

JAMES ENGINEERING PTY LTD T/AS JAMES ENERGIES
ABN 63 101887950
STANDARD CONDITIONS FOR PURCHASE ORDERS

1. DEFINITIONS:

"Purchase Contract" means the terms and conditions of the purchase and sale of the specified Goods as set out and described in the purchase order.

"Specified Goods" as set out and described in the purchase order.

"Purchase Order" or "Order" means the purchase order document incorporating the terms and conditions hereof.

"Purchaser" means James Engineering Pty Ltd T/As James Energies.

"Seller" means the Seller named on the purchase order of the specified goods.

2. CONTRACT:

(a) The purchase order together with:

- (i) All conditions implied by law except where inconsistent with the express terms of this order;
- (ii) All representations made by the Seller for the benefit of the Purchaser in relation to the Specified Goods (except where expressly excluded in this Order);
- (iii) Any documents incorporated by reference herein to the extent that they or any part of them is not inconsistent with the express terms of this order, shall contain all the terms and conditions of the purchase and sale in relation to the supply of the Specified Goods and acceptance of this Order by the Seller includes acceptance of these terms and conditions as the sole basis of the purchase and sale to the exclusion of any conditions of sale appearing on any document of the Seller save as aforesaid.
- (b) Without limiting the foregoing;
- (i) Any purported terms and conditions of sale seeking to limit the liability of the Seller in relation to the Specified Goods and which may be contained in sales literature, tenders, quotations, information, notices, delivery dockets, acceptance letters, tax invoices or other material provided by the Seller but which are not expressly contained in the order, or incorporated by express reference herein are deemed to be excluded.
- (ii) Modification of these terms and conditions expressed in any document of the Seller shall not apply to the Order unless expressly accepted in writing by the Purchaser.
- (iii) No amendment or alteration to this order shall be made without the written agreement of the Purchaser.
- (c) Notwithstanding the completion of the Purchase Order any condition, which is capable of taking effect after completion, shall remain of and in force and effect.

3. QUALITY, QUANTITY, DELIVERY, WARRANTIES:

- (a) The Specified Goods delivered by the Seller shall conform precisely in quality, quantity, specification and description with the Order and any plans or specification or other description provided or nominated by the Purchaser and any samples of the Specified Goods inspected by the Purchaser.
- (b) Time of delivery of the Specified Goods if stated in the Order shall be of the essence. The Purchaser shall have the right to claim delay costs from the Seller in the event of any delay attributable to the Seller's actions or omissions.
- (c) The Specified Goods shall be new and shall be free from all lien's charges and encumbrances of any kind and shall be the property of the Seller.
- (d) The Specified Goods shall comply with the Standards laid down by the Standards Association, local authority, Regulating or Supply Board and/or any other body or association of quality or merchantability in relation to the Specified Goods.
- (e) The Specified Goods shall be fit for the purpose for which the goods of the same kind are commonly supplied and any other purpose made known to the Seller, be of merchantable quality and free from defect in materials and workmanship.
- (f) All warranties implied at law shall apply to the Specified Goods in addition to any warranty expressly herein contained or to any Manufacturer's warranty, service guarantee of performance. In the event of any inconsistency between any implied warranty, express warranty or guarantee that the most favourable to the Purchaser shall prevail.

4. PRICE:

- (a) All prices stated in the Order are firm and not subject to escalation.
- (b) The purchase price stated in the Order is deemed to included the cost of delivery to and off loading at the destination specified on the Order and packaging of the Specified Goods in accordance with the delivery instructions specified unless expressly stated to the contrary.
- (c) If delivery of the Specified Goods is made at a time or place other than stated in the Order the Purchaser may refuse or reject the Specified Goods and may procure similar goods elsewhere and the Seller shall be liable for any additional costs of the Purchaser in consequence thereof.
- (d) Payment shall be made by the date specified on the Purchase Contract or if not specified within 30 days of the last day of the month in which the delivery of the Specified Goods occurs. No payment shall be due to the Seller unless the Seller has first furnished to the Purchaser an Invoice for the Specified Goods showing the date and place of delivery of the Specified Goods (unless expressly agreed by the Purchaser in writing) and the calculation of any applicable GST, Customs Duty, Excise or other Government Tax, charge or levy applicable to the Specified Goods.

5. INSPECTION:

- (a) The Purchaser or its designated agent shall have the right of inspection of all work related to the manufacture and/or supply of the Specified Goods. Any such inspection shall not affect the obligations of the Seller with respect to the Specified Goods.
- (b) Acceptance of the Specified Goods by the Purchaser is subject to inspection and testing after delivery and unpacking and if the Specified Goods are to be installed or incorporated into plant or premises subject to inspection and testing following such installation or incorporation. Signature by or on behalf of the Purchaser shall not be or be construed as acceptance by the Purchaser of the Specified

Goods but only the number of packages or items of the Specified Goods delivered by the Seller.

