

Standard Terms and Conditions (Purchase Order)

1. General

1.1 These are the terms and conditions referred to in the purchase order form (**Purchase Order**).

1.2 When terms and conditions apply:

These terms and conditions (**Standard Conditions**) apply to any contract entered by Streamline Connect Pty Ltd (**Streamline**) issuing a Purchase Order to the nominated supplier (**Supplier**), whether as an offer or acceptance of an offer (the **Contract**), where that Purchase Order refers to Streamline's standard terms and conditions. The Contract includes the following documents, in order of precedence:

- a) The Purchase Order including the description of the Goods, Delivery details and, if applicable, special conditions.
- b) Standard Conditions (this document).
- c) Schedule of rates and prices or bill of quantities.
- d) Specifications.
- e) Drawings.

2. Definitions and Interpretation

2.1 In these Standard Conditions:

Correctly Rendered Invoice means an invoice that:

- a) seeks payment in accordance with the Purchase Order for Goods Delivered and accepted by Streamline;
- b) is addressed in accordance with the Purchase Order;
- c) identifies the Purchase Order number;
- d) is a tax invoice for GST purposes; and
- e) is, where explanation is necessary in the opinion of Streamline, accompanied by documentation substantiating the amount claimed.

day means calendar day.

Defect means any defect, deficiency, fault, shrinkage, non-conformance or omission in the Goods, including any aspect of the Goods which is not in conformance with the requirements of this Contract.

Delivery means the physical receipt of possession and control of the Goods from the Supplier by Streamline, or an agent nominated by Streamline, in satisfaction of the Supplier's obligations under the Purchase Order. "Deliver" and "Delivered" have corresponding meanings. Delivery includes commissioning where applicable.

Delivery Address means the location specified on the Purchase Order to which the Supplier must Deliver the Goods.

Goods means any material, plant, equipment or item of work specified in the Purchase Order and includes all associated activities, such as design, Manufacture, painting, inspection, testing, quality assurance and control, Supplier Documents, packing and Delivery as required under the Purchase Order, or as appropriate to the items and services being provided, where not specifically mentioned in the Purchase Order.

Intellectual Property Rights means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including patents, patent applications, trade secrets, know-how, rights in relation to design and to registered and unregistered trademarks.

Manufacture includes grow, extract, produce, process and assemble.

Property includes every type of right, interest or thing which is legally capable of being owned and includes, but is not restricted to, physical goods, equipment and real property, as well as intangibles such as intellectual property, contract options and goodwill.

PPSA means the *Personal Property Securities Act 2009* (Cth) and any regulations made under that legislation.

PPSA Security Interest has the meaning given to that term in the PPSA.

Supplier Documents means all documents to be provided by the Supplier including manuals, MSDS, drawings, designs, diagrams, schematics, specifications, photographic material and brochures.

- 2.2 Words importing the singular only also include the plural and vice versa where the context requires and words importing a gender shall include every gender. The words "include", "includes" or "including" and other words introducing one or more examples of a thing are not to be construed as words of limitation.
- 2.3 These Standard Conditions shall prevail in any conflict between them and the terms of any offer or acceptance by the Supplier.
- 2.4 Headings are not part of these Standard Conditions.

3. Special conditions

- 3.1 The Contract conditions include any special conditions referred to in the Purchase Order and if any such special conditions are inconsistent with these Standard Conditions, the former shall, to the extent of the inconsistency, prevail.

4. Supplier to inform itself

- 4.1 The Supplier shall be deemed to have:
 - a) carefully examined and comprehended all Contract documents provided by Streamline; and
 - b) allowed for all the conditions, risks, contingencies and other circumstances which may in any way affect the supply of the Goods.

5. Intellectual Property and Confidentiality

- 5.1 The Supplier warrants that it is the owner or valid licensee of all Intellectual Property Rights in the Goods and that the supply of the Goods and their use by Streamline does not and will not infringe any Intellectual Property Rights of any third party.
- 5.2 The Supplier grants Streamline a perpetual, royalty free license of any Intellectual Property Rights required by Streamline to use, consume or sell the Goods to its own clients. The Supplier indemnifies Streamline against any loss suffered or incurred by Streamline or by Streamline's clients as a consequence of any claim by a third party with respect to the Intellectual Property Rights.
- 5.3 Any information provided by Streamline to the Supplier, including the Contract documents, shall not be copied or used for any purpose other than for providing the Goods, and shall not be disclosed to any third party without the prior written consent of Streamline. The obligations under this clause shall be continuing and shall survive the completion or termination of the Contract.

6. Subcontracting and Assignments

- 6.1 The Supplier must not, without Streamline's consent in writing, assign any or all of the Supplier's rights under the Contract.
- 6.2 The Supplier must not, without Streamline's consent in writing, subcontract the whole or any part of the work of Manufacture or provision of the Goods. Streamline's approval shall in no way relieve the Supplier of any of its obligations under the Purchase Order.
- 6.3 The Supplier is liable to Streamline for the acts and omissions of any subcontractor as if those were the acts or omissions of the Supplier.

