

Purchase Order Conditions – Western Advance Pty Ltd

PART A – GENERAL CONDITIONS

1 APPLICATION

(a) Part A of these conditions applies to all Contracts for:

- (i) Goods Purchased by Western Advance;
- (ii) Supply of Hired-in Goods; and/or
- (iii) Supply of Services.

(b) Any reference by the Supplier to their own terms and conditions in its quotation or any other document attached to the delivery of the Goods and/or Services will have no effect on this Purchase Order ("PO"). These conditions shall be effective from the date of order stated on the PO.

2 DEFINITIONS AND INTERPRETATION

Western Advance	means Western Advance Pty Ltd.
Contract	is the contract comprising of the PO and these conditions for which the Supplier accepted.
Defect	means any failure, deficiency, error or omission in respect of the Good and/or Services.
Delivery Point	is the place specified in the PO to which the Goods are to be delivered by the Supplier.
Goods	includes machinery, plant, equipment, materials and other items of all kinds to be supplied or Hired-in under the "PO" and includes any and all parts thereof.
Goods Purchased	means any Goods sold by the Supplier to Western Advance.
Hired-in Goods	includes the Goods identified in the PO which are leased by the Supplier to Western Advance for a period of time.
Legal Requirements	includes present and future obligations arising under applicable laws, statutes, regulations, by-laws, orders etc.
Mobilisation Date	is the date that the Goods and/or Services are to be delivered to Western Advance in accordance with the PO and as may be amended in written notice by Western Advance.
Price	is the amount Western Advance has agreed to pay for the Goods as specified in the PO.
PO	means the document headed as Purchase Order (PO) and describing the Goods and/or Services to be supplied to Western Advance or to which these conditions are attached.
Re-delivery Point	is the Delivery Point to where the Goods are to be returned at the end of the hired period, unless otherwise specifically agreed to in the PO.
Service	means the personnel services described in the PO and the provision of all materials and equipment, necessary to allow or assist the performance of the Services.
Supplier	means the person or company identified in the PO who is bound to supply and deliver the Goods and/or Service.

3 CHANGES

(a) Western Advance may, at any time, require the Supplier to vary or change the specifications of the Goods and/or Services, provided that the variation is in writing and within the general scope of the PO. The cost of any change must be agreed by between Western Advance and the Supplier, and will be added to or deducted from the Price (as the case may be). Western Advance has the right to audit the Supplier's estimated cost of any change to the Price.

(b) No changes to the PO may be made by the Supplier without the written agreement of Western Advance.

(c) Any variations or revised PO relating to this PO contain the same terms and conditions as contained in this Contract.

(d) In cases of any conflict or ambiguity, the PO shall have precedence over these conditions.

4 TIME

(a) The time for delivery of the Goods and/or Services, is of the essence.

(b) The Goods and/or Services must be delivered to Western Advance by the Mobilisation Date specified in the PO in accordance with these conditions.

(c) If the Goods and/or Services are not delivered to the Delivery Point on the Mobilisation Date, then:

- (i) Western Advance may extend the date for delivery; or
- (ii) By written notice cancel the Contract, in whole or in part.

5 PACKAGE AND TAGGING

(a) The Supplier must ensure that all Goods are clearly marked and identified and suitably packed or otherwise prepared for shipment to avoid damage or loss to the Goods while they are in transit to Western Advance.

(b) An advice note and packing list must be provided with the Goods and must quote the relevant PO number and state whether all or only parts of the Goods are delivered.

(c) The Supplier must, having regard to the nature of the Goods, comply with all applicable statutes, laws and regulations and shall obtain all governmental and other statutory and regulatory consents, approvals and licences necessary to manufacture, assemble, use, store, transport, supply and sell the Goods in accordance with the Contract.

(d) Where the Contract includes the supply of any hazardous substances, the Supplier must strictly comply with Legal Requirements relating to the supply of the Goods.

6 PRICE

(a) In consideration of the Supplier's performance under the Contract, Western Advance shall pay the Supplier in accordance with the PO.

(b) The Price as indicated in the PO is fixed and firm unless specifically agreed to by Western Advance and stated on the PO.

