

BLUESCOPE CONSTRUCTION LTD

Trading as BlueScope Construction/ Highline

STANDARD TERMS AND CONDITIONS FOR PURCHASE ORDERS

1. Supply of Goods & Services

- 1.1 The Supplier must supply the Goods and/or Services:
 - (a) to the reasonable satisfaction of BlueScope Construction Ltd ;
 - (b) in accordance with relevant standards of the Standards Association of Australia, the specifications and the law; and
 - (c) at the reasonable times directed by BlueScope Construction Ltd.
- 1.2 If the Supplier discovers any inconsistency, ambiguity or discrepancy in or between the Purchase Order or quote and the specifications relevant to the Goods and/or Services, the Supplier must immediately notify BlueScope Construction Ltd and seek direction as to how the inconsistency, ambiguity or discrepancy is to be resolved.
- 1.3 The Supplier must supply everything necessary to supply the goods and/or services at its own cost.
- 1.4 The Supplier agrees and acknowledges that:
 - (a) nothing in this Agreement or otherwise requires BlueScope Construction Ltd to purchase a particular quantity or minimum quantity of any goods or services during the term of this Agreement;
 - (b) any estimate or forecast as to consumption of or requirements for any goods or services does not bind BlueScope Construction Ltd ; and
 - (c) this is not an exclusive supply arrangement and BlueScope Construction Ltd may purchase goods or services from other suppliers, whether for trial purposes or for any other reason.

2. Conditions as to quality and description of Goods

- 2.1 The Goods must match the description (including performance criteria) in the Purchase Order. If the Supplier gave BlueScope Construction Ltd a sample of the Goods before the Supplier fulfilled the Purchase Order, the Goods must correspond with the sample in addition to matching the description.
- 2.2 The Goods must be fit for the purpose for which Goods of the same kind are commonly supplied and for any other purpose which BlueScope Construction Ltd makes known to the Supplier.
- 2.3 The Goods must be new and of merchantable quality unless otherwise stated in the Purchase Order.
- 2.4 The Goods must meet any safety performance requirements stated in the Purchase Order.

3. Conditions as to quality of Services

- 3.1 The Services must match the description of the Services in the Purchase Order.
- 3.2 If the Supplier provided BlueScope Construction Ltd with a demonstration of the Services before the Supplier fulfilled the Purchase Order, the Services must correspond in nature and quality with the Services demonstrated.
- 3.3 The Services must be performed by appropriately qualified and trained personnel with all due care and skill.
- 3.4 The Services must be fit for the purposes for which those types of Services are commonly bought and for any other purposes which makes BlueScope Construction Ltd known to the Supplier.
- 3.5 The Supplier must provide to BlueScope Construction Ltd at BlueScope Construction Ltd 's request:
 - (a) copies of all Technical Materials relating to the Goods and/or Services;
 - (b) a detailed program for the projected supply of the Goods and/or Services.
- 3.6 BlueScope Construction Ltd has the right to withhold any payment of money due to the Supplier under the Purchase Order until such time as the Goods and/or Services comply with the Purchase Order.

4. Price

- 4.1 BlueScope Construction Ltd will pay the Supplier the price specified in the purchase order or quote.
- 4.2 Unless this Agreement provides otherwise, the price is inclusive of:
 - (a) all charges for packing, packaging, insurance and delivery of the goods in accordance with this Agreement;
 - (b) the cost of the services; and
 - (c) all taxes including GST.
- 4.3 The price may not be increased, without the parties prior written consent.

5. Invoicing, Payment & GST

- 5.1 Unless the Purchase Order states that progress payments are to be made, the Supplier must invoice BlueScope Construction Ltd upon delivery of the Goods and/or upon completion of the Services.
- 5.2 Where progress payments are to be made, the Supplier must invoice BlueScope Construction Ltd on the last business day of each calendar month (or other period specified in the Purchase Order) for Goods delivered and/or Services performed by the Supplier in that month or that period (as the case may be).
- 5.3 All invoices must include all relevant records to enable BlueScope Construction Ltd to confirm the amount of the invoice, together with the number of this Agreement.

