



## **SIMCOA GENERAL TERMS AND CONDITIONS OF PURCHASE**

### **1. CONTRACT**

The Contract means these General Terms and Conditions of Purchase, which incorporates the Purchase Order, together with any other documents or annexure referred to in connection therewith (if any), which combine to make up the Contract between Simcoa Operations Pty Ltd (herein after the Company) and the Supplier. This document shall take precedence over any contrary provisions (if any) contained in any other document referenced and no modifications or additions to these terms and conditions shall be binding upon the Company unless agreed to in writing.

### **2. THE COMPANY**

"The Company" or any form thereof means Simcoa Operations Pty Ltd, whose registered office is at 973 Marriott Road, Wellesley, WA, 6233.

### **3. GOODS - DELIVERY**

- (a) Notwithstanding any agreement to pay freight, and subject to the Contract, delivery shall not be deemed to be completed until all goods to be provided pursuant to the Contract have actually been received and formally accepted by the Company. Property in the goods will pass to the Company after it has formally accepted the goods.
- (b) All goods will be subject to the Company's inspection and approval and if rejected the goods will be held, subject to the Supplier's instructions, at the Supplier's list and returned at the Supplier's expense. Notwithstanding the generality of the foregoing the Company reserves the right to reject any goods which are damaged or which do not conform to the quality or type specified in the Purchase Order or which otherwise do not conform to the warranties hereinafter contained.
- (c) Acceptance of any part of the goods supplied under, this contract which are not in accordance with the terms hereof shall not bind the Company to accept any future shipments or deliveries.
- (d) Acceptance of any or all part of the goods shall not be deemed to be a waiver of the Company's right either to cancel or return all or part thereof because of the failure to perform to the Purchase Order by reason of defects (latent or patent) or other breach of warranty or to make any claim for damages, including special damages, occasioned by the Company. Such rights shall be in addition to any other remedies provided by law.

### **4. GOODS - WARRANTY**

- a) The Supplier warrants that all goods provided pursuant to the Contract shall be of merchantable quality, fit and safe for consumer use and that they otherwise conform to the specifications provided by the Company to the Supplier prior to the Supplier providing its Letter of Offer.
- b) The Supplier warrants and represents that the goods supplied pursuant to the Contract including and all component parts or units thereof are free of defects and the Supplier will timely remove, replace or repair, and re-install any defective part or unit without any cost whatsoever to the Company (including all labour, material, freight and delivery charges) for a period of one (1) year after the Company's acceptance of the goods.
- c) The parties agree that the stipulation herein contained as to the quality of the goods is a condition of the Contract, a breach of which shall give the Company the right to reject the goods and treat the Contract as repudiated or to retain the goods subject to a right to compensation for damages for breach of contract.
- d) The Supplier warrants that upon delivery all goods are free from all liens, charges and encumbrances of any kind whatsoever.



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### **5. WORKS**

- a) In the supply of labour, materials and plant the Supplier shall make all cash or other deposits, furnish all bonds and give all notices as are required by law and shall further pay all labour engaged in the performance of any works under the Contract at not less than the wage prevailing in the community in which such works are performed for the class of work involved.
- b) The Supplier shall perform such works as an independent contractor and not as an employee of the Company and nothing herein contained, whether express or implied shall be deemed to constitute the Supplier as an employee of the Company nor to constitute a partnership between the parties hereto.
- c) All labour, tools, implements, materials, plant and appliances necessary for the completion of the works pursuant to the Contract shall be provided by the Supplier at the Supplier's own expense unless otherwise agreed in writing by the Company and the Supplier HEREBY AGREES to ensure that such labour, tools, implements, materials, plant and appliances shall at all times, be sufficient to ensure the completion of the works at the time and in the manner provided for in the Purchase Order.
- d) The Supplier and all persons employed by it or under its control shall in the performance of the works comply with all reasonable directions, rules and regulations which may be made or given from time to time by the Company or its representatives.
- e) The Supplier shall ensure that persons engaged in the performance of works are competent, skilled and efficient and that they conform with the professional standards, methods and practices provided by an experienced and competent professional organization rendering the same or similar services.
- f) The Supplier shall ensure that all persons engaged, whether employees, agents, contractors, sub-contractors or licensees of the Supplier, are experienced and competent and acceptable to the Company.