(c) The Price shall be Australian Dollars (AUD).

(d) All applicable GST and any other taxes and duties shall be separately stated and itemised on the Supplier's invoice.

(e) Unless otherwise stated in the PO, the Price includes all costs of wrapping, packing, cartons, crating and the cost of freight to the destination but excluding unloading.

7 INVOICES AND PAYMENT

(a) Unless other stated, the Supplier shall be entitled to render an invoice upon completion of the work, or where performance of the Contract may exceed thirty (30) days in duration, at the end of each calendar month in which the Contract is performed.

(b) A correctly rendered invoice must be submitted to either:
accounts@westernadvance.com in PDF format;
 or
 The Accounts Payable Department
 Western Advance Pty Ltd
 130 Mulgool Road
 Malaga WA 6090

(c) The invoice **must** quote the PO number and the product description and identification code number (if any) against each component quoted in the same sequence as shown in the PO. The invoice must also bear the correct Western Advance entity. Failure to do so may result in Western Advance returning the invoice to the Supplier as it is invalid.

Purchase Order Conditions – Western Advance Pty Ltd

- (d) Invoices shall be paid within forty-five (45) days from receipt by Western Advance of a correct and proper invoice and required supporting documentation following delivery of the Goods and/or Services in accordance with the PO.
- (e) If there is any disputed item on the invoice submitted Western Advance will:
 - (i) As soon as possible inform the Supplier of the disputed amount; and
 - (ii) Pay the amount invoiced, less the disputed amount, pursuant to the Contract.
- (f) Western Advance shall provide the Supplier prior notice of seven (7) days of its intention to deduct or set off any sums and shall furnish the Supplier with reasons and due evidence necessary to support the deduction or set off.
- (g) Supplier must submit their final invoice to Western Advance for payment within three (3) months of the last date of delivery of the Goods and/or Services for payment. Failing which, the Supplier may not receive payment.

8 TAXES

- (a) Supplier will comply with all Legal Requirements relating to taxation.
- (b) If Western Advance is required by Legal Requirements to make withholdings or deductions from payments otherwise due to the Supplier, then Western Advance may do so, and the amount so withheld will be deemed to be paid by the Supplier.

9 EXCLUSION OF CONSEQUENTIAL LOSS

- (a) Except for liquidated damages or other amounts that become payable under the Contract, no party shall be liable to the other party for any indirect or consequential loss or damage, including loss of profit, loss of use, loss of revenue or loss of opportunity.

10 TERMINATION

- (a) Western Advance may terminate this Contract at its convenience by providing written notice to Supplier without incurring any liability to the Supplier for any compensation or payment of moneys except for what is properly due for that part of the Contract properly performed up to the date of termination.
- (b) If the Supplier defaults or breaches any of its obligations under the Contract, Western Advance may by written notice and without prejudice to any other rights, do either or both:
 - (i) Reject any Goods; and/or
 - (ii) Terminate all or part of the Contract.

11 NOTICE

- (a) A notice or other communication under the Contract is only effective if it is in writing, signed (except in the case of an email) and either left at the addressee's address specified in the Contract or sent to the addressee by mail, fax or email address of the party.
- (b) If notice or other communication under the Contract is sent by:
 - (i) Mail, it is taken to have been received 3 days after it is posted;
 - (ii) Facsimile or email, it is taken to have been received when the addressee actually receives it in full and in legible form.

12 DISPUTE & GOVERNING LAW

- (a) If a dispute arises under the Contract, which cannot be resolved amicably, either party may commence legal proceedings in relation to that dispute.
- (b) The Contract shall be governed by the laws of Western Australia.

13 ENTIRE AGREEMENT

- (a) The Contract constitutes the entire agreement between the parties and supersedes all previous negotiations and communications.

PART B - GOODS PURCHASED

14 APPLICATION OF THIS PART

To the extent that the Contract is for the supply of Goods to be purchased by Western Advance, the conditions of this Part B apply in addition to any other terms and conditions of Contract.

15 DELIVERY

- (a) Supplier at its own expense shall deliver the Goods Purchased to Western Advance to the Delivery Point on the Mobilisation Date.