- 5.4 BlueScope Construction Ltd will pay all invoices and/or progress claims rendered to it by the Supplier within 50 days of receipt of the invoice or progress claim, except where:
- (a) BlueScope Construction Ltd retains part of the price as provided in this Agreement; or
 - (b) BlueScope Construction Ltd disputes the invoice, in which case the undisputed part of the relevant invoice (if any) will be paid and the remainder will be paid upon resolution of the dispute.
- 5.5 BlueScope Construction Ltd may reduce any payment due to the Supplier under this Agreement by any amount for which the Supplier is liable to it, including costs, charges, damages and expenses. This does not limit BlueScope Construction Ltd's right to recover those amounts in other ways.
- 5.6 If GST is imposed on any supply made by the Supplier under or in connection with this Purchase Order, the Supplier may recover from FMG, in addition to the Price, an amount equal to the GST payable in respect of that supply.
- 5.7 The Supplier must first provide BlueScope Construction Ltd with a valid tax invoice before BlueScope Construction Ltd will pay any GST amount to the Supplier.

6. Title, Risk and Delivery

- 6.1 Title in any Goods or part thereof passes to BlueScope Construction Ltd when BlueScope Construction Ltd pays for that part or whole of the Goods.
- 6.2 Risk in any goods does not pass to BlueScope Construction Ltd until the Supplier has delivered the goods to the site and BlueScope Construction Ltd has acknowledged receipt in writing.
- 6.3 The Supplier must deliver all goods in accordance with the purchase order or quote, and must comply with all laws.
- 6.4 The Supplier warrants that:
- (a) it has complete ownership of the Goods free of any liens, charges and encumbrances and will provide the Goods to BlueScope Construction Ltd on that basis; and
 - (b) BlueScope Construction Ltd will be entitled to clear, complete and quiet possession of the Goods.
- 6.5 The Supplier is responsible for ensuring that any goods are properly marked, packed and delivered, by the delivery date(s) and to the point of delivery, in compliance with government regulations.
- 6.6 BlueScope Construction Ltd may return any Goods delivered greater than that specified in any purchase order or quote to the Supplier at the Supplier's sole risk and expense. The Supplier must collect any excess quantities of the Goods from BlueScope Construction Ltd as soon as possible after receiving written notification.

7. Extension of Time

- 7.1 If the Supplier will be delayed in supplying the Goods and/or performing the Services the Supplier must give BlueScope Construction Ltd the earliest possible notice in writing stating:
- (a) the cause of the delay; and
 - (b) the effect on the completion of the Services and/or the delivery of the Goods (as the case may be).
- 7.2 The giving of any notice by the Supplier does not affect the Supplier's obligation to deliver the Goods and/or complete the Services by the specified Delivery Date or Completion Date and BlueScope Construction Ltd reserves all rights, remedies and powers under the Agreement formed in relation to the Purchase Order and under the law in relation to any breach by Supplier of the Delivery Date or Completion Date.
- 7.3 BlueScope Construction Ltd may, at any time, and for any reason whatever, by notice in writing to the Supplier extend the time for completion of the Services and/or delivery of the Goods.

