Terms and Conditions of Purchase

1. General

Unless the context otherwise requires:

Agreement has the meaning given in clause 2(b);

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

Business Day means a day that is not a Saturday, Sunday or public holiday in Melbourne and the place in which the Goods are to be delivered or the Services are to be performed;

Consequential Damages means any:

(a) Loss of contracts;

(b) Loss of opportunity to enter an alternative transaction or contract;

(c) Any incidental, indirect or consequential loss which is not caused directly by the party's breach or conduct; or

(d) Loss of Indirect Profit.

Delivery Date has the meaning given in clause 8(a);

Goods means all goods agreed to be supplied by the Supplier and purchased by Steel Mains pursuant to the Agreement;

GST has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or, if that Act ceases to exist, it has the meaning provided by any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act;

Indirect Profit means profit that:

(a) did not arise as the natural, probable or reasonably foreseeable consequence of a breach of the Agreement; and

(b) was not within the actual contemplation of the parties at the date of entering into the Agreement.

Intellectual Property Rights means all intellectual property rights of any kind, whether registered or unregistered, relating to the Goods or Services, or the installation or operation of the Goods, including but not limited to patents, designs, drawings, instruction booklets, specifications, circuit drawings, componentry, trade secrets, know-how, trade marks and copyright in such intellectual property;

Purchase Order means the purchase order or other form of request by Steel Mains to the Supplier for the supply of the Goods or Services;

Purchase Price has the meaning given in clause 3(a);

Services means all labour in connection with the supply of any Goods, or other services supplied by the Supplier and purchased by Steel Mains pursuant to the Agreement;

Site has the meaning given in clause 8(a);

Steel Mains means Steel Mains Pty Ltd ABN 73 004 843 056;

Supplier means the party named as the Supplier on the Purchase Order;

Terms means these terms and conditions of purchase annexed to each Purchase Order;

Warranty Period means a minimum period of 12 months commencing upon acceptance of the Goods and Services by Steel Mains.

2. Agreement

(a) Steel Mains may order any Goods or Services from the Supplier by issuing the Supplier with a Purchase Order.

(b) An agreement shall be formed by and upon the Supplier accepting the Purchase Order from Steel Mains either by the Supplier's acknowledgement or by performance, and each Purchase Order shall be governed by these Terms (**Agreement**).

(c) The Agreement shall take precedence over any other representations, agreements, arrangements or understandings relating to the Goods or Services and any matters in connection with the Goods or Services.

(d) The Supplier acknowledges and accepts that any conditions or terms of sale submitted by the Supplier at any time, deviating from or inconsistent with the Agreement will not bind Steel Mains, notwithstanding any statement by the Supplier in its Invoice that its terms and conditions prevail over the Agreement.

3. Purchase Price

(a) The price for the Goods and Services will be the price set out in the relevant Purchase Order, unless the amount is adjusted pursuant to clause 4 or as varied by the parties in writing (**Purchase Price**).

(b) The total Purchase Price, unless expressly stated in the Purchase Order, will be inclusive of all works, services and materials reasonably necessary to ensure delivery, including any delivery, packaging, freight (unless otherwise agreed), insurance and installation costs and shall also be inclusive of all charges whatsoever including GST, sales, excise, goods and services or other taxes, duties or imposts imposed by any relevant authority in connection with this Agreement.

(c) The Supplier shall accept, in lieu of any applicable sales or other tax arising out of the purchase of the Goods or Services, any statutory or other appropriate exemption issued in favour of Steel Mains and the Purchase Price shall be adjusted accordingly.

(d) Payment of the Purchase Price will be made within 45 days after the last day of the month in which the Supplier's valid tax invoice is received or otherwise in accordance with Steel Mains' credit arrangement with the Supplier.

(e) Steel Mains may offset or deduct from a validly issued tax invoice any amount which it reasonably considers is due or may become due from the Supplier to Steel Mains, or withhold any disputed portion of a valid tax invoice.

4. Variation of Agreement

(a) Prior to delivery, the parties, acting reasonably, may agree to vary the nature, quantity or quality of Goods or Services under the Agreement (**Variation**).