16 RISK, TITLE AND PROPERTY

- (a) Title to and property in the Goods immediately passes to Western Advance upon payment or delivery, whichever occurs first, and the Goods must be appropriately marked and identified as the property of Western Advance.
- (b) Risks in the Goods remain with the Supplier until delivery to Western Advance in accordance with the Contract.

17 INSPECTION AND TESTING

- (a) Western Advance shall have the right to inspect and test the Goods Purchased at any time during the manufacture and/or prior to shipment, and to perform final inspection within a reasonable time after the delivery of the Goods Purchased.
- (b) If as a result of any inspection or testing, the Goods Purchased are defective or otherwise non-conforming, Western Advance may reject such Goods and shall notify the Supplier immediately.
- (c) The Supplier shall with all speed make good the non-conformity to ensure that any rejected Goods comply with the PO.
- (d) Such Goods shall not be accepted until after such time that Western Advance confirms in writing that the Goods are accepted. However, acceptance of the Goods by Western Advance does not relieve the Supplier of any of its obligations under Contract or at law.

18 WARRANTIES

- (a) Supplier warrants that the Goods sold herein to Western Advance have been produced, sold, delivered and furnished in strict compliance with all Legal Requirements to which the Goods are subject.
- (b) Any manufacture instructions, spare parts and/or warranty details shall be provided to Western Advance upon delivery.
- (c) Supplier shall execute and deliver such documents as may be required to effect or to evidence any legal or warranty compliance.

19 INDEMNITIES

- (a) Supplier shall defend all actions, suits or claims and shall indemnify and hold harmless Western Advance from liability of any kind that may arise for or on a account of any infringement of any patents registered designs, copyrights, trademarks, trade names or any other intellectual property rights by reason of the nature of the, form or condition of any Goods Purchased pursuant to the PO or by reason of the use or sale of such Goods for the purpose intended or reasonably intended by Western Advance.

20 INSURANCE

- (a) Supplier shall at its own cost, effect and maintain until the risk in the Goods pass to Western Advance adequate material loss or damage insurance including adequate transit insurance.

PART C - HIRED-IN GOODS

21 APPLICATION OF THIS PART

- (a) To the extent that the Contract is for the supply of Goods to be Hired-in by Western Advance, the conditions of this Part C apply in addition to any other terms and conditions of Contract.

22 HIRED-IN GOODS

- (a) The Supplier is responsible for the delivery and all costs associated with the delivery of Hired-in Goods to Western Advance premises.

Purchase Order Conditions – Western Advance Pty Ltd

- (b) The Supplier must furnish all operating manuals and instructions for the Hired-in Goods.
- 23 TERM**
- (a) The term of hire shall be for the period specified in the PO.
- (b) If Western Advance continues to retain possession of the Hired-in Goods, with the Supplier's consent beyond the period specified in the PO, Western Advance shall be deemed to continuously hire the Goods on the same terms and conditions as the Contract.
- 24 OWNERSHIP & RISK**
- (a) The Supplier retains full title and ownership in the Hired-in Goods notwithstanding that the Goods are hired to and in the possession of Western Advance.
- (b) Risk in the Hired-in Goods shall only pass to Western Advance when Western Advance takes delivery of the Goods. Such risk shall remain with Western Advance until the Goods are returned to the Supplier.
- 25 INSPECTION & TESTING**
- (a) Western Advance shall have the right, but not the obligation, at all times to inspect and test the Hired-in Goods provided.
- (b) Prior to delivery of the Hired-in Goods, Western Advance may request the Supplier, at its own costs, to carry out an inspection and/or testing.
- (c) Western Advance shall have the right to reject any Hired-in Goods that do not comply or conform to the PO or treat as a Defect under clause 26.
- (d) Any Hired-in Good that is reasonably rejected by Western Advance shall be replaced with a suitable substitute by the Supplier, at its own expense.
- 26 DEFECTS**
- (a) During the term of hire, Western Advance shall notify the Supplier of any Defect in the Hired-in Goods as soon as practicable after becoming aware of such Defect.
- (b) Upon receipt of such notification, the Supplier shall immediately repair or replace the Hired-in Goods. Alternatively, Western Advance may undertake at its option, due to project requirements repair the Defect itself. If so, Western Advance shall be entitled to recover all reasonable costs incurred by Western Advance in carrying out the repairs, from the Supplier.
- (c) If a Defect cannot be remedied, the Supplier must make replacement Goods available to Western Advance in accordance with the terms of the Contract.
- 27 MAINTENANCE AND REPAIR**
- (a) The Supplier shall provide Hired-in Goods which have been maintained in good and operational condition.
- (b) Where the Hired-in Goods is to be operated by Western Advance, the Supplier shall provide sufficient spare parts and a written list of maintenance instructions (daily, weekly and monthly servicing, whichever is applicable).
- 28 WARRANTIES & GUARANTEES**
- (a) The Supplier warrants that the Goods shall be of merchantable quality, free from defects in design, material, workmanship, and title, and shall conform in all respects to the terms of the PO and any applicable standard(s).
- (b) The Supplier warrants that the use of Hired-in Goods does not and will not infringe any patent, proprietary or other protected right related to the Goods and the Supplier agrees to defend, protect and indemnify Western Advance, its successors, assigns, customers and the other users of Western Advance's products and services from and against any claim arising by reason of the use of the Goods, including, without limitation, all claims for actual or alleged infringement of any letters patent, trade marks, copyright, design, confidential information or similar protection.