- (c) In every case inspection and testing must be carried out to the satisfaction of the Purchaser, if in the opinion of the Purchaser the Specified Goods do not comply in any respect however minor with the Purchase Contract the Purchaser may in its discretion either:
 - (i) Reject and return the Specified Goods at the Seller's expense, such expense to be deducted from any monies owing by the Purchaser to the Seller or recovered from the Seller as a debt and owing; or
 - (ii) Convert the Specified Goods into a condition acceptable to the Purchaser, the cost of such conversion to be deducted from any monies owing by the Purchaser to the Seller or recovered from the Seller as a debt and owing.

6. LOSS OR DAMAGE:

Where the Specified Goods are destroyed or damaged prior to the delivery and acceptance of the Specified Goods the Purchaser shall be entitled to cancel the Order and where any payment of the Specified Goods has been made the Purchaser shall be entitled to recover in full the monies paid by it.

7. PATENT, TRADEMARK, COPYRIGHT, LICENCES, ETC:

- (a) The Seller warrants to the Purchaser or its successors in interest that the manufacturer or sale or use of the Specified Goods will not un hinge any patent, trademark design, copyright or confidentiality agreement in Australia or elsewhere and the Seller agrees to indemnify the purchaser and its successors in interest against any liability or damage from breach of this warranty or prevention or hindrance of use of the Specified Goods.
- (b) If the Seller represents that the Specified Goods are protected by one or more patents and any such patent is found to be invalid the Purchaser may forthwith cancel this order and the Purchase Contract and recover any money paid the Seller thereunder.
- (c) The Seller at its cost shall obtain all necessary licenses; permits or authorities required for the performance of this Order and shall comply with all applicable laws and regulations in relation to the Specified Goods.

8. TECHNICAL DATA:

- (a) The Seller shall supply with the specified Goods all engineering Technical and other data required for the satisfactory use, maintenance, repair, installation or operation of the Specified Goods.
- (b) Specified Goods made or done according to the Purchaser's design or specifications or developed for the Purchaser at the Purchaser's direction and any designs or specifications supplied by the Purchaser and all copies there of shall be held by the Seller on the Purchaser's behalf and at the Purchaser's disposal shall not be disclosed or furnished to any third party without the prior written consent of the Purchaser. The Seller shall take or cause to be taken all reasonable precautions to prevent disclosure of any of the said designs or specifications to any third party.

9. RIGHTS OF PURCHASE:

- (a) All rights and remedies of the Purchaser contained in this Order are cumulative and in addition to and without prejudice to the fights and remedies of the Purchaser of law, in equity or by statue.
- (b) In the event of any breach of the Seller of any term or condition of the Purchase Contract and whether such breach be of a material or of a minor nature the Purchaser may at any time thereafter terminate the Purchase Contract and reject and/or return the Specified Goods or any part of them and recover from the Seller its costs and damages including consequential damages if any sustained by the Purchaser.
- (c) If the Seller commits an act of bankruptcy or becomes bankrupt or assigns his estate for the benefit of his creditors or being a corporation is insolvent or goes into liquidation or has a receiver, Official Manager or Provisional Liquidator appointed of its affairs or enters into a Deed of Arrangement of composition with its creditors then the Order and the Purchase Contract may at the option of the Purchaser be cancelled by the Purchaser free of claim of the Seller.
- (d) As a separate and independent right, the Purchaser may at any time in its sole discretion cancel the Purchase Contract and shall pay to the Seller actual costs incurred by the Seller in respect to the Specified Goods to the date of cancellation and upon such payment take to and property in any materials in or completed Specified Goods shall pass to the Purchaser.

10. WAIVER:

Failure by the Purchaser to insist upon strict performance of any term or condition of Purchase Contract shall not be deemed a waiver thereof or of any rights, the Purchaser may have and shall not be deemed a waiver of any subsequent breach of any such term or condition.

11. INTERPRETATION:

- (a) The Purchase Contract is so interpreted in accordance with the laws of the State in which the Purchaser signs the Order.
- (b) If any term or condition of the Purchase Contract or any part thereof shall be void for any reason then such terms or conditions shall be struck out and the Purchase Contract shall take effect as though such term had never appeared therein.

12. TAX INVOICE:

A Tax Invoice has the same meaning as in the GST Act as applicable for tax invoices that relate to supplies of \$1000 or more, including the requirements of Regulations 29.70(2).

13. SELLER WARRANTIES:

The Seller warrants that:

- (a) The Seller is and will remain registered under the GST ACT.
- (b) Each supply made by the Seller under the Order is a taxable supply.