7. Quality

- 7.1 The Goods must match the description and specifications referred to in the Purchase Order.
- 7.2 All Goods supplied must:
 - a) be of merchantable quality, free of Defects, new (unless otherwise specified) and unencumbered; and
 - b) conform to all applicable laws, regulations, statutory requirements, codes and Australian Standards.
- 7.3 The Supplier must, if required by Streamline, establish and maintain a quality system which conforms to the requirements of any applicable Australian Standards and the Purchase Order.

8. Delivery

- 8.1 The Supplier must ensure the Goods are supplied safely and are suitably packed to avoid damage in transit or in storage.
- 8.2 Delivery of Goods must be made at the time, place and in the manner specified in the Purchase Order. Failure to comply with the stipulated transport mode may render a cost variation at the Supplier's expense.
- 8.3 Streamline may at its sole discretion specify in writing a later time for Delivery.

8.4 Either a Delivery docket, packing note or invoice is to accompany all Deliveries made, quoting the Purchase Order number, quantity dispatched, description of the Goods and consignment details.

9. Ownership of Property

9.1 Full unencumbered title in the Goods shall pass to Streamline upon the earlier of:

- a) Streamline making payment of the amount claimed in a Correctly Rendered Invoice; or
- b) the Goods being Delivered to the Delivery Address and accepted by Streamline.

9.2 Risk in the Goods will remain with the Supplier until the Goods are delivered to the Delivery Address and accepted by Streamline.

10. Testing

10.1 Streamline shall inspect the Goods within 14 days of Delivery and accept the Goods unless they do not comply with the Contract. If rejected, Streamline shall provide the Supplier with reasons for rejection.

10.2 The Supplier must cooperate, at no cost, with all efforts of Streamline to inspect the Goods. In the course of inspecting the Goods, Streamline may issue instructions to the Supplier and the Supplier shall comply with such instructions at no cost to Streamline.

10.3 Streamline may reject Goods after acceptance but before the expiry of the warranty period if they do not comply with the Contract. For the avoidance of doubt, payment shall not be deemed to constitute acceptance by Streamline that the Goods are free of Defects.

10.4 Streamline is not liable to pay for:

- a) rejected Goods; or
- b) costs associated with secondary inspections.

10.5 If Streamline rejects the Goods, the Supplier must, without prejudice to Streamline's rights and at Streamline's absolute discretion:

- a) replace or repair the rejected Goods with conforming Goods as required by the Contract at the expense of the Supplier; or
- b) remove the rejected Goods at the expense of the Supplier and, if Streamline has paid for the Goods, reimburse Streamline in full.

10.6 Streamline may direct the times within which the Supplier must remove, replace or repair the rejected Goods.

11. Warranty

11.1 If Streamline gives reasonable written notice of any Defect or omission discovered in the Goods during any warranty period, the Supplier must correct the Defect or omission without delay and at no cost to Streamline.

11.2 Where no warranty is otherwise specified, the warranty period shall be 12 months from acceptance of the Goods by Streamline.

11.3 The Supplier must meet all costs of, and incidental to, the discharge of its warranty obligations, including any packing, freight, disassembly and re-assembly costs.

11.4 Any Goods rectified under warranty must be subject to a further warranty period, commencing from the date of completion of such rectification, unless otherwise directed in writing by Streamline.

11.5 If the Supplier fails to correct any Defects or failures in the Goods of which it has been notified by Streamline, within the time specified in the notice (which must not be unreasonable), Streamline shall have the right to rectify the Goods itself or have the necessary rectification undertaken by the third party. All costs so incurred by Streamline shall be a debt due and payable by the Supplier.

11.6 This clause 11 survives Delivery of the Goods and termination of the Contract and shall remain in effect until any warranty period has expired.

12. Security

12.1 *Purpose*

Streamline may request security for the purpose of ensuring the due and proper performance of the Contract.

12.2 *Form*

The security must be in the form of an approved unconditional undertaking given by an approved financial institution or insurance company, or other form approved by Streamline.

12.3 *Amount and time*

Security in the amount of 5% of the Contract value must be lodged with Streamline within 28 days of Streamline issuing the Purchase Order and requesting the provision of security.

12.4 *Recourse*

Streamline may convert into money security where it has become entitled to exercise a common law right in the event the Supplier commits a fundamental breach of the Contract.

12.5 *Reduction and return of security*

Upon Streamline's acceptance of the Goods its entitlement to security shall be reduced to 50% thereof. Within 14 days of the expiration of the warranty period and in the absence of any Defect or omission, Streamline must release to the Supplier any security then held by Streamline.

13. Variations

13.1 The Supplier must not vary the Contract unless so directed in writing by Streamline. Streamline may request the Supplier to vary the Contract but must do so in writing.

13.2 The price to be paid for a variation must be determined by Streamline using any rates or prices identified in the Contract, to the extent they are applicable to, or it is reasonable to use them for valuing the variation.

13.3 To the extent that clause 13.2 does not apply, Streamline and the Supplier must act reasonably in deciding whether to agree a price for the variation. Failing agreement on the price of the variation, Streamline shall determine a reasonable amount for the variation.