29 INDEMNITIES

- (a) Supplier shall be responsible for and hold Western Advance harmless against all claims, liens, demands, proceedings, judgements, fines and penalties, costs (including legal costs), losses, liabilities and other expenses whatsoever for any;
- (i) Personnel injury or death;
- (ii) Loss or damage to Western Advance's equipment; or
- (iii) Pollution (including cleaning up costs);
- arising as a result of or in connection with any Defect or fault in the Hired-in Goods.
- (b) Western Advance shall be responsible for and hold the Supplier harmless against all claims, liens, demands, proceedings, judgements, fines and penalties, costs (including legal costs), losses, liabilities and other expenses whatsoever for any;
- (i) Personnel injury or death;
- (ii) Loss or damage to the Hired-in Goods; or
- (iii) Pollution (including cleaning up costs);
- arising out of or in connection with Western Advance's negligent operation of the Hired-in Goods.
- (c) Each party shall assume its own liability towards third parties and indemnify the other party accordingly.

30 INSURANCE

- (a) Supplier will maintain during the period of Contract, all insurance cover relevant to the provision of Contract including;
- (i) Adequate material loss or damage insurance including transit coverage up to the date of delivery; and
- (ii) Product and public liability insurance against third party liabilities. The insurance will have a limit of not less than AUD 10 million per claim; and
- (iii) Any additional insurance required by the applicable law.
- (b) Either party's indemnification obligations under this Contract are not limited in amount or in scope to coverage provided by that party's insurance cover.

31 RETURN OF HIRED-IN GOODS

- (a) Unless specifically stated in the PO, the end of the term of hire or upon termination of the Contract, the Hired-in Goods shall be:
- (i) Returned to the Supplier at the Re-Delivery Point;
- (ii) With the hire Price to be paid up to the Re-Delivery Point.

PART D - SERVICES

32 APPLICATION OF THIS PART

- (a) To the extent that the Contract is for the supply of Services, whether in conjunction with Goods Purchased or the supply of Hired-in Goods or otherwise, the conditions of this Part D apply in addition to any other terms and conditions of Contract.

33 SERVICES

- (a) The Supplier shall perform the Services in accordance with the PO, best industry standards and in compliance with all relevant laws and regulations, and in such a manner as will always safeguard and protect Western Advance's interests.
- (b) The Supplier shall perform the Services with all proper skill and care and shall ensure that the work, services and any equipment used to produce or incorporated into the Services shall be fit for their intended purpose and of good quality and workmanship.

34 TERM

- (a) The term of Service shall be for the period specified in the PO.
- (b) Should the term extend beyond the period specified in the PO, a new revised PO shall be issued in accordance with clause 2.

