

STANDARD TERMS OF PURCHASE

1. -*Application of Terms

- (a) These Standard Terms of Purchase apply to all Deliverables purchased by Geofabrics Australasia Pty Ltd ABN 23 005 479 961 (or a related body corporate) (**Geofabrics**) from a Supplier.
- (b) Unless expressly agreed by Geofabrics in writing, these Standard Terms of Purchase override any quotes, terms and conditions, invoices or other documentation exchanged between the parties whether or not such documents expressly provide that they override these Standard Terms of Purchase. These Standard Terms of Purchase will be deemed to have been accepted by the Supplier when fulfilling a Purchase Order.
- (c) Where these Standard Terms of Purchase are inconsistent with any special terms and conditions set out in a Purchase Order or on any attached or incorporated document, those terms and conditions will take precedence over these Standard Terms of Purchase to the extent of any such inconsistency.

2. Purchase Orders

- (a) The Purchase Order is the only form recognised by Geofabrics as authority for purchasing the Deliverables.
- (b) Geofabrics shall not be bound by this Purchase Order until the Supplier has acknowledged, in writing, to Geofabrics the acceptance of the offer contained in this order, including these Standard Terms of Purchase. Where Geofabrics' Purchase Order constitutes an acceptance of any offer made by the Supplier the receipt of this Purchase Order will constitute Geofabrics' acceptance and will be subject to Geofabrics' Standard Terms of Purchase.
- (c) If the Supplier who purports to accept a Purchase Order subject to conditions, the Supplier will be deemed to have waived any conditions which are inconsistent with these Standard Terms of Purchase.

3. Price

- (a) Unless otherwise agreed in writing, the total price payable by Geofabrics for the Deliverables will be the price set out in the Purchase Order (**Price**).
- (b) The Price is fixed and is inclusive of all costs incurred by the Supplier in supplying the Deliverables (including labour and transportation costs and the cost of any items used in conjunction with the Deliverables) and all new, existing or increased federal, state, territory or regulatory taxes, charges or duties (other than GST).

4. Payment

- (a) Subject to clause 4(b), the terms of payment are 30 days from the date of the invoice.
- (b) If Geofabrics disputes the amount of a valid Tax Invoice, Geofabrics must pay the undisputed amount in accordance with clause 4(a) and the parties must deal with the disputed amount in accordance with clause 20.
- (c) Unless otherwise specified in the Purchase Order or agreed in writing by Geofabrics, the Supplier shall not be entitled to progress payments in respect of the supply of the Deliverables.

5. Supply of Deliverables

- (a) In consideration for the Price the Supplier must supply the Deliverables to Geofabrics in accordance with the Contract.
- (b) Geofabrics gives no representations that it will engage the Supplier to supply a minimum volume of Deliverables.
- (c) The Supplier must supply the Deliverables:
 - (i) with due care and skill using that standard of diligence that would reasonably be expected from a prudent, expert and experienced provider of deliverables which are similar to the Deliverables in Australia;
 - (ii) using appropriately qualified trained, certified and supervised Supplier Representatives; and
 - (iii) in compliance with the Contract, all applicable Laws, industry practice and the reasonable directions of Geofabrics' Representatives.
- (d) Geofabrics has no responsibility to the Supplier or to the Supplier's Representatives in respect of any remuneration, workers' compensation, superannuation, payroll tax, leave, redundancy payments or any other benefits under any industrial instrument or law.

6. Variations

Unless expressly permitted in these Standard Terms of Purchase, if either party wishes to vary a Contract, such variation will only be effective if agreed by the parties in writing. If the parties are unable to agree, Geofabrics may terminate the Contract by written notice to the Supplier.

7. Delivery

- (a) The Supplier must supply the Deliverables in accordance with the delivery details set out in the Purchase Order (including the manner, date and location of delivery). Acronyms or terminology used to describe the manner of delivery of the Deliverables have the meaning

given to them in the Incoterms 2010 unless otherwise specified by the parties.

- (b) The Supplier is responsible for all transportation costs associated with the delivery of the Deliverables to Geofabrics' site. Geofabrics may vary the delivery details by written notice to the Supplier.
- (c) Geofabrics reserves the right to refuse to accept liability for any goods delivered in excess of the quantity ordered or not in accordance with any delivery details set out in the Purchase Order.
- (d) All goods must be suitably packed to avoid damage.

8. Communication

The Supplier agrees to communicate and work with the designated Geofabrics Representative on a regular basis specified by Geofabrics or as required to review the supply and delivery performance of the Deliverables supplied under the Contract. This will include any KPI performance criteria (if applicable).

