

# DOWNER MOUCHEL PURCHASE ORDER

## TERMS AND CONDITIONS

### 1 SUPPLY

- 1.1 The Supplier must supply and deliver the Goods to DownerMouchel at the Place of Delivery or Place of Pick-up (as applicable) by the Delivery Date for the Price.
- 1.2 The Supplier is taken to have carefully examined all documents and other information furnished by DownerMouchel relating to the supply of the Goods and to have fully satisfied itself of all conditions, risks, contingencies and other circumstances which might affect the supply of the Goods including conditions at the Place of Delivery or Place of Pick-up (as applicable), and to have made due allowance for these in the Price.
- 1.3 All Goods supplied by the Supplier to DownerMouchel are supplied under these Purchase Order Terms and Conditions unless a separate written contract is entered into by DownerMouchel and Supplier which expressly excludes these Purchase Order Terms and Conditions.
- 1.4 These Purchase Order Terms and Conditions (together with the Purchase Order) constitute the entire agreement between the Supplier and DownerMouchel with respect to the supply of the Goods. All other terms and conditions (including terms and conditions provided or referenced by the Supplier, whether or not received or acknowledged by DownerMouchel) will be void and unenforceable and will not in any way affect the application or operation of these Purchase Order Terms and Conditions.

### 2 WARRANTIES

- 2.1 The Supplier represents and warrants that when the Goods are delivered to DownerMouchel that they will:
- (a) be of merchantable quality, new in every respect and in good order and condition;
  - (b) comply in all respects with the Purchase Order, including any specifications or other requirements included with the Purchase Order;
  - (c) be fit for the purpose made known to the Supplier by DownerMouchel or, if none was made known to the Supplier, be fit for the purpose:
    - (i) for which goods of that kind are ordinarily used;
    - (ii) which should reasonably have been inferred by the Supplier having regard to the nature of the Goods, the Purchase Order and any communication with DownerMouchel;
  - (d) comply with all applicable Australian Standards or where there is no applicable Australian Standard then all applicable International Standards ;
  - (e) comply with the provisions of any law or legislation applicable to them;
  - (f) be free from defects for:
    - i. a minimum of 2 years from the date the Goods are put into service; or
    - ii. the period specified in the Purchase Order, whichever is longer.
- 2.2 The warranties in clause 2.1 are in addition to any warranties which are or may be implied under any legislation applicable to the Goods that has not been

expressly excluded in this Purchase Order.

### 3 PRICE

- 3.1 The Price is fixed and will not be subject to adjustment for rise and fall, exchange rate variations or any changes in general or market specific economic conditions except where expressly agreed in writing, signed by an authorised representative of DownerMouchel.
- 3.2 Except as expressly provided in the Purchase Order, the Price includes all taxes, duties, levies and fees (including GST) which are payable in relation to the supply and delivery of the Goods. The Supplier must pay such taxes, duties, levies and fees.
- 3.3 Upon Delivery of the Goods, the Supplier must invoice DownerMouchel for the Goods. The Supplier must not invoice DownerMouchel for Goods which have not been delivered. If GST is payable and included in the Price, the invoice must be in the form of a valid tax invoice. All invoices must be itemised and be in a form which clearly indicates any GST component already paid by the Supplier for which DownerMouchel is entitled to claim an input credit.
- 3.4 DownerMouchel will pay the Supplier the Price for the Goods which are delivered at the date of the invoice provided under clause 3.4 within 30 (thirty) days after the end of the month in which an invoice for those Goods is received at the invoicing address included on the Purchase Order. The Supplier shall submit all invoices for payment to DownerMouchel no later than three (3) calendar months after Delivery of the Goods to which the invoice relates and the Supplier shall have no entitlement or make any Claim after that date.
- 3.5 DownerMouchel may make payment by credit card, cheque, bank cheque, transfer or cash payment or in any manner otherwise agreed in writing by the parties.
- 3.6 Payment is not evidence of the value of the Goods or an admission of liability or that the Goods are satisfactory but is a payment on account only.

### 4 VARIATION

- 4.1 DownerMouchel may direct the Supplier by a notice in writing to perform a Variation.
- 4.2 Within 10 business days of DownerMouchel issuing a notice under clause 4.1, the Supplier must advise DownerMouchel how much the Variation will cost and the timeframe for it to be performed.
- 4.3 If DownerMouchel accepts the terms of the Variation proposed by the Supplier in accordance with clause 4.2, the Supplier must proceed with the Variation.