(b) Any Variation must be agreed in writing, and must include details of all agreed changes made to the Agreement including but not limited to date of delivery, location, quantity, pricing or specifications.

5. Termination by Agreement

(a) Prior to delivery, Steel Mains may terminate the Agreement by written notice to the Supplier. Such termination will take effect immediately upon receipt of the notice, unless the Supplier has, prior to the receipt of the notice, irrevocably committed to manufacture the Goods or incurred non-cancellable costs solely for the purpose of fulfilling the Agreement. In those circumstances, the Supplier's consent to termination is required, which consent must not be unreasonably withheld, conditioned or delayed.

(b) If Steel Mains terminates the Agreement under clause 5(a), the Supplier will be entitled to be paid the Purchase Price for any Goods supplied and Services performed in accordance with the Agreement up to and including the date of termination.

6. Termination for Cause

(a) Either party may immediately terminate the Agreement where the other party:

  (i) Commits a material breach which is not remedied within 30 days after receipt of written notice from the other party; or

  (ii) Becomes bankrupt, has an administrator, a receiver or a receiver and manager appointed, goes into liquidation (whether voluntarily or otherwise), or is wound up, dissolved or declared insolvent.

(b) Where Steel Mains terminates the Agreement pursuant to clause 6(a), Steel Mains will be entitled to take possession of any premises, materials, tools and appliances paid for in full.

(c) Where the Supplier's default gives Steel Mains a right to terminate this Agreement pursuant to clause 6(a), but Steel Mains elects not to terminate and instead completes, or procures the completion of, the supply of the Goods or Services, all reasonable additional costs incurred by Steel Mains in connection with such completion are to be payable by the Supplier. Steel Mains may set off those costs against any amounts otherwise payable to the Supplier, and the Supplier must promptly pay any shortfall.

7. Site Access and Workplace Health and Safety

(a) Where the Supplier or third parties are required to attend Steel Mains' premises or a Site in connection with the delivery, installation or servicing of Goods or the performance of Services, the Supplier must provide Steel Mains reasonable notice.

(b) Steel Mains will provide the Supplier with access to its premises or a Site as is reasonably necessary to facilitate the supply of the Goods or carry out the Services during ordinary business hours, unless otherwise agreed in writing. The Supplier must supply the Goods and perform the Services in a way that minimises disruption to Steel Mains' operations, personnel and other contractors at the premises or Site.

(c) The Supplier must, and must ensure that any third parties:

  (i) comply with all applicable workplace health and safety laws and regulations in the relevant jurisdiction, including without limitation the *Work Health and Safety Act 2011* (Cth) or its state or territory equivalent;

  (ii) comply with all laws and Steel Mains' policies and rules concerning health and safety, including on Steel Mains' premises or a Site;

  (iii) comply with all reasonable directions provided by Steel Mains; and

  (iv) immediately notify Steel Mains of any incidents on or in connection with Steel Mains' premises or any Site.

(d) Steel Mains may, at any time and in its sole discretion, direct the Supplier or any third party engaged by the Supplier to immediately leave Steel Mains' premises or a Site. The Supplier must immediately comply with that direction, and cause any third party to do so.

8. Delivery

(a) The delivery of the Goods or Services must be made strictly in accordance with the Agreement, including in particular any specified delivery date(s) (each, a **Delivery Date**) and location(s) (each, a **Site**).

(b) Unless otherwise agreed in writing, Steel Mains will not accept part delivery of the Goods or Services.

(c) The Goods or Services are deemed to have been delivered when:

  (i) the Goods are unloaded at the Site; or

  (ii) the Supplier notifies Steel Mains in writing that it deems the Services to have been completed in accordance with the Agreement and Steel Mains does not dispute that notice within 5 Business Days after receipt.

(d) Where Goods are being delivered by the Supplier, the Supplier must obtain and maintain goods in transit insurance covering physical loss or damage for not less than the total invoice value of the Goods supplied.

9. Liquidated Damages

(a) In the event that delivery of the Goods or Services is delayed due to the fault of the Supplier, then without prejudice to any other rights of Steel Mains, the Supplier shall pay to Steel Mains liquidated damages at the rate of 0.5% of the Purchase Price stated in the Purchase Order for each day of delay up to a maximum of 10% of the Purchase Price, until delivery occurs.