### **6. SAFETY**

While on the Company's premises, whether for the delivery of goods or in the performance of works pursuant to the Contract, the Supplier and all persons employed by it or under its control shall observe such safety rules as the Company shall prescribe as necessary for the protection of the Company's personnel and property including but not limited to:

- (a) Compliance with all relevant occupational health and safety laws and industrial protection standards;
- (b) Use of appropriate safety equipment;
- (c) Limit smoking and the use of fire, including welding and torch cutting, to such locations and occasions as are specifically authorized in writing by the Company.

### **7. PAYMENT**

Subject to the Contract and unless otherwise stated by the Company in writing, the terms of payment for goods or work pursuant to the Contract are as follows:

- (a) Goods - on delivery of the goods or within forty-five (45) days of the Company accepting the goods as being in accordance with the Purchase Order, whichever is the later;
- (b) Works - on completion of the works or within thirty (30) days of the Company accepting the works as being in accordance with the Purchase Order, whichever is the later PROVIDED THAT the Company may withhold payment if the Supplier fails to provide adequate documentation as required by the Purchase Order and PROVIDED FURTHER THAT payment for any goods or works hereunder does not imply acceptance of the goods or works by the Company.



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### **8. TERMINATION OF WORKS**

- (a) In addition to the Company's other rights under the Contract, the Company may, notwithstanding anything else herein contained, terminate any part of the works or all the remaining work to be performed by the Supplier pursuant to the Contract at any time by giving to the Supplier two (2) days notice in writing of its intention to so terminate such works. Such notice to specify the effective date of termination of the works and if not all remaining work to be terminated that part of the works to be terminated.
- (b) The Supplier shall thereafter cease all work specified in the said notice of the effective date of termination, but shall otherwise remain liable and shall continue to perform any part of the works not specified in such notice.
- (c) The Supplier must take any action necessary or as the Company may direct for the protection and preservation of property and works related to the Contract and the Supplier must use its best endeavours to minimize the costs of termination to the Company.
- (d) The Company shall make payment to the Supplier pursuant to Clause 7 for:
- Works partially completed before the giving of such notice, and the Company's liability to make payment shall be conditional upon the Supplier having performed such works in accordance with the Contract and otherwise having observed and performed the Contract;
  - Any reasonable costs incurred by the Supplier that are directly attributable to the termination. The Supplier shall provide documentary evidence of all actual costs to the Company.
- (e) The Company shall not, on account of such termination, be liable for any incidental or consequential damages including, without limitation, loss of profit.
- (f) The total payment to the Supplier with respect to this clause calculated together with all other payments made in terms of this Contract, shall not exceed the Contract Price applicable to the works or any particular part of the works.
- (g) The Company shall not be required to give any reason for the exercise of its rights under this Clause.
- (h) If the Supplier passes a resolution that it be wound up or suffers a winding up order to be made against it or becomes insolvent or bankrupt or enters into a composition with its creditors or any class of them or suffers receiver, manager or liquidator to be appointed or carries on business under a receiver, manager or liquidator then the Company may, without prejudice to any of its other rights, reject any unaccepted goods and terminate all works or any part of the Purchase Order.