### 5 GENERAL DELIVERY OBLIGATIONS

- 5.1 The Supplier must at its own cost package, mark and label the Goods before Delivery to DownerMouchel in accordance with any specification for packaging, marking or labelling or otherwise in a manner reasonably expected of the Supplier having regard to the nature of the Goods. Unless otherwise agreed in writing by DownerMouchel the Supplier is responsible for the safe disposal of any packaging waste.
- 5.2 DownerMouchel may refuse to accept Delivery at any time if the Goods do not comply with this Purchase Order.
- 5.3 The Supplier is to provide detailed delivery dockets with

every Delivery. The Supplier acknowledges that failure to comply with the delivery docket requirements may delay or preclude acceptance and payment for the Goods.

## **6 EXTENSIONS TO TIME FOR DELIVERY**

- 6.1 If the Supplier reasonably believes that the Goods (or part thereof) will not be delivered by the Delivery Date, the Supplier must give DownerMouchel immediate notice of that fact.
- 6.2 If the Supplier gives notice under clause 6.1 DownerMouchel may at its absolute discretion:
- (a) extend the time for Delivery of the Goods, by notifying the Supplier of a later Delivery Date (but is not required to do so for the benefit of the Supplier);
  - (b) refuse to take Delivery of the Goods; or
  - (c) cancel the relevant Purchase Order(s) without liability to DownerMouchel.
- 6.3 DownerMouchel may, at any time, and for any reason whatsoever, by notice in writing to the Supplier extend the time for completion of Delivery of the Goods (but is not required to do so for the benefit of the Supplier).
- 6.4 The Supplier must take all reasonable steps necessary to minimise the effect of any delay on the supply of Goods.

## **7 DELIVERY OF GOODS BY SUPPLIER**

- 7.1 This clause 7 applies if the Supplier is responsible for Delivery to the Place of Delivery (Supplier Delivery).
- 7.2 The Supplier must deliver the Goods to the Place of Delivery by the Delivery Date and during the Delivery Hours.
- 7.3 The cost of delivery of the Goods to the Place of Delivery (including all transport costs and reasonably appropriate insurance cover), and all packing, loading and unloading is included in the Price for the Goods.
- 7.4 If the Goods are not delivered to the Place of Delivery by the Delivery Date, the Supplier will be in breach of this Purchase Order and:
- (a) the Supplier must pay, as a debt immediately due and payable, liquidated damages at the rates specified in the Purchase Orders, from the Delivery Date to the date of Delivery of the Goods;
  - (b) where liquidated damages are not specified in the Purchase Order or are unenforceable for any reason, the Supplier will be liable to DownerMouchel for all loss, cost, expense and damage suffered by DownerMouchel arising out of or in connection with such breach;
  - (c) DownerMouchel may, without prejudice to its other rights, terminate the whole or part of the relevant Purchase Order(s).
- 7.5 The Supplier must comply with all safety requirements of DownerMouchel relating to the Supplier's conduct at the Place of Delivery and otherwise comply with all laws and regulations relating to health, safety and the environment.

## **8 PICK UP OF GOODS BY DOWNERMOUCHEL**

- 8.1 This clause 8 applies if the Supplier is responsible for making the Goods available for collection at the Place of Pick-up (DownerMouchel Pick-up).
- 8.2 The Supplier must make the Goods available for DownerMouchel (or its nominated agent) to collect at the Place of Pick-up by the Delivery Date

8.3 If the Goods are not made available for collection at Place of Pick-up by the Delivery Date, the Supplier will be in breach of this Purchase Order and:

- (a) the Supplier must pay, as a debt immediately due and payable, liquidated damages at the rates specified in the Purchase Order, from the Delivery Date to the date of Delivery of the Goods; and
- (b) where liquidated damages are not specified in the Purchase Order or are unenforceable for any reason, the Supplier will be liable to DownerMouchel for all loss, cost, expense and damage suffered by DownerMouchel arising out of or in connection with such breach;
- (c) DownerMouchel may, without prejudice to its other rights, terminate the whole or part of the relevant Purchase Order(s).

