

## 1. General

- 1.1 These Terms and Conditions apply to the order for goods ("Goods") or services ("Services") placed by BSES Limited ("BSES") as described in the accompanying purchase order ("Purchase Order").
- 1.2 "Supplier" means the person, firm, partnership, company or other legal entity to whom the Purchase Order is issued.
- 1.3 These Terms and Conditions are to be read as an addition to any terms specified in the Purchase Order and/or any attachment to the Purchase Order that is expressly incorporated in writing.
- 1.4 The Purchase Order and these Terms and Conditions represent the entire agreement between the parties on everything connected with their subject matter and supersede any prior agreement on anything connected with them **except where** BSES has already entered into a longer form supply agreement with the Supplier in which case the terms and conditions of that agreement will apply between the parties.
- 1.5 No amendments or variations to the Purchase Order or these Terms and Conditions will be binding on the parties unless approved in writing by a BSES officer with delegated authority to approve any such amendments or variations.
- 1.6 For the avoidance of doubt, the Purchase Order and these Terms and Conditions apply to the exclusion of any terms and conditions contained on the Supplier's invoice, conditions of sale or otherwise (unless those terms and conditions are expressly accepted in writing by a BSES officer with delegated authority to approve any such amendments or variations).

## 2. Offer and Acceptance

- 2.1 The delivery of a Purchase Order by BSES to the Supplier constitutes an offer by BSES to acquire the Goods and/or Services described in that Purchase Order from that Supplier on the terms contained in that Purchase Order and these Terms and Conditions.
- 2.2 By supplying the Goods and/or Services to BSES, the Supplier is deemed to have accepted the Purchase Order and these Terms and Conditions.

## 3. Delivery, Acceptance and Title

- 3.1 If a time period for delivery of the Goods and/or Services is specified in the Purchase Order, time is of the essence with respect to the Supplier's delivery obligations
- 3.2 The Supplier shall deliver the Goods and/or Services in accordance with the terms specified in the Purchase Order and at the time or times nominated by BSES. The Supplier shall unload the Goods at the delivery point designated by BSES. The Supplier shall immediately advise BSES in writing of any circumstances that may cause delay in delivery, the action taken to avoid or minimise the delay and the estimated period of delay.
- 3.3 Payment of any invoice by BSES will not be deemed acceptance of any Goods and/or Services, but rather such Goods and/or Services will be subject to a reasonable period of inspection, testing, acceptance or rejection by BSES.
- 3.4 If BSES rejects any Goods as being defective or non-conforming, BSES may, at its option, either return the

Goods for credit or refund or require prompt correction or replacement of any defective or non-conforming Goods or part thereof. Return to the Supplier of any defective or non-conforming Goods and delivery to BSES of any corrected or replaced Goods shall be at the Supplier's expense.

- 3.5 All delivery notifications issued by the Supplier to BSES must include a valid Purchase Order number.
- 3.6 The property and risk in the Goods will pass to BSES upon delivery to BSES at the designated delivery point specified in the Purchase Order. This clause is without prejudice to BSES' rights under clauses 3.3 and 3.4.

## 4. Confidential Information

- 4.1 The Supplier must treat all information provided to it by or on behalf of BSES ("Confidential Information") as confidential and not disclose it to any person.
- 4.2 All Confidential Information remains the property of BSES and must only be used by the Supplier for the purpose of supplying the Goods and Services.
- 4.3 The Supplier's obligations under this clause do not extend to information already in the public domain other than due to a breach of these Terms and Conditions or any disclosure required by law.
- 4.4 These obligations continue indefinitely beyond the end of the Purchase Order and Terms and Conditions.

## 5. Intellectual Property

- 5.1 "Intellectual Property" means all intellectual property rights throughout the world and includes plant breeder's rights, patents, rights in respect of copyright, rights in circuit layouts, designs, trademarks, trade secrets, know-how and confidential information; ; any application or right to apply for registration of any of these rights and all rights of a similar nature to any of these rights that may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.
- 5.2 The Supplier warrants that the Goods and/or Services will not infringe any Intellectual Property of a third party. The Supplier indemnifies BSES, its employees and agents against all expenses, demands and liabilities for any alleged infringement.
- 5.3 Any Intellectual Property brought into existence by either party as a result of the supply of the Goods and/or Services ("Material") vests in BSES.
- 5.4 Ownership of Intellectual Property that is in existence prior to the Supplier's acceptance of the Purchase Order and these Terms and Conditions or brought into existence after this date (other than as a result of the supply of the Goods and/or Services) and which is made available by a party for the supply of the Goods and/or Services ("Background IP") will remain with the party that makes it available.
- 5.5 BSES grants the Supplier a non-exclusive, world-wide, royalty-free licence to use the Material and Background IP only to the extent required for the supply of the Goods and/or Services.
- 5.6 If Material is reliant upon Background IP owned by the Supplier, the Supplier grants BSES a non-exclusive, irrevocable, world-wide, royalty-free licence to use that Background IP, only to the extent required for BSES' use of Materials.