### **9. INSURANCE**

- (a) The supplier shall effect and maintain throughout the terms of the Contract at its own expenses, the following insurances with responsible insurers acceptable to the Company:
- Worker's Compensation insurance covering liability to employees of the Supplier and/or its subcontractors under the laws of Western Australia or any other relevant jurisdiction and without limitation of amount at common law and including any industrial disease levy that may be required;
  - Public Liability insurance which provides indemnity as a principal to the Company for its vicarious liability to any third party in respect to death, bodily injury, loss of and damage to property arising out of anything done or omitted to be done under the Contract wherever such loss may arise for a limit of liability of not less than AUD\$10,000,000.00 in respect of each accident and unlimited in the aggregate in respect of all accidents occurring during each period of insurance;
  - Motor vehicle third party liability insurance in respect of all motor vehicles including those required to be licensed or otherwise registered by law which are in the ownership or control of the Supplier and are used by the Supplier and/or its sub-contractors in connection with the performance of the Supplier's obligations under the Contract for an amount of at least AUD\$10,000,000.00 in respect of each and every claim and unlimited in the aggregate in respect of all claims made during each period of insurance;



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- iv. General insurance in respect of all motor vehicles, plant and equipment and other chattels used in connection with the performance of the Supplier's obligations under the Contract against loss, destruction or damage of any nature arising from any cause whatever.
- (b) The Supplier shall, within ten (10) days of written demand by the Company provide the Company with copies of each policy of insurance and/or certificates of renewal of the relevant policies of insurance hereinafter referred to.
- (c) The Company shall effect and maintain throughout the term of the Contract Transit insurance covering liability for loss or damage to goods or materials supplied under the Contract between the Supplier's nominated point of delivery and the Company's nominated point of acceptance PROVIDED THAT in respect of each and every claim relating to such insurance the Supplier shall be responsible for the initial payment of \$100.00.

### **10. TAXES AND DUTIES**

- (a) The Supplier shall pay and discharge all taxes, duties and other impositions (whether statutory or otherwise) on or in relation to all goods or works to be provided under the Contract including, without limiting the generality of the foregoing, taxes in relation to employees, contractors or subcontractors of the Supplier import or export licenses, harbour dues and loading/unloading costs and all other applicable and related fees.
- (b) Without limiting the generality of Clause 16 hereof the Supplier shall indemnify the Company from and against any liability for such taxes, duties and other impositions except such charges as the Company agrees in writing to pay.
- (c) The Company shall retain the right to withhold moneys due to the Supplier under the Contract in respect of any unpaid taxes, duties or impositions that are the responsibility of the Supplier and to apply such moneys towards payment of such taxes, duties or impositions.

### **11. STATE PREFERENCE**

The Supplier shall insofar as it is reasonable and economically practicable so to do use the services of professionals, labour, services, materials, manufacturers and the like as are available within the State of Western Australia in the first instance and Australia in the second instance.

### **12. OWNERSHIP OF INFORMATION AND INTELLECTUAL PROPERTY**

- (a) All information, data, specifications, drawings, reports, plans, designs, accounts, calculations and other documents for or incidental to goods to be manufactured or works to be performed under the Contract, supplied by the Company to the Supplier or and all copyright therein shall be the property of the Company and shall be delivered to the Company forthwith upon the completion of the manufacture of the goods or performance of the works required under the Contract or upon the earlier determination of the Contract.
- (b) Each party shall keep secret and confidential and not disclose to any third party without the prior written consent of the other party any information, data, specifications, drawings, reports, accounts, plans, designs, calculations or other documents as are referred to in paragraph (a) hereof and the party receiving such information shall take or cause to be taken such reasonable measures as be required to prevent such disclosure, including obtaining confidentiality agreements from its employees and agents.
- (c) The Supplier grants to the Company a non-exclusive, non-transferable, royalty free license to use the Supplier IP for the term of the Contract, solely for the purpose of the using or receiving the benefit of the goods/works provided to it by the Supplier under the Contract.

Supplier IP means the Supplier's intellectual property rights which are in existence at the date of the Contract and which are incorporated into the goods or works or which come into existence after the date of the Contract in connection with the Contract.