8. Acceptance of the Goods and Services

- 8.1 BlueScope Construction Ltd is entitled to a reasonable period of time after the Delivery Date or Completion Date to be made in writing to the Supplier.
- 8.2 Payment for the Goods and any Services or the signing of delivery receipts before inspection does not constitute acceptance of the Goods or the Services.
- 8.3 If BlueScope Construction Ltd deems any Goods to be Defective goods, BlueScope Construction Ltd may, at its option:
- (a) reject the Defective Goods; or
 - (b) make good the Defective Goods.
- 8.4 The Supplier must collect any Defective Goods, at cost to the Supplier, as soon as possible after receiving BlueScope Construction Ltd's written notification.
- 8.5 If upon inspection or testing BlueScope Construction Ltd finds any Services to be Defective Services, BlueScope Construction Ltd may, at its option:
- (a) reject the Defective Services; or
 - (b) make good the Defective Services.
- 8.6 At BlueScope Construction Ltd's option and request, the Supplier agrees to:
- (a) refund to BlueScope Construction Ltd any payments made by BlueScope Construction Ltd in respect of any Defective Goods and any Defective Services; or
 - (b) make good free of charge any Defective Goods and any Defective Services; or
 - (c) reimburse BlueScope Construction Ltd for any expenses BlueScope Construction Ltd incurs in making good any Defective Goods and any Defective Services.

9. Termination or Variation of the Purchase Order

- 9.1 BlueScope Construction Ltd may immediately terminate the contract formed in relation to the Purchase Order by notice in writing to the Supplier if the Supplier does not comply with or is in breach of any of its obligations under the Purchase Order or this Agreement and such non-compliance or breach is not remedied within 14 days after BlueScope Construction Ltd requests remedy of the breach or the Supplier becomes insolvent or has an administrator or liquidator appointed. Such termination does not limit BlueScope Construction Ltd's right to recover loss and damage from the Supplier for a breach or default of this Agreement resulting in termination.
- 9.2 BlueScope Construction Ltd may terminate the contract formed in relation to the Purchase Order at any time upon 24 hours written notice.
- 9.3 If the Agreement is terminated by BlueScope Construction Ltd then it is only liable for the cost of all accepted Goods delivered to site and/or all accepted Services actually rendered to the date of termination.
- 9.4 BlueScope Construction Ltd may vary the Purchase Order or part of the Purchase Order at any time upon 7 days' written notice.
- 9.5 Upon receipt of a notice of variation the Supplier must vary the Purchase Order in accordance with BlueScope Construction Ltd's notice and send notification of a reasonable adjustment to the price for the Purchase Order within 14 days of the effective date of variation.
- 9.6 BlueScope Construction Ltd has the right to accept or reject the reasonable price adjustment if BlueScope Construction Ltd is satisfied that the adjusted Price specified is reasonable and equitable and the termination or variation of the Purchase Order is not a result of any default, act or omission on the part of the Supplier.

10. Independent contractor

- 10.1 Both parties acknowledge that the Supplier is an independent contractor and is not BlueScope Construction Ltd's employee or agent.

11. Warranties

- 11.1 The Supplier warrants that:
- (a) any Goods will be fit for the purpose of which goods of the same kind are commonly supplied and for any other purpose made known, must meet the safety performance requirements of the intended purpose and will be suitable, new and free of defects;
 - (b) any Services will be carried out in a proper and skilful manner and must be performed by appropriately qualified and trained personnel and must be fit for the purpose for which those type of Services are commonly bought and for any other purposes made known to you;
 - (c) it holds all licences required to supply the Goods and or Services;
 - (d) the provision of any Goods or Services by it will not infringe the rights, including without limitation intellectual property rights of any third party; and

- (e) it has complete ownership of any Goods free of any liens, charges and encumbrances and BlueScope Construction Ltd will be entitled to clear, complete and quiet possession of the Goods.
- 11.2 The Supplier must, at its own cost, make good any Goods or Services that do not confirm with the requirements of this Purchase Order Supply Con before the end of the warranty period.
- 11.3 BlueScope Construction Ltd may direct the Supplier to correct, remove or replace any non-conforming Goods or Services as the case may be before or during the warranty period.
- 11.4 If the Supplier does not comply with such a direction, BlueScope Construction Ltd may, in addition to exercising other legal rights, have that work carried out by others and the cost is a debt due and payable by the Supplier to BlueScope Construction Ltd.