(b) The Supplier acknowledges and agrees that all amounts payable by the Supplier in accordance with this clause 9 constitute a genuine pre-estimate of the loss likely to be incurred by Steel Mains as a result of the Supplier's delay, including lost revenue, and do not constitute a penalty.

10. Force Majeure

(a) Neither party will be liable for any failure to fulfil or any delay in fulfilling any obligation arising under the Agreement if the failure or delay has been caused directly or indirectly by any acts of God, flood, drought, fire, storm, earthquake, natural disasters, epidemic, pandemic, war, terrorism, civil unrest, industrial disputes, strikes, lockouts, government actions, changes in law, utility failures, transport disruptions, shortages of labour, materials or equipment, and interruptions to supply chains, or any other cause beyond the party's reasonable control and not as a consequence of the party's negligence.

(b) If an event referred to in clause 1(a) continues for an unbroken period of not less than 90 days, either party may terminate the Agreement by written notice to the other party, in which case the Supplier will be entitled to be paid the costs set out in clause 5(b).

11. Acceptance and Return of Goods

(a) Signed delivery dockets shall not mean acceptance by Steel Mains of the Goods delivered but only the number of packages or cartons delivered.

(b) All Goods which have been delivered or Services performed are subject to final inspection and approval by Steel Mains.

(c) Within a reasonable time, not to exceed 10 Business Days, Steel Mains will inspect the Goods or Services and may reject any Goods or Services that do not comply with the supply agreed upon in the Agreement, by notifying the Supplier in writing of the claim and providing full particulars of the claim.

(d) Where Goods or Services are validly rejected by Steel Mains or where a shortage in the quantity of Goods delivered is identified by Steel Mains:

  (i) where rejected in accordance with clause 11(c), to the extent permitted by law, the Supplier must repair or replace incorrectly supplied Goods or Services at the Supplier's expense;

  (ii) where oversupplied, the excess Goods are to be returned to the Supplier, at the Supplier's cost and risk;

  (iii) where undersupplied or a shortage is identified, the Supplier must, at its cost and within the time reasonably specified by Steel Mains, supply the shortfall quantity of Goods and reimburse Steel Mains for any reasonable costs incurred as a result of the shortage; or

  (iv) where the Supplier is unable to comply with clause 11(d)(i) or 11(d)(iii), the Supplier must refund the Purchase Price forthwith together with an amount to cover Steel Mains' inspection, handling, transportation and other reasonable charges or expenses.

(e) Acceptance of or payment for all or any part of the Goods or Services shall not be deemed to be a waiver on the part of Steel Mains of its contractual, statutory or other rights in respect of the Goods or Services.

(f) Where Steel Mains rejects the Goods which are already installed, the Supplier shall immediately upon written direction and at the Supplier's cost, remove the defective Goods, replace same and make good any damage to other property occasioned in such removal to the satisfaction of and at no cost to Steel Mains.

12. Installation

(a) Where the Goods are required to be installed by the Supplier, the Supplier shall provide all work and materials necessary to carry out such installation at its cost.

(b) All work carried out by the Supplier will be completed in a proper and workmanlike manner and the Supplier will exercise all due care.

13. Title and risk

(a) The Supplier warrants full and unrestricted title for all Goods supplied under the Agreement and that the Goods are free from any lien or encumbrance whatsoever.

(b) Title to the Goods will pass to Steel Mains upon the earlier of payment in full to the Supplier and delivery of the Goods.

(c) Without limiting Steel Mains' right to reject the Goods under clause 11(c), risk in the Goods passes to Steel Mains upon delivery of the Goods.

(d) However, if any of the Goods are defective or otherwise do not conform to the Agreement, the Supplier retains all risk in those Goods until the non-conformity or defect has been remedied by the Supplier to Steel Mains' satisfaction.

(e) The Supplier expressly waives any and all liens of any kind or nature to which the Supplier may otherwise be entitled, whether statutory or otherwise, and the Supplier agrees to indemnify and forever hold harmless Steel Mains against any claims from any third parties against the Supplier affecting directly or indirectly the Goods or Services.