## **9 RISK AND TITLE**

- 9.1 The Supplier warrants that it has unencumbered ownership of, and title to, the Goods and the Goods are free of any liens, charges and encumbrances.
- 9.2 Unencumbered title and risk in the Goods will pass to DownerMouchel on Delivery of the Goods.

## **10 ACCEPTANCE OR REJECTION OF GOODS**

- 10.1 DownerMouchel is not obliged to accept early Delivery of the Goods. If DownerMouchel does not accept early Delivery of the Goods, the Supplier must, at its cost, hold the Goods in store until the Delivery Date. DownerMouchel is not obliged to accept any Goods in excess of the quantity specified in this Purchase Order.
- 10.2 If DownerMouchel or any of its representatives signs a delivery docket or other document required by the Supplier to acknowledge delivery, DownerMouchel will not be taken to have accepted the Goods as being in accordance with this Purchase Order (whether as to quality or quantity). This applies notwithstanding any terms and conditions appearing on any such acknowledgment of delivery.
- 10.3 The Supplier must deliver all applicable material safety data sheets (MSDS) and Operation and Maintenance Documents with the Goods.

## **11 RETURN OF GOODS**

- 11.1 If, within a reasonable time of Delivery, it is apparent to DownerMouchel that the Goods or any part of the Goods are not in accordance with this Purchase Order, DownerMouchel may return those Goods to the Supplier.
- 11.2 If DownerMouchel exercises its power under clause 11.1, then without limiting DownerMouchel's rights under the Purchase Order or otherwise at law, the Supplier must pay DownerMouchel:
- (a) any amounts paid by DownerMouchel for the Goods so returned; and
  - (b) any costs incurred or losses suffered by DownerMouchel in connection with the delivery or return of those Goods.

## **12 DEFECTIVE GOODS**

- 12.1 If the Goods are or become defective in any way, DownerMouchel may (without limiting DownerMouchel's rights under the Purchase Order (or otherwise at law) in its absolute discretion, by notice to the Supplier:

- (a) require the Supplier to replace or repair the Defective Goods at the Supplier's cost and within a reasonable period (including if necessary uninstalling or removing the Defective Goods);
- (b) replace or repair the Defective Goods or engage a third party to replace or repair the Defective Goods and in either case, the cost of doing so will be a debt immediately due and payable by the Supplier to DownerMouchel
- (c) uninstall or remove the Defective Goods or engage a third party to uninstall or remove the Defective Goods and in either case, the cost of doing so will be a debt immediately due and payable by the Supplier to DownerMouchel;
- (d) reject and/or return the Defective Goods and will be entitled to a full refund of any amounts paid for the Defective Goods.

### 13 INSURANCE AND INDEMNITY

13.1 Unless DownerMouchel expressly agrees otherwise in writing, the Supplier must procure and maintain the following Insurances:

- (a) **Public and Products liability insurance** written on an occurrence basis with a limit of indemnity of not less than \$20,000,000 for each and every occurrence and, in the case of product liability, no less than \$20,000,000 in the aggregate during any 12 month period of insurance which covers the liability of the Supplier in respect of bodily injury to any third party, third party property damage and advertising liability.

13.2 The Supplier indemnifies DownerMouchel against any action, liability, costs, damages or expenses suffered or incurred by DownerMouchel as a consequence of any action or omission by the Supplier, its contractors, employees or agents, including supply of Defective Goods.

### 14 CONFIDENTIALITY

Without the prior written consent of DownerMouchel, the Purchase Order must be treated as confidential and must not be disclosed to any person, unless required by law, or be used for advertisement, display or publication.

### 15 DRAWINGS AND TOOLS

All tools, patterns, materials, drawings, specifications and other data provided by DownerMouchel in connection with the Purchase Order:

- (a) remain the property of DownerMouchel (except that the Supplier is responsible for making good any damage done to them while they are in the possession of the Supplier);
- (b) must be used solely for the purpose of the Purchase Order;
- (c) must not be passed to or divulged to any third party except with the express consent of DownerMouchel in writing; and
- (d) must be returned by the Supplier to DownerMouchel on completion of this Purchase Order.

### 16 INTELLECTUAL PROPERTY RIGHTS

16.1 The Supplier warrants that it has all Intellectual Property Rights necessary to supply the Goods in accordance with the Agreement and indemnifies DownerMouchel against any Loss suffered or incurred by DownerMouchel as a consequence of any claim by a third party that it has a right to any property or Intellectual Property Right in the Goods.

