

Terms and conditions

1 Definitions

In this Order:

Bankruptcy Act means the *Bankruptcy Act 1966* (Cth).

Claim means any claim, action, proceeding or demand, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Corporations Act means *Corporations Act 2001* (Cth).

Event of Force Majeure includes fire, storm, flood, earthquake, explosion, accident, act of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction or act of God.

GST Law has the meaning given to it in *A New Tax System (Goods and Services Tax) Act 1999*.

Industry Best Practice means the standards (including any relevant Australian Standard), practices and methods generally followed by and that degree of skill and diligence that would ordinarily be expected of a skilled and experienced supplier in the course of supplying goods and services similar to the goods and services.

Insolvency Event means any of the following events occurring in relation to a party:

- (a) if an application is filed for the winding up of the party (winding up application) and the winding up application is not dismissed or withdrawn within 30 Business Days of that application being filed;
- (b) if an order is made for the winding up of the party and the winding up is not stayed indefinitely or terminated within 30 Business Days of the winding up order being made;
- (c) if the party's shareholders pass a resolution for its winding up;
- (d) if a receiver, receiver and manager, controller (as defined in section 9 Corporations Act), or similar person is appointed to, or the holder of a Security Interest takes (or appoints an agent to take) possession of, any property of the party;
- (e) if a provisional liquidator is appointed to the party;
- (f) if:
 - (i) the party is placed into administration (as defined in section 9 Corporations Act) or enters into a deed of company arrangement (as defined in section 9 Corporations Act); or
 - (ii) the party, or any other person takes any step towards placing the party into administration or towards entering into a deed of company arrangement;
- (g) if the party:
 - (i) advises the other party that it is financially unable to proceed with or meet any of its obligations under this document;
 - (ii) without the written consent of the other party, suspends payment of its debts;
 - (iii) ceases or threatens to cease to carry on all or a material part of its business;
 - (iv) is or states that it is unable to pay its debts as and when they fall due and payable; or
 - (v) is taken to fail to comply with a statutory demand under section 459F Corporations Act;
- (h) if the party, without the consent of the other party:
 - (i) begins negotiations with one or more of its creditors seeking a general readjustment or rescheduling of its indebtedness to one or more of its creditors;
 - (ii) takes any steps toward entering into, or enters into, any compromise or arrangement with one or more of its creditors under part 5.1 Corporations Act; or
 - (iii) makes any assignment or enters into any arrangement or composition generally for the benefit of one or more of its creditors;

- (i) if the party:
 - (i) commits an act of bankruptcy under section 40 Bankruptcy Act; or
 - (ii) is made bankrupt;
- (j) if the party becomes or takes any step that could result in the party becoming an insolvent under administration (as defined in section 9 Corporations Act);
- (k) if the party enters into or takes any step that could result in the party entering into a personal insolvency agreement under part X Bankruptcy Act;
- (l) if the party enters into or takes any step that could result in the party entering into a debt agreement under part IX Bankruptcy Act;
- (m) if execution is levied against the party by a creditor;
- (n) if any matter relating to the party becomes subject to a direction under, or has effect as if it were a direction under, section 14 *Australian Securities and Investment Commission Act 2001* (Cth), or to an investigation under, or taken to be under, *Australian Securities and Investment Commission Act 2001* (Cth); or
- (o) if any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition, unless:
 - (i) the event takes place as part of a solvent reconstruction, amalgamation, merger or consolidation on terms approved by the other party before it takes place; and
 - (ii) the implementation of the reconstruction, amalgamation, merger or consolidation complies with the terms of the approval.

Order means this purchase order.

Security Interest has the meaning given to it in the *Property Securities Act 2009* (Cth).

Technical Materials means the copyright in all plans, designs, drawings, engineering information, data, specifications, reports, accounts and any other material.

Variation has the meaning set out in clause 2(c).

Warranty Period means the period specified in this purchase order or if no period is specified, the period provided for in clause 11(a).

2 Order

- (a) The Supplier will provide the Goods and Services in accordance with this Order. An Order may not be amended, altered, supplemented or cancelled without the prior written consent of Mastermyne. No terms stated by the Supplier in accepting or acknowledging an Order will be binding upon Mastermyne unless accepted in writing by Mastermyne. The Supplier may not assign or sub-contract any Order without Mastermyne's prior written consent.
- (b) This Order will form the terms and conditions of the contract between the parties.
- (c) Mastermyne may direct the Supplier at any time to vary, amend, increase, decrease, omit or change the quality, quantity, character or extent of the Goods or Services. If the parties cannot agree the price for a Variation, Mastermyne will pay a reasonable price.
- (d) Mastermyne may request the Supplier to provide security in accordance with this Order. Mastermyne may have recourse to this security if the Supplier breaches this Order, at any time to the extent of loss suffered by Mastermyne as a result of the Supplier's breach.