14. Insurance

(a) The Supplier shall maintain in full force public liability insurance and product liability insurance in respect of the Goods or Services for a minimum amount of AU$20,000,000 for any one occurrence.

(b) The Supplier must not do anything which could prejudice any insurance of the Goods or Services.
(c) Where the Supplier or its personnel are required to attend or access Steel Mains' premises or a Site in connection with the delivery, installation, servicing or inspection of Goods or the performance of Services, the Supplier must at its own cost effect and maintain the insurance required by clause 14(a) (with a reputable insurer) and must further maintain workers' compensation insurance as required by applicable law, in each case for the duration of the Agreement.
(d) Upon request, the Supplier must provide Steel Mains with a certificate of currency for all policies of insurance required under this clause 14.

15. Indemnity

(a) Each party must indemnify the other party and its employees and agents from and against any loss arising from damage to or destruction of property, or from any death, injury, illness or disease, directly caused by the performance of its obligations under this Agreement, except to the extent caused or contributed to by the other party.
(b) For the avoidance of doubt:
  (i) any liability of Steel Mains under clause 15(a) for loss arising from damage to or destruction of property is subject to, and counts toward, the cap on Steel Mains' total liability under clause 16(j);
  (ii) the cap in clause 16(j) does not apply to any liability of Steel Mains under clause 15(a) for loss arising from death, injury, illness or disease; and
  (iii) nothing in clause 16 limits or caps the Supplier's liability under clause 15(a).

16. Warranties

(a) Other than what is provided for in this Agreement, Steel Mains makes no warranties or representations to the Supplier.
(b) The warranties in this clause 16 are in addition to any other rights or remedies which may be available to Steel Mains at law and nothing in this Agreement is intended to have the effect of excluding any rights under Australian Consumer Law or any other non-excludable rights.
(c) The Supplier represents and warrants to Steel Mains that for the Warranty Period, or a longer period as specified in the Purchase Order:
  (i) In relation to Goods, the Goods will:
    (A) be fit for their intended purpose;
    (B) comply with the requirements of all relevant standards in Australia, New Zealand and the jurisdiction(s) where the Supplier operates and with any other contractual obligation of Steel Mains to a third party (as disclosed to the Supplier by Steel Mains);
    (C) conform with all specifications, drawings, samples or other descriptions furnished by Steel Mains to the Supplier from time to time; and
    (D) be of the highest quality and free from any defects in design, manufacturing, materials and workmanship.
  (ii) In relation to Services, those Services were or will be completed with reasonable care and skill by a qualified individual in accordance with all relevant law.
(d) The Supplier must ensure that all warranties provided to the Supplier by its contractors, suppliers, or consultants in respect of the Goods and Services are assigned to, and are enforceable by, Steel Mains. To the extent any such warranty cannot be assigned or directly enforced by Steel Mains, the Supplier indemnifies Steel Mains against all loss arising from any defect, non-performance or other matter that would have been recoverable under that warranty had it been capable of assignment or enforcement by Steel Mains.
(e) If during the Warranty Period, Steel Mains identifies any defect in the Goods or Services, Steel Mains may direct the Supplier to rectify the defect within a reasonable period specified by Steel Mains. If the Supplier fails to rectify a defect in accordance with this clause 16(e), Steel Mains may require the Supplier to:
  (i) collect the Goods and remove any personnel engaged in performing the Services; and/or
  (ii) re-supply the Goods or Services, or otherwise rectify the Goods or Services and resubmit for acceptance, within such time as Steel Mains may reasonably direct, without prejudice to any other rights or remedies available to Steel Mains.
(f) If the Supplier fails to rectify a defect in accordance with clause 16(e), Steel Mains may, at its discretion and at the Supplier's cost:
  (i) rectify the defect itself or engage a third party to do so;
  (ii) sell the defective Goods or return them to the Supplier; and/or
  (iii) accept the defective Goods or Services, treat the defect as a variation to the Agreement, adjust the Purchase Price accordingly, and recover from the Supplier as a debt due and payable any additional costs, losses, or expenses incurred by Steel Mains as a result of the defect.
(g) To the extent that any Goods or Services are supplied by the Supplier to a 'consumer' as defined in the Australian Consumer Law, the Supplier will comply with any applicable consumer guarantees and Steel Mains is entitled to a replacement or refund for a major failure and to compensation for any other reasonably foreseeable loss or damage. Steel Mains is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
(h) All warranty claims by Steel Mains will detail the bases of the alleged warranty breach in writing and be delivered to the Supplier.
(i) To the maximum extent permitted by law and notwithstanding any other clause contained herein, Steel Mains shall not be liable to the Supplier, whether in contract, tort (including negligence), under statute or otherwise, for any Consequential Damages.
(j) Steel Mains' total liability under the Agreement shall not exceed the total dollar amount of the Goods or Services purchased by Steel Mains under the Purchase Order.