9. Occupational health and safety and environment

- (a) The Supplier must ensure that all of the Supplier's Representatives attending or working on any Geofabrics site:
 - (i) obtain all relevant Geofabrics work permits, complete and sign all relevant Geofabrics task specific checklists, work in accordance with Geofabrics' standard operating procedures and prior to undertaking any work on the site complete any Geofabrics site specific induction program (at the Supplier's cost) and sign the Geofabrics Contractor EHS Declaration;
 - (ii) comply with all applicable Laws relating to Occupational Health and Safety, the Environment and 'Chain of Responsibility', and Geofabrics' site security, safety, health and environmental requirements, a copy of which is available upon request; and
 - (iii) are provided (at the Supplier's cost) with and at all times wear the required personal protective equipment.
- (b) The Supplier must ensure that all plant and equipment supplied or brought on to any Geofabrics site by the Supplier, or the Supplier's Representatives is properly maintained and serviced and complies with all relevant Laws.
- (c) The Supplier must ensure (if applicable) that:
 - (i) spill management procedures (where appropriate in relation to the supply of the Deliverables) are in place and have been approved by Geofabrics prior to the commencement of work at Geofabrics' site;
 - (ii) Geofabrics is immediately notified in the event of any potential or actual contamination or spill on Geofabrics' site; and
 - (iii) all spills caused by the Supplier that occur during the supply of the Deliverables are cleaned up, at the Supplier's own cost.

10. Geofabrics property

- (a) Any plant, equipment, or other property (**Geofabrics Equipment**) provided by Geofabrics to the Supplier remains the property of Geofabrics. All tools, gauges, jigs, patterns and fixtures (**Geofabrics Toolage**) and all drawings, designs, specifications and other documents (**Geofabrics Documents**) supplied without charge by Geofabrics to the Supplier and any such items which have been purchased or manufactured by the Supplier and paid for by Geofabrics are the confidential property of Geofabrics and must not be disclosed to third parties without the prior written consent of Geofabrics.
- (b) The Geofabrics Equipment and any Geofabrics Toolage loaned to the Supplier must only be used by the Supplier for the purposes of fulfilling its obligations under the Contract and Geofabrics accepts no responsibility as to its accuracy or suitability. The Supplier must keep the Geofabrics Equipment and Geofabrics Toolage in good condition, compensate Geofabrics for any Loss suffered by Geofabrics and release Geofabrics from any Loss in connection with the Supplier's use of it.
- (c) On termination or expiry of the Contract the Supplier must promptly deliver to Geofabrics all Geofabrics Equipment, Geofabrics Toolage and Geofabrics Documents.

11. Site conditions

- (a) The Supplier is responsible for investigating and satisfying itself as to the expected and possible physical conditions at Geofabrics' site and possible inclement or adverse weather that could affect the performance of services (in terms of delays or costs).
- (b) Only if there are extreme weather, ground or site conditions that differ materially from those which could reasonably have been anticipated by a competent and experienced supplier and cannot be overcome by the Supplier applying good engineering practice, then the Supplier may apply to Geofabrics for a variation under clause 6.

12. Title and risk

- (a) Risk and title in the Deliverables passes to Geofabrics upon delivery.
- (b) None of the following constitutes acknowledgement by Geofabrics as to the condition of the Deliverables or that the Deliverables comply with the terms of the Contract: transfer of title in the Deliverables to

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Geofabrics; delivery of the Deliverables; or payment for the Deliverables by Geofabrics.

- (c) Geofabrics reserves the right to inspect, and where practicable test, goods whilst they are in the course of being produced or installed and may for this purpose enter upon the premises of the Supplier from time to time.

13. Warranty

- (a) The Supplier represents, undertakes and warrants that the Deliverables:
- (i) comply with the Specifications, the Contract, any samples previously supplied by the Supplier, all relevant Laws and best industry practices;
 - (ii) will be supplied with due care and skill;
 - (iii) are fit for the purpose for which goods and/or services of the same kind are commonly supplied and also fit for any particular purpose advised by Geofabrics;
 - (iv) do not infringe the Intellectual Property Rights of any third person;
 - (v) are free of defects, new (unless otherwise specified) and of merchantable quality; and
 - (vi) are free of any encumbrances.
- (b) A Contract is deemed to contain all consumer guarantees, terms and conditions that Geofabrics would be entitled to if Geofabrics were a "consumer" within the meaning of the *Competition and Consumer Act 2010* (Cth).