14. Price

14.1 Unless otherwise stated in the Purchase Order, all prices are fixed and not subject to change, including changes in the cost of labour, material or exchange rates.

14.2 The Contract price for the Goods shown in the Purchase Order includes all:

- a) taxes, duties, charges and any other imposts for which the Supplier is liable;
- b) insurance costs;
- c) amounts payable for the use (whether in the course of performance of the Contract or Streamline's enjoyment of the Goods) of patents, copyright, registered designs, trademarks and other intellectual property rights; and
- d) charges for performance of the Contract.

15. Set Off Rights

15.1 Streamline may deduct any reasonable amounts otherwise payable to the Contractor or supplier that it reasonably considers the Contractor is obliged to or will become obliged to pay Streamline, including all costs, charges, damages and expenses and any debts owed during the cause of the engagement.

16. Payment

16.1 Streamline must pay for the Goods within 42 days of the later of:

- a) its acceptance of the Goods; or
- b) receipt of a Correctly Rendered Invoice.

17. Indemnity and insurance

17.1 The Supplier indemnifies Streamline, its officers, employees and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses arising as a consequence of any act, omission, neglect or default of the Supplier or its employees, agents or subcontractors related to its obligations under the Contract.

17.2 The Supplier must, for so long as any obligations remain in connection with this Contract, effect and maintain appropriate insurance policies. Upon request by Streamline, the Supplier must provide Streamline with proof of insurance acceptable to Streamline.

18. Applicable law

18.1 The Contract shall be governed and construed in accordance with the laws applicable in Western Australia.

19. Termination

19.1 Streamline may, without prejudice to any other rights and remedies it has under the Contract or otherwise, terminate the Contract in whole or in part and with immediate effect by notice in writing to the Supplier, if the Supplier:

- a) fails to Deliver the Goods by the date required by the Contract;
- b) is in breach of any other material term of the Contract;
- c) commits any unlawful act arising out of or in connection with the performance of the Contract, including an act of gross negligence, wilful misconduct, fraud or dishonesty; or
- d) in the opinion of Streamline, is unable to effectively perform its obligations under the Contract due to insolvency or related reasons.

19.2 Notwithstanding any other provisions of the Contract, Streamline may for its convenience terminate the Contract by giving 7 days written notice to the Supplier.

19.3 In the event of termination under clause 18.1, Streamline may:

- a) cease payment under the Contract;
- b) recover from the Supplier all sums paid for undelivered Goods; and
- c) purchase similar Goods from alternative suppliers and claim by way of indemnity from the Supplier any loss it may incur in doing so.

19.4 In the event of termination under Clause 18.2 Streamline shall pay to the Supplier (less any amounts previously paid and subject to any rights Streamline may have to suspend, withhold or set-off payments):

- a) the price for the Goods provided to Streamline prior to the effective date of termination and not included in any previous payment by Streamline;
- b) the cost of materials reasonably ordered by the Supplier for the purpose of providing the Goods, which the Supplier is legally liable to accept and cannot otherwise utilise, but only if the materials become the property of Streamline; and
- c) the reasonable costs of complying with any direction given by Streamline upon, or subsequent to, termination.

20. Waiver

20.1 Any failure or delay on the part of Streamline to exercise a power or right under the Contract does not operate as a waiver of the power or right. A waiver is not effective unless it is in writing.

21. PPSA

21.1 If the Supplier believes a PPSA Security Interest arises under the Contract, it must notify Streamline at least 7 days before the Supplier takes steps to register such security interest on the PPSA Register.

21.2 Within 14 days of the earlier of the completion or termination of the Contract or the receipt of the price for the Goods, the Supplier must, at its cost, procure the removal from the PPSA Register of each security interest it has registered in respect of the Goods, and must provide Streamline with verification of the removal pursuant to section 157 of the PPSA.

21.3 The parties agree that for the purposes of section 115 of the PPSA the following sections will not apply to any Relevant Collateral: section 120 (enforcement of liquid assets), section 126 (apparent possession) and section 128 (secured party may dispose of collateral).

22. Negation of employment, partnership and agency

22.1 The Contract does not create a relationship of employment, agency or partnership between the Supplier and Streamline.

23. Dispute resolution**23.1 Notice**

If a dispute between the Supplier and Streamline arises out of or in connection with the Contract, then either party shall deliver by hand or send by certified mail to the other party a notice of dispute in writing adequately identifying and providing details of the dispute.

23.2 *Negotiation*

Within 14 days of service of a notice of dispute, the Supplier and Streamline shall confer at least once to attempt to resolve the dispute. Failing resolution of the dispute the parties shall explore, and if possible agree on, methods of resolving the dispute by other means. At such conferences, both parties must be represented by a person having authority to agree to a resolution of the dispute.

In the event that the dispute cannot be so resolved, either party may by notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to expert determination.

23.3 *Expert determination*

Expert determination shall be effected by a single expert who shall be nominated by the Chairperson for the time being of the Chapter of the Resolution Institute in Western Australia. The expert determination shall be:

- a) undertaken in accordance with the Resolution Institute's Expert Determination Rules; and
- b) final and binding.