17. Maintenance manuals

The Supplier shall provide comprehensive operating instructions, maintenance manuals, drawings and software protocol (if applicable) to enable Steel Mains to maintain the Goods.

18. Intellectual property

(a) The Supplier warrants that it is the owner of or, where appropriate, is the registered or licensed user of, any patents, trademarks, copyright, data or trade secrets connected directly or indirectly to the Goods or Services and the Supplier agrees to indemnify and forever hold harmless Steel Mains against any actions arising from any breach of this warranty.
(b) Steel Mains shall at all times retain title to the copyright or any other intellectual property rights in any plans, designs, sketches, drawings, blueprints, patterns, models, tools, dyes, moulds, special appliances, materials and patents and in any other document or material furnished by Steel Mains (whether furnished by Steel Mains in connection with this Agreement or produced by the Supplier for the purposes of this Agreement) (**Steel Mains IP**).
(c) During the term of this Agreement, Steel Mains IP shall be deemed to be held by the Supplier on consignment or as a bailee or licensee only and at the Supplier's sole risk.
(d) Steel Mains IP shall only be used by the Supplier in the production for Steel Mains of the Goods or Services, or the performance of related work and not for any other purpose whatsoever.
(e) Save for the strict application of the foregoing, this Agreement shall not be construed as being an implied or an express assignment or licence of any of Steel Mains IP or the rights therein. The Supplier shall not be entitled to any lien, charge or other form of attachment whatsoever in respect of Steel Mains IP.
(f) The Supplier shall not disclose, grant use of or access to Steel Mains IP to others except where, prior to disclosure, Steel Mains so agrees in writing. Steel Mains IP shall not include matters or things known to the general public or to the Supplier prior to the date of this Agreement, provided that such knowledge was not the result of a breach of any other confidentiality obligation of the Supplier.
(g) The Supplier shall return all property of Steel Mains upon receipt of demand, and the Supplier shall not under any circumstances whatsoever make any unauthorised copies of any information provided to the Supplier by Steel Mains, including Steel Mains IP.
(h) Upon expiry or termination of the Agreement for any reason, any right of the Supplier to use Steel Mains IP immediately ceases and the Supplier must cease using, and return or destroy (as directed by Steel Mains), all Steel Mains IP and any copies of it in the Supplier's possession or control.

19. Hazardous Materials

(a) The Supplier shall notify Steel Mains forthwith in writing upon acceptance of the Purchase Order if the Goods or Services are subject to laws and/or regulations relating to hazardous and/or toxic substances, or when disposed of, to regulations governing hazardous wastes, or any other applicable environmental, health or safety laws or regulations.
(b) Written instructions for handling, warnings and material data safety sheets shall be provided by the Supplier to Steel Mains with each shipment or delivery of Goods.