14. Defective Deliverables

- (a) If at any time during the period ending 12 months after successful commissioning or 18 months after delivery (or other agreed guarantee period), whichever occurs first (**Performance Guarantee Period**), Geofabrics becomes aware of any defect in the Deliverables (including non-compliance with the Contract, if the Deliverables are the subject of a product recall, if there is a defect in design or performance or if there is inferior quality or workmanship), provided the Deliverables have been under proper use (**Defective Deliverables**), Geofabrics may, without prejudice to any other right or remedy available, by notice to the Supplier reject the Defective Deliverables and require the Supplier to:
- (i) refund to Geofabrics any payments made by Geofabrics in respect of any Defective Deliverables that it rejects (including any costs and expenses incurred in returning goods to the Supplier);
 - (ii) re-perform, repair or make good, at no cost to Geofabrics, any Defective Deliverables that Geofabrics rejects (and in which case this clause 14 will apply to such items from the date of repair or replacement until the end of the period equal to the Performance Guarantee Period); or
 - (iii) reimburse Geofabrics for any expenses Geofabrics incurs in performing or making good any Defective Deliverables on behalf of the Supplier, provided that Geofabrics only carries out such work after consultation with the Supplier.
- (b) Geofabrics reserves the right to inspect, and where practicable test, the Deliverables whilst they are in the course of being produced or installed and may for this purpose enter upon the premises of the Supplier from time to time.
- (c) Any inspection or testing does not affect the Supplier's obligations or Geofabrics' rights under the Contract in respect of Defective Deliverables.

15. Insurance

- (a) The Supplier must carry at all times during the term of a Contract all insurance required by law and the following minimum levels (per occurrence) of insurance with a reputable insurer:
- (i) Public liability insurance: \$10,000,000;
 - (ii) Goods, Works, Services liability and/or Professional indemnity (as applicable): \$10,000,000;
 - (iii) marine insurance covering risks of physical loss or damage to any plant, equipment or goods in transit or in storage prior to delivery for their full replacement cost;
 - (iv) Workers compensation insurance in accordance with statutory obligations; and
 - (v) Motor Vehicle Third Party Property Damage: \$5,000,000.
- (b) If requested by Geofabrics, the Supplier must immediately provide certificates of currency for these insurance policies.

16. Indemnity

- (a) The Supplier is liable for and must indemnify Geofabrics and Geofabrics' Representatives against all Loss suffered or incurred in connection with:
- (i) the Deliverables;
 - (ii) a breach of the Contract; or
 - (iii) any act or omission by the Supplier or the Supplier's Representatives,
- including without limitation in connection with any death or injury to any person, damage to any property, or any clean-up costs, directly

or indirectly caused or contributed to by the Supplier, except to the extent that any Loss is caused by Geofabrics' wilful misconduct or negligence.

17. GST

- (a) Any reference in this clause to a term defined or used in the GST Act is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) To the extent that any supply made is a taxable supply, the recipient must pay, in addition to the consideration to be provided under the Contract for that supply (unless it expressly includes GST) an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply, provided that the supplier has first issued to the recipient a Tax Invoice in respect of that taxable supply.

18. Subcontracting and assignment

- (a) The Supplier must not assign, transfer, subcontract or otherwise deal with the whole or part of a Contract except with the prior written consent of Geofabrics.
- (b) Where Geofabrics consents to a subcontracting arrangement, the Supplier:
- (i) must ensure any subcontractor undertakes to comply with the Supplier's obligations under the Contract; and
 - (ii) will remain liable to Geofabrics for any act or omission, default or negligence of any subcontractor as if it were the act, omission default or negligence of the Supplier.

19. Termination

- (a) Either party (**Terminating Party**) may immediately terminate a Contract by written notice to the other party if the other party (**Defaulting Party**):
- (i) breaches the Contract in a material respect and, in the reasonable opinion of the Terminating Party, the breach cannot be remedied; or
 - (ii) can be remedied, but is not remedied by the Defaulting Party within 14 days after the Terminating Party gives the Defaulting Party notice of the breach; or
 - (iii) becomes Insolvent.
- (b) Geofabrics may, at its option, terminate all or part of a Contract at any time and for any reason by giving written notice to the Supplier.
- (c) On termination or expiry of a Contract:
- (i) the accrued rights and remedies of each party are not affected;
 - (ii) the Supplier must stop working on any incomplete or undelivered Deliverables;
 - (iii) if requested by Geofabrics, deliver to Geofabrics all completed Deliverables which conform in quality to the Contract; and
 - (iv) the Supplier's sole and exclusive right in respect of the termination is limited to the payment of the Price for any Deliverables which have been completed in accordance with the Contract and delivered to Geofabrics.