3 Quality

- (a) The Goods and Services must:
 - (i) match the description in this Order;
 - (ii) correspond with any sample which the Supplier provided to, or showed, Mastermyne prior to this Order;
 - (iii) comply with any laws, regulations, licences, permits, patents, trademarks, copyrights or approvals applicable to the Goods and Services;
 - (iv) be fit for the purpose for which the Goods and Services of the same kind are commonly provided and for any other purpose which Mastermyne makes known to the Supplier;
 - (v) comply with any specifications or plans supplied by Mastermyne for the supply of the Goods or Services; and
 - (vi) be in accordance with Industry Best Practice.
 - (vii) The supplier is responsible for any liability resulting from any alleged infringement of any permits, licences, patents, trademarks, copyrights or approvals on the items supplied
- (b) The Goods must be new and of merchantable quality.

4 Inspection

- (a) The Supplier agrees that Mastermyne may inspect (at any time) the Goods while in any stage of manufacture or installation at any premises (whether or not the premises are in the control of the Supplier).
- (b) Mastermyne may reject the whole or any part of the Goods supplied and Services performed or being performed that do not conform to this Order. The Goods and Services rejected shall be re-supplied at no additional cost to Mastermyne. Any such inspection shall not relieve the Supplier of any obligation under this Order.

5 Delivery and transportation

- (a) The Supplier must at its own cost properly pack and protect all Goods to ensure safe arrival at the Site and in accordance with Industry Best Practice.
- (b) The Supplier must deliver the Goods by the Delivery Date and provide the Services by the Completion Date. If the Goods are not delivered by the Delivery Date and the Services are not provided by the Completion Date, the Supplier must pay Liquidated Damages at the rates (if any) specified in this Order.
- (c) Mastermyne may extend, by a reasonable period, the Delivery Date or Completion Date for an Event of Force Majeure, a Variation or for any other reason (at its sole discretion). Mastermyne reserves the right to cancel part of or in its entirety any purchase order for goods or services that do not meet an agreed extended delivery date and any costs incurred will be the responsibility of the supplier.
- (d) The Supplier must provide all installation instructions, maintenance and operating manuals engineering data, spare

parts lists and other information as reasonably required for the installation, operation and maintenance of the Goods at the time of delivery or completion of any Services unless otherwise agreed.

6 Inspection on delivery

- (a) All Goods may be inspected by Mastermyne within a reasonable time after arrival at the Site. If on inspection, any Goods are found to be unsatisfactory, defective, of inferior quality or workmanship or fail to meet any specifications or other requirements of this Order, Mastermyne may return such Goods to the Supplier at the Supplier's sole risk and expense. On return of any unsatisfactory or defective Goods, the Supplier shall reimburse Mastermyne for:
 - (i) any amounts paid by Mastermyne on account for the returned Goods, and
 - (ii) any cost incurred by Mastermyne in connection with the delivery or return of such Goods.

7 Invoicing and payment

- (a) Mastermyne will, subject to the terms of this Order, pay the Supplier the price specified in this Order. The price is inclusive of all delivery charges and all taxes. Unless otherwise specified, any money payable under this Order is to be paid in Australian currency. The Supplier can only invoice Mastermyne after the provision of the Goods and Services unless otherwise specified in this Order.
- (b) Mastermyne will pay all Tax Invoices (as this term is defined in the GST Law) rendered to Mastermyne by the Supplier under clause 7(a) within 30 days from the end of the month in which the goods or services were received, upon receipt of a Tax Invoice submitted no later than the 7th day of the month following the month of the supply of goods or services except where Mastermyne disputes the invoice, in which case:
 - (i) Mastermyne will pay the undisputed part of the relevant invoice (if any) and dispute the balance; and
 - (ii) if the resolution of the dispute determines that Mastermyne is to pay an amount to the Supplier, Mastermyne will pay that amount upon resolution of that dispute.
- (c) No interest will be payable by Mastermyne in respect of any invoice rendered to Mastermyne by the Supplier under clause 7(a) which remains due and unpaid.
- (d) Mastermyne may reduce any payment due to the Supplier under these terms by any amount for which the Supplier is or in Mastermyne's sole opinion may be liable to Mastermyne, including costs, charges, damages and expenses. This does not limit Mastermyne's right to recover those amounts in other ways.