20. Miscellaneous

(a) The Goods are for the use of or re-sale by Steel Mains and may be incorporated in any products. In no event shall any claim for royalties or other additional compensation be made by the Supplier by reason of such use, re-sale or manufacture.
(b) The fact that Steel Mains fails to do, or delays in doing, something it is entitled to do under the Agreement, does not amount to a waiver of its right to do it. Steel Mains must agree in writing to any waiver.
(c) If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from the Agreement, but the rest of the Agreement is not affected.
(d) The Supplier shall at all times comply with the requirements of all applicable statutes, regulations or standards in the supply of the Goods or Services pursuant to this Agreement.
(e) **Governing Law:** Steel Mains and the Supplier agree that this Agreement and any supplementary agreement for the supply of Goods or Services by the Supplier to Steel Mains is governed by the laws of Victoria. Both parties agree unconditionally to submit to the non-exclusive jurisdiction of the courts in Victoria and any court hearing appeals from those courts.
(f) Where there is more than one Supplier party to the Agreement, then the liability of each shall be joint and several.
(g) The rights and remedies provided in the Agreement will not affect any other rights or remedies available to Steel Mains.
(h) This Agreement cannot be assigned or transferred, and no part of it may be sub-contracted by the Supplier without the prior written consent of Steel Mains.
(i) Unless otherwise stated, all amounts shall be in Australian dollars or the currency stipulated in the Purchase Order.
(j) If the Supplier is a trustee, then the Supplier is bound by the Agreement both personally and in its capacity as a trustee.
(k) **Dispute resolution**
  (i) If a dispute arises out of or in connection with the Agreement, either party may give written notice of the dispute to the other party and:
    (A) the parties must use reasonable efforts to resolve the dispute through good faith negotiations within 14 days of the notice being given; and
    (B) if the parties are unable to resolve the dispute within 14 days, either party may refer the dispute to mediation administered by an independent mediator agreed between the parties, or failing agreement, appointed by the President of the Law Society of Victoria.
  (ii) Despite the existence of a dispute, each party must continue to perform its obligations under this Agreement, including in respect of all Goods, Services and amounts that are not the subject of the dispute, pending resolution of the dispute.
(l) Any notice to be given to a party under the Agreement must be in writing and must be sent by post or email to the address of that party shown in the quotation, Purchase Order or order acknowledgement. Notice is deemed to have been given at the time it would have been received in the normal course of post if sent by post, or if otherwise given at the time it was actually received, unless the sender receives an automated reply that the recipient is "out of office" or "undelivered message".

21. Supplier Code of Conduct, Ethical Compliance and Modern Slavery

(a) The Supplier must at all times comply with:
  (i) the Supplier Code of Conduct provided by Steel Mains, as amended from time to time, notified to the Supplier and available on Steel Mains' website;
  (ii) all applicable anti-bribery, anti-corruption, competition, fraud prevention and whistleblower protection laws; and
  (iii) all applicable labour, employment, workplace, human rights and modern slavery legislation.
(b) The Supplier must maintain appropriate policies, procedures, training and controls to ensure ongoing compliance with this clause 21 and the Supplier Code of Conduct issued by Steel Mains.
(c) The Supplier must immediately notify Steel Mains upon becoming aware of any actual, suspected or alleged breach of this clause 21 or the Supplier Code of Conduct by the Supplier, or any subcontractor engaged in connection with the Goods and/or Services.
(d) Any breach of this clause 21 shall constitute a material breach of this Agreement and entitle Steel Mains to immediately terminate this Agreement by written notice without prejudice to any other rights or remedies available to Steel Mains.
(e) The Supplier warrants that it, and its directors, officers, employees, agents, subcontractors and suppliers involved in the performance of this Agreement, comply with all applicable trade sanctions, export controls, import controls and related trade laws in Australia, New Zealand, U.S., and the jurisdictions where they operate. The Supplier further warrants that neither it nor any person involved in the supply of the Goods or Services is subject to any applicable sanctions and that the Goods and Services do not originate from, are sourced from, or otherwise involve any sanctioned country, entity or individual.
(f) The Supplier must immediately notify Steel Mains of any actual or suspected breach of this clause 21 or if it becomes aware of any circumstance that may cause it or any person or party involved in the performance of this Agreement to become subject to sanctions. Steel Mains may suspend performance of, or terminate, this Agreement immediately by written notice if it reasonably believes that continued performance may result in a breach of applicable trade laws or expose Steel Mains to sanctions-related risk.
(g) The Supplier must maintain records sufficient to demonstrate compliance with this clause 21 and, upon reasonable notice, provide Steel Mains or its nominee with access to such records and other information reasonably required to verify compliance. The Supplier must provide all reasonable assistance in connection with any such audit or verification and promptly rectify any non-compliance identified.

Schedule 1 – Special Conditions

Clause No.	Clause
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