## 6. Termination

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- 6.1 BSES may terminate the Purchase Order and these Terms and Conditions if:
- the Supplier fails to comply with any provision hereof where time is of the essence;
  - the Supplier fails to remedy any breach within seven days of notice of breach by BSES;
  - the Supplier is insolvent or becomes the subject of administration, liquidation, a proceeding for relief of debtors or makes an assignment for the benefit of creditors or is otherwise unable to pay its debts when they fall due.
- 6.2 Without affecting its right to terminate this Purchase Order under paragraph 6.1, BSES may at any time before delivery cancel or change the Purchase Order. If the Supplier has already incurred expense for work started but not completed, BSES agrees to pay reasonable compensation to the Supplier. The Supplier shall provide auditable details of its proposal for compensation within seven (7) days of receiving notice of the cancellation or change.

## 7. Indemnity, Insurance and Warranties

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- 7.1 The Supplier indemnifies BSES, its employees, contractors and agents against all losses, damages, costs or expenses which it or any of them may incur or sustain and all actions, proceedings, claims and demands which may be brought or made against any of them by any person in respect of or arising out of any use of the Goods and/or Services, any breach of this Order by the Supplier, any negligence, fraud or other wrongful act or omission of the Supplier, its employees, contractors or agents, or any death, personal injury or damage to property in connection with the supply or use of the Goods and/or Services.
- 7.2 The Supplier's liabilities under this clause is reduced to the extent that any action, proceeding, claim or demand arises out of any negligence, fraud or other wrongful act or omission of BSES or its employees, contractors and agents.
- 7.3 BSES holds the benefit of the indemnity in this clause for the benefit of BSES, its employees, contractors and agents.
- 7.4 The Supplier shall maintain adequate insurance including, without limitation, public liability, worker's compensation (including common law liability) and product liability insurance upon such terms and for such amounts as are reasonable in the circumstances of the Purchase Order. BSES may ask the Supplier to provide evidence that it maintains appropriate insurance. The Supplier shall not commence manufacture or delivery of Goods and/or Services until evidence of insurance has been acknowledged by BSES. BSES may terminate the Purchase Order and Terms and Conditions. If in its absolute discretion it considers that the Supplier's insurance is not adequate.

## 8. Prices and Taxes

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- 8.1 In consideration for the supply of Goods and/or Services under the Purchase Order and Terms and Conditions, BSES agrees to pay to the Supplier the price noted on the Purchase Order. This is a firm price and is not subject to rises and falls.
- 8.2 No charges will be allowed for transportation, packing or returnable containers unless stated in the Purchase Order.

- 8.3 Unless so specified, all prices stated on the Purchase Order will be considered GST-inclusive. All invoices issued by the Supplier must be GST compliant, be headed "Tax Invoice" and separately state the amount relating to taxes.

## 9. Invoices and Payments

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- 9.1 All invoices issued by the Supplier must be billed to "BSES Limited" and sent by mail to the BSES office that generated the Purchase Order or by email in PDF format to accounts@bses.com.au.
- 9.2 All invoices must include:
- a valid BSES Purchase Order number;
  - adequate description of the Goods and/or Service;
  - particulars of the date and time of delivery of the Goods and/or Service.
- 9.3 Unless otherwise specified on the Purchase Order, BSES agrees to pay the Supplier invoice within 30 days following the end of the month in which the Supplier invoice is received.
- 9.4 Non-inclusion of a Purchase Order number in the invoice and/or delivery notification may delay processing of payment for the Goods and/or Service.
- 9.5 A Purchase Order is not required to be sent by BSES to a Supplier where the order placed by BSES for Goods and/or Services does not exceed \$500 (excluding GST).
- Unless paragraph 9.5 applies, BSES will not be liable to pay any invoice issued by the Supplier where a Purchase Order from BSES has not been received by the Supplier.

## 10. Miscellaneous

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- 10.1 **Governing law:** The law of Queensland governs the Purchase Order and Terms and Conditions. The parties submit to the non-exclusive jurisdiction of the courts of the State of Queensland and of the Commonwealth of Australia.
- 10.2 **Assignment:** The Supplier must not assign or subcontract any obligations under the Purchase Order and Terms and Conditions without the prior written consent of BSES, which consent may be withheld in its discretion.
- 10.3 **Relationship:** The relationship between the parties is that of independent contracting parties. Nothing in the Purchase Order and Terms and Conditions creates any joint venture, agency, partnership, trust, fiduciary, employment or other relationship between the parties.
- 10.4 **Waiver:** BSES' failure or delay to exercise a power or right does not operate as a waiver of that power or right. A waiver by BSES is not effective unless it is in writing, and only relates to the specific purpose for which it is given.