8 GST

- (a) The Price or other consideration on any Supply by the Supplier to Mastermyne under or in connection with this Order includes any GST payable on that supply, and the Supplier (and not Mastermyne) is responsible for payment of that GST.
- (b) The terms in clause 8(a) which commence with capital letters have the same meaning as in the GST Law.

9 Termination

- (a) Mastermyne may terminate this Order:
 - (i) immediately on written notice to the Supplier, if an Insolvency Event occurs in respect of the Supplier or if the Supplier breaches any term of this Order, including any of the warranties, without prejudice to any other rights (including damages) that it may have as a result of such a breach; or
 - (ii) on giving 7 days written notice to the Supplier.
- (b) If Mastermyne terminates this Order in accordance with clause 9(a) the Supplier will not be entitled to any Claim against Mastermyne.

10 Insurance

The Supplier must hold public and product liability insurance (for an amount of \$10 million), transit insurance (for the replacement value of the Goods) and any other insurance specified in this Order.

11 Warranty Period

- (a) Unless otherwise stated in this Order the Supplier warrants that for a period of 12 months from date of commissioning or installation or 18 months from date of dispatch by the Supplier (whichever is later) and will at its cost repair or replace any defective Goods or Services which become apparent under normal working conditions during such period.
- (b) The Warranty Period will likewise apply to any part of the Goods and Services which has been re-performed, repaired or replaced in accordance with clause 11(a).

12 Title and risk

- (a) The Supplier warrants that the Goods are free and clear of all liens and encumbrances and that the Supplier has a good and marketable title to the Goods.
- (b) Title to and property in the partly completed or completed Goods and any materials and parts to be used in their manufacture pass to Mastermyne upon payment or delivery (whichever occurs first).
- (c) Risk in the Goods shall pass on delivery to Mastermyne and issue of a receipt by Mastermyne or where the Goods are to be installed or commissioned by the Supplier, on completion of installation or commissioning (whichever occurs last).

13 Indemnity

The Supplier indemnifies Mastermyne from any loss of any nature whatsoever which Mastermyne or the Supplier may incur as a result of or in connection with the Supplier's performance, non-performance or purported performance of this Order.

14 Site

If the Supplier will be performing work on any site:

- (a) the Supplier must use its best endeavours to cooperate and coordinate its work with the work of others at the site;
- (b) the Supplier enters the site entirely at its own risk;
- (c) the Supplier will comply with all policies and procedures of Mastermyne or Mastermyne's client; and
- (d) the Supplier must fully acquaint itself with the site and the location and nature of the facilities including, electrical transmission lines, pipelines, transmission line.

15 Information

- (a) The terms of this Order must remain confidential between Mastermyne and the Supplier and must not be disclosed to third parties without prior written consent of the other party.
- (b) The copyright in all Technical Materials given to the Supplier pursuant to this Order is the property of Mastermyne. Such information is made available to the Supplier provided that:
 - (i) the Supplier keeps such information confidential;
 - (ii) it is to be used only for the purposes of this Order; and
 - (iii) all such information and copies are returned to Mastermyne on completion of this Order and are not to be used for any other purpose.
- (c) The Supplier gives Mastermyne a non-exclusive, transferable, perpetual licence to use any Technical Materials that it provides to Mastermyne pursuant to this Order.
- (d) The Supplier warrants that the sale or use of the Goods will not infringe any patent, trademark or copyright in Australia or any foreign country.
- (e) The Supplier must maintain a correct set of records relating to the performance or purported performance of this Order and must allow Mastermyne to audit such records upon reasonable notice.

16 Other

- (a) The Supplier performs all work as an independent contractor and not as agent or employee of Mastermyne.

- (b) The Supplier must comply with all reasonable directions of Mastermyne.
- (c) The Supplier must at its own cost supply all labour, tools, equipment and materials necessary for the supply of Goods and Services. The Supplier must at its own expense obtain all requisite licences and permits and comply with all laws and regulations in connection with the supply of the Goods and Services.
- (d) Where the Supplier comprises more than one person or entity, each of them shall be jointly and severally liable for the full performance of the Supplier's obligations under this document.
- (e) No obligation in this Order is waived unless it is waived in writing and signed by the parties.
- (f) Where any provision of this Order is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this Order.
- (g) Notwithstanding the existence of a dispute, the Supplier will at all times continue to fulfil all obligations under this Order.
- (h) The Supplier and Mastermyne agree that the laws in force in the State of Queensland apply to this Order and both submit to the non-exclusive jurisdiction of the Courts of the State of Queensland.