20. Dispute Resolution

- (a) In event of any dispute, claim or failure to agree, the parties will try to settle that dispute amicably by negotiation within 5 days of giving notice in writing to the other party. If the parties cannot resolve the dispute within 10 days then the dispute must be referred to the parties' respective CEOs or authorised Senior Management who must, in good faith, seek to resolve the dispute within 7 days. If the dispute cannot be so resolved, either party may give written notice to the other party requesting that the dispute be referred to mediation administered by the Australian Commercial Disputes Centre (ACDC). The mediation must be conducted in accordance with ACDC Mediation Guidelines which set out the procedures to be adopted for the mediation, the process of selection of the mediator and the costs involved (the terms of the ACDC Mediation Guidelines are deemed to be incorporated into these Standard Terms of Purchase).
- (b) If the dispute is not resolved at mediation, then either party may commence legal proceedings.

21. Force Majeure

- (a) Where Force Majeure prevents or delays a party from performing any obligation under a Contract, that obligation is suspended to the extent and for as long as the Force Majeure continues.
- (b) The party affected by the Force Majeure must notify the other party in writing as soon as possible, providing an estimate of the likely duration of the Force Majeure, take reasonable steps to resolve or abate the Force Majeure and resume promptly performance of its obligations under a Contract.
- (c) In the event that the Supplier's performance is prevented or delayed by Force Majeure, Geofabrics may:
- (i) appoint an alternative supplier to supply the Deliverables; and
 - (ii) suspend the Contract for the duration of the Force Majeure.

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22. General

- (a) Each Contract supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the parties in respect of its subject matter.
- (b) To the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) and any similar provision under any similar legislation) is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to these Terms and Conditions of Purchase.
- (c) Any term by its nature intended to survive termination of a Contract survives termination.
- (d) Geofabrics may set off from any amounts it owes to the Supplier, any amounts the Supplier owes to Geofabrics under a Contract.
- (e) A waiver of any right must be in writing and signed by the party granting the waiver.
- (f) A party may only use confidential information of another party for the purposes of a Contract, and must keep the existence and the terms of the Contract and any confidential information of another party confidential except where:
 - (i) the information is public knowledge (but not because of a breach of the Contract) or the party has independently created the information;
 - (ii) disclosure is required by law or a regulatory body (including a relevant stock exchange); or
 - (iii) disclosure is made to a person who must know for the purposes of the Contract on the basis that the person keeps the information confidential.
- (g) Nothing in a Contract will constitute or be deemed to constitute a partnership, agency or employer/employee relationship between the parties.
- (h) These terms are governed by the laws of State or Territory in which the Deliverables are supplied to Geofabrics. The parties submit to the non-exclusive jurisdiction of the courts of that State or Territory and courts entitled to hear appeals from those courts.

23. Definitions

In these terms:

Contract means a contract to purchase Deliverables arising out of a Purchase Order, any other specific terms expressly agreed to by Geofabrics in writing and these Standard Terms of Purchase (and in that order of precedence);

Deliverables means goods and or services supplied by the Supplier to Geofabrics as set out in in the attached Schedule 1;

Force Majeure means any circumstances beyond the reasonable control of the party affected including acts of God, any regulation, law or restriction of any government agency, war, riot, hostilities or other civil commotion, fire, flood, explosion, drought or earthquake.

GST Act means *A new Tax System (Goods Tax) Act 1999* (Cth);

Intellectual Property Rights includes any copyright, patent, trade mark, registered design and any rights in respect of an invention, discovery, novel design, trade secret, confidential information, know-how, concept, idea, information, data or formula;

Insolvent means in respect of a party, that party: being a natural person, the person becomes bankrupt; or being a corporation, takes or has taken against it any action for the winding up of the corporation or the placing of the corporation under external administration or has an administrator or controller appointed over any of its assets;

KPIs means any key performance indicators set out in the Purchase Order and any other key performance indicators agreed by the parties;

Laws mean all relevant laws, regulations and Australian standards;

Loss means all actions, claims, costs (including legal costs on an indemnity basis), damages, expenses, interest, liabilities and losses (including any *special, indirect, consequential loss*, loss of profit, loss of goodwill, loss of revenue or loss of business opportunity);

Purchase Order means an order issued by or on behalf Geofabrics setting out details of the Deliverables that Geofabrics requires the Supplier to supply;

Geofabrics' Representatives means the officers, employees, agents, contractors and subcontractors of Geofabrics (other than the Supplier and the Supplier's Representatives);

Specifications mean the specifications for the Deliverables set out in the Purchase Order;

Supplier means the person or entity who is supplying the Deliverables to Geofabrics;

Supplier's Representatives mean the officers, employees, agents, contractors and subcontractors of the Supplier; and

Tax Invoice has the meaning given to it in the GST Act.