16.2 The Supplier grants DownerMouchel a perpetual, non-transferable, royalty-free licence of any Intellectual Property Rights required in order to use, consume or sell the Goods in the manner reasonably intended by DownerMouchel at the Date of the Purchase Order.

### 17 TERMINATION

17.1 DownerMouchel may suspend all or part of the supply of the Goods at any time for any period of time by giving notice to the Supplier. The Supplier must comply with the notice and recommence supply when notified by DownerMouchel. The Supplier will not be entitled to any additional payment arising as a result of the suspension.

17.2 DownerMouchel may terminate the Purchase Order immediately by notice in writing to the Supplier if the Supplier:

- (a) commits a material breach of the Purchase Order and does not remedy the breach within 10 business days of being required to do so by DownerMouchel (or any longer period as the parties may agree in writing); or
- (b) commits an Insolvent Event.

17.3 DownerMouchel may terminate the Purchase Order at any time and for any reason by giving notice in writing to the Supplier. Subject to any rights DownerMouchel may have of set off or deduction, upon termination DownerMouchel's only obligation will be to pay the Supplier for Goods which have been Delivered in accordance with the Purchase Order prior to the date of termination.

### 18 PROTECTION OF ABORIGINAL HERITAGE AND RIGHTS

18.1 It is of critical importance that the Purchaser, Supplier and the Client have a very good working relationship with Aboriginal people and the organisations which represent them. Accordingly, the Supplier must ensure that it will not do or omit to do in provision of the goods anything that harms that relationship.

18.2 The Supplier must comply with:

- (a) all applicable statutory requirements relating to Aboriginal Heritage and Native Title Laws;
- (b) any agreements or arrangements between the Client, the Purchaser and Aboriginal people in relation to Aboriginal Heritage; and

the Client's and the Purchaser's reasonable instructions to enable the Client and the Purchaser to comply with any statutory requirements, agreements, arrangements or requirements or any other authorisation relating to Aboriginal Heritage and Native Title Laws.

### 19 COMPLIANCE WITH THE CODE AND GUIDELINES

19.1 The Supplier must ensure that it complies with the National Code of Practice for the Construction Industry (Code) in the respective State or Territory of supply and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry (Guidelines) in the respective State or Territory of supply.

19.2 Compliance with the Code and the Guidelines does not relieve the Supplier from its responsibility to perform its obligations pursuant to this Purchase Order or from any liability for any defect in the goods arising from compliance

with the Code and the Guidelines.

- 19.3 The Supplier must maintain adequate records of its compliance with the Code and the Guidelines.
- 19.4 The Supplier must not engage a material supplier in relation to the Purchaser Order where the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations.
- 19.5 The Supplier must ensure it and its suppliers provide the Government of the Commonwealth of Australia or any person authorised by the Government of the Commonwealth of Australia, including a person occupying a position in the Office of the Australian Building and Construction Commissioner (as referred to in the Code and the Guidelines), with access to:
- (a) inspect any work, material, machinery, appliance, article or facility;
  - (b) inspect and copy any record relevant to the Purchaser Order; and
  - (c) interview any person, as is necessary to demonstrate their compliance with the Code and the Guidelines.
- 19.6 The Supplier must comply with a request from the Government of the Commonwealth of Australia or any person authorised by the Government of the Commonwealth of Australia, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, in person, by fax or by post.

## 20 MISCELLANEOUS

- 20.1 In this Agreement:
- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
  - (b) "includes" means includes without limitation;
  - (c) a reference to a gender includes any gender;
  - (d) a reference to "\$" is to be construed as a reference to Australian currency;
  - (e) a reference to a party to this Agreement includes that party's successors and permitted assigns;
  - (f) a reference to legislation includes any amendment to that legislation, any consolidation or replacement of it, and any subordinate legislation made under it;
  - (g) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.
- 20.2 No waiver by DownerMouchel of a breach of the Purchase Order by the Supplier constitutes a waiver for any subsequent or continuing breach by the Supplier.
- 20.3 The Purchase Order is governed by the law of the State or Territory in which Delivery is to be made as specified in the Purchase Order. Each party irrevocably submits to the non-exclusive jurisdiction of the courts this jurisdiction and any courts which have jurisdiction to hear appeals from any of those courts. A party must not object to the jurisdiction of

a court merely because the forum is inconvenient.