Purchase Order Conditions – Western Advance Pty Ltd

35 HEALTH AND SAFETY

- (a) Whilst working on Western Advance's premises, the Supplier shall observe any Western Advance or its client's safety standards.
- (b) The Supplier shall abide by, and ensure that all equipment conforms to, all necessary safety measures. Such safety measures, shall comply with all applicable policies, procedures and regulations that may apply to the Services.

36 SUPPLIER'S PERSONNEL

- (a) Supplier shall provide personnel that have the experience and capability to efficiently and expeditiously perform the Services.
- (b) Supplier is an independent contractor with respect to the Services and must exercise independent control, management and supervision of the Services, with Western Advance only concerned with the results of the Services being performed. Supplier is not Western Advance's agent in any way.

37 SUPPLIER'S EQUIPMENT

- (a) Supplier shall provide all equipment and tools required or necessary for the satisfactory performance and completion of the Services.
- (b) Supplier will ensure that all of its equipment and tools are in good working condition and suitable for use in connection with the Services.
- (c) The Supplier is responsible for ensuring that the Supplier's personnel have suitable and appropriate safety clothing and equipment for undertaking the Services.

38 INSPECTION AND TESTING

- (a) In order to confirm that the requirements of the PO are being met, Western Advance shall have the right but not the obligation, at all times to inspect and test the Services performed by the Supplier.
- (b) The Supplier shall at its own costs, carry out such inspection or tests as so required.

39 WARRANTIES

- (a) The Supplier shall ensure that the work and all services, equipment and workmanship used for or incorporated into the Services, shall be fit for its intended purpose and of good quality and workmanship.
- (b) The Supplier shall ensure that the Services shall be free from errors, defects, shrinkages and failures for a period of twelve (12) months from the date of Service.
- (c) The Supplier shall be responsible at its own costs, for the:
 - (i) Repair, correction or replacement of any defective Services, equipment or workmanship; and
 - (ii) Carrying out of all work of uncovering, removal, procurement and reinstallation as may be necessary.
- (d) In the event of such breach of sub-clause (b) herein, Western Advance shall notify the Supplier of the breach. Upon receipt of such notice, the Supplier shall immediately carry out the repairs under sub-clause (c). Alternatively, Western Advance may at its option, undertake any of the Supplier's obligations under sub-clause (c), in which case Western Advance shall notify the Supplier of its intention and shall be entitled to recover from the Supplier all costs incurred by Western Advance for carrying out such obligation.

40 INDEMNITIES

- (a) Supplier shall be solely responsible for and hold Western Advance harmless against all claims, liens, demands, proceedings, judgements, fines and penalties, costs (including legal costs), losses, liabilities and other expenses whatsoever for any;
 - (i) Personnel injury and/or death to the Supplier's personnel;
 - (ii) Loss or damage to the Supplier's equipment or tools;
 - (iii) Pollution (including cleaning up costs) emanating from the Services;

arising out of or in connection with the performance of the Contract, except to the extent that Western Advance's negligence or wilful misconduct has contributed to the claim, Western Advance will be responsible for the claim.

- (b) Western Advance shall be solely responsible for and hold the Supplier harmless against all claims, liens, demands, proceedings, judgements, fines and penalties, costs (including legal costs), losses, liabilities and other expenses whatsoever for any;

- (i) Personnel injury and/or death to Western Advance's personnel;
- (ii) Loss or damage to Western Advance's equipment;
- (iii) Pollution (including cleaning up costs) emanating from the Western Advance's equipment;

arising out of or in connection with the performance of the Contract, except to the extent that the Supplier's negligence or wilful misconduct has contributed to the claim, the Supplier will be responsible for the claim.

- (c) Each party shall assume its own liability towards third parties and indemnify the other party accordingly.

41 INSURANCE COVERAGE

- (a) Supplier will maintain during the period of Service, all insurance cover relevant to the provision of Service including:
 - (i) Public liability insurance against third party liabilities arising from the performance of the Services. The insurance will have a limit of not less than AUD 1 million per claim;
 - (ii) Worker's compensation insurance and employer's liability insurance, as required by law; and
 - (iii) Any additional insurance required by the applicable law.
- (b) Either party's indemnification obligations under this Contract are not limited in amount or in scope to coverage provided by that party's insurance cover.