12. Liability and Indemnities

- 12.1 The Supplier is be liable for, and indemnifies BlueScope Construction Ltd and keeps BlueScope Construction Ltd indemnified from and against any liability and any loss or damage of any kind whatsoever arising directly or indirectly from:
 - (a) any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused or contributed to by the Goods and the performance of any Services by the Supplier.
 - (b) any negligence or wilful act or omission by the Supplier or its agents, servants or employees in connection with the works under this Purchase Order;
 - (c) any claim made against BlueScope Construction Ltd by or on behalf of any of the Supplier's agents, servants or employees, or by any government or regulatory authorities, in respect of any relevant legislation concerning pay-roll tax, remuneration, income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal;
 - (d) any penalty imposed for breach of an applicable law in connection with the performance of the Services by the Supplier;
 - (e) loss or damage to any plant, equipment, tools, appliances or other property owned, rented or hired by the Supplier and used in relation to the Purchase Order.
- 12.2 Neither party is liable to the other (without limitation) for any special, indirect or consequential loss or damage, any loss of actual or anticipated savings, opportunity, revenue, profit or good will.
- 12.3 Each indemnity is a continuing obligation and survives termination of this Agreement.

13. Governing Law

- 13.1 This Agreement is governed by the laws of the Western Australia and both parties agree to submit to the non-exclusive jurisdiction of the courts of Western Australia.

14. Dispute Resolution

- 14.1 If any dispute or difference arises between BlueScope Construction Ltd and the Supplier in connection with the Purchase Order then:
- (a) Either party may give written notice to the other of the existence of the dispute or difference.
 - (b) The notice must provide sufficient detail to identify the cause and nature of the dispute or difference and call on the other party to rectify the matters complained of or otherwise attempt to settle them.
 - (c) At the expiration of 5 working days following the giving of the notice, unless it shall have been otherwise settled, the dispute or difference may then be submitted for resolution by reference to arbitration under the *Commercial Arbitration Act 1985*.
 - (d) The arbitrator will be agreed by the parties or, in if they fail to agree on a choice within 5 working days of it being requested, then the arbitrator will be the current President of the Master Builders Association of WA, or the President's nominee.
 - (e) In seeking the nomination, the party who served notice under paragraph (a) must deposit \$500 with the Master Builders Association of WA by way of security for the costs of the arbitrator. The security will be applied in accordance with the directions of the arbitrator.
- 14.2 In the event of a payment dispute, as defined by the *Construction Contracts Act 2004*, if either party makes an application for adjudication, the parties agree that the adjudicator will be appointed by the Master Builders Association of WA. In seeking the appointment, the party making the application for adjudication must deposit \$500 with the Master Builders Association of WA by way of security for the costs of the adjudicator.

15. Definitions

In the Purchase Order unless the contrary intention appears:

Completion Date means the date specified for completion of the Services as set out in the Purchase Order.

Defective Goods means Goods which are not in conformity with the Purchase Order or are defective in design, performance, workmanship or makeup.

Defective Services means Services or the results of any Services which are not in conformity with the Purchase Order, are of inferior quality or workmanship or are otherwise unsatisfactory.

Delivery Date means the date specified for delivery of the Goods as set out in the Purchase Order.

Goods means the goods specified in the Purchase Order (including any part of the Goods specified).

Gross Negligence means the failure to perform a duty in reckless disregard of the consequences.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Purchase Order means the agreement between the Parties consisting of the Purchase Order to which these Standard Terms and conditions apply and all documents referred to in the Purchase Order as applicable to the Purchase Order.

Party means you or us.

Parties mean you and us.

Services means the services specified in the Purchase Order (including any part of the specified services and the results of the specified services).

Taxes means any and all present and future sales, use, personal, property, real property, value added, goods and services, GST, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges or any nature whatsoever or whensoever imposed (other than taxes on our net income) by any government, governmental or other relevant authority, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed or otherwise payable.

Tax Invoice has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).