- 20.4 The United Nations Convention on Contracts for the International Sale of Goods is excluded and does not apply to the Purchase Order.
- 20.5 If any provision or part of any provision, of the Purchase Order is invalid or otherwise unenforceable that provision or that part of the provision will be severed from the Purchase Order and the remainder of the Purchase Order will continue to be effective and valid notwithstanding such severance.
- 20.6 The Supplier must not, without the prior written approval of DownerMouchel, assign, or deal with its interest under the Purchase Order to a third party. Any such approval will not relieve the Supplier of its obligations under this Purchase Order.

## 21 DEFINITIONS

In these terms and conditions unless the context otherwise requires:

**Australian Standards** means any Australian Standard (as amended or replaced) issued by Standards Australia applying directly or indirectly to the Goods;

**Carbon Pricing Scheme** means the Australian Federal Government's carbon price mechanism established by the *Clean Energy Act 2011* or in whatever alternative form that mechanism ultimately takes;

**Defective Goods** means Goods which are not in conformity with the Purchase Order or are otherwise defective in design, performance, workmanship or makeup;

**Delivery** means the physical receipt of possession and control of the Goods from the Supplier by DownerMouchel, or an agent nominated by DownerMouchel (whether by way of Supplier Delivery or DownerMouchel Pick-Up), in satisfaction of the Supplier's obligations under the Purchase Order, and Deliver and Delivered have corresponding meanings;

**Delivery Date** means the date specified in the Purchase Order as the date by which the Supplier must deliver the Goods to the Delivery Place (for Supplier Delivery) or make the Goods available for pick-up by DownerMouchel (for DownerMouchel Pick-Up) (as applicable)

**DownerMouchel** means the party identified as Downer EDI Works Pty Limited (ABN 66 008 709 608) and Mouchel International (Jersey) Limited (ABN 74 136 475 879) trading as DownerMouchel (ABN 92 646 425 631) such in the Purchase Order

**DownerMouchel Pick-up** means that DownerMouchel or its nominated agent is responsible for taking Delivery of the Goods from the Supplier as specified in the Purchase Order;

**Goods** means the goods described in the Purchase Order and includes all manuals, spare parts and operating instructions needed by the DownerMouchel for the proper use of the Goods and identified in the Purchase Order and any services incidental to the supply of the goods, and all other things which can reasonably be inferred from the description of the Goods in the Purchase Order;

**Insolvent Event** means any one of the following circumstances where the

Supplier:

- a) is (or states that it is) an insolvent under administration or insolvent (each defined under the Corporations Act 2001 (Cth));
- b) is in liquidation, provisional liquidation, under administration or wound up or has had a controller appointed to its property;
- c) is subject to any arrangement, assignment, moratorium or composition, protected from creditors under statute or dissolved;
- d) has an application or order has been made, resolution passed, proposal put forward, or any other action is taken which is preparatory to or could result in any of (a), (b) or (c) above;
- e) is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act 2001 (Cth); or
- f) something having a substantially similar effect to (a) to (e) happens under the law of any jurisdiction in relation to the Supplier which DownerMouchel reasonably believes may prejudice the Supplier's ability to supply Goods or to pass title in Goods to DownerMouchel;

**Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trademarks, designs, patents, inventions and other results of intellectual activity in any field whether or not registrable, registered or patentable;

**Place of Delivery** means the place specified by

DownerMouchel in the Purchase Order;

**Place of Pick-up** means the place specified by DownerMouchel in the Purchase Order;

**Price** means the rates or measures contained in the Purchase Order

**Purchase Order** means the written notice from DownerMouchel to the Supplier specifying the Goods and identified by a unique identifier

**Representative:** means a person chosen or employed by DownerMouchel to act on their behalf

**Supplier** means the party identified as such in the Purchase Order

**Supplier Delivery** means that the Supplier is responsible for Delivery of the Goods to DownerMouchel at the Place of Delivery as specified in the Details;

**Variation** means:

- (a) the inclusion of other goods as Goods to be supplied by the Supplier under the Purchase Order;
- (b) a change in the character or quality of the Goods to be supplied under the Purchase Order; or
- (c) an increase or decrease in the quantity of Goods to be supplied under the Purchase Order