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### **13. ASSIGNMENT**

The Supplier shall not assign, sub-let, transfer, charge or otherwise deal with its benefit under the Contract either in whole or in part without the prior written consent of the Company.

### **14. SUPPLIER'S COVENANTS**

In addition to the several terms and condition hereinbefore contained the Supplier COVENANTS with the Company to comply with the following general terms:

- a) Invoices - Purchase Order numbers must be clearly shown on all invoices;
- b) Delivery Dockets - Purchase Order numbers must be clearly shown on all deliver; dockets;
- c) Packing Slips - Packing slips are to be attached to the outside of all packages;
- d) Packages - Packages are to be suitably packed for consignment having regard to the nature of the goods concerned and all packages are to be clearly marked as directed by the Company. Purchase Orders numbers must be clearly shown on all consignments;
- e) Consignments - All consignments must be pre-paid by the Supplier unless otherwise instructed by the Company in writing;
- f) Overseas Supplier - All overseas suppliers must ensure that documentation of shipment includes Suppliers invoices (three copies) bills of lading (3 copies), packing lists and insurance certificates (as required). All shipment documents and dispatch notices must be air mailed to the Company as soon as possible;
- g) Supplier's Documents - The supplier agrees to make available to the Company all the Supplier's documents and records relating to the goods or works ordered hereunder if the Purchase Order is not issued in acceptance of a firm price quotation.

### **15. INDEMNITY**

The supplier shall indemnify the Company from and against all claims, losses, demands, proceedings, judgments, damages, charges, expenses, costs (including legal costs and expenses) and losses of any nature whatsoever which the Company may suffer or incur in connection with the loss of life, personal injury or illness of any person or arising from the damage to or loss of any property real or personal but not limited to the property of the Company:

- (a) (wheresoever occurring) arising from or out of the performance of the Contract;
- (b) occasioned wholly by the employees, agents, contractors, sub-contractors or licensees of the Supplier;
- (c) for the alleged infringement to patents relating to any property effected by the Contract; or
- (d) by reason or the failure of the goods provided or works performed hereunder to conform to any warranty (whether express or implied)

and this indemnity shall be in addition to any other remedies provided by law. The Supplier further agrees at the request of the Company, to assume the defences of any and all such suits or proceedings referred to in the Contract and to pay all costs and expenses incidental thereto.

### **16. LIABILITY**

- (a) Notwithstanding any other clause in this Contract, and to the full extent permitted by law, the Supplier's total liability for any and all claims arising under or in connection with this Contract (including any indemnity), the provision or failure to provide the goods or works, whether in tort (including negligence), in contract (including indemnities), under statute or otherwise, is limited to the total price payable under the Contract.



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This limitation does not apply to the extent that the Supplier is able to recover under any policy of insurance it is required to hold pursuant to this Contract, in which case the limitation is the sum recovered by the Supplier up to the policy limit specified in this Contract.

- (b) Neither party is liable for loss of profits, loss of revenue, loss of business opportunities, loss of anticipated savings, damage to goodwill or any economic, special or consequential loss.
- (c) The Supplier will not be liable for any loss, damage, cost or expense caused or contributed to by an act or omission of the Company or a third party, to the extent that person has contributed to such loss or damage.

### **17. DEFAULT BY SUPPLIER**

If either party materially breaches any obligation under this Contract and fails to remedy such breach within 10 days of being notified in writing by the other party of such breach, or if such breach is not capable of remedy, the other party may cancel the relevant Purchase Order or terminate this Contract by written notice with immediate effect.

### **18. FORCE MAJEURE**

If the Supplier or the Company is prevented from performing an obligation under the Contract due to circumstances or events beyond its reasonable control, the party affected must immediately notify the other with full particulars of the force majeure. The performance of the affected obligation may be delayed for the period of the event of the force majeure provided that if such period continues for more than SEVEN (7) days this Contract may be terminated by written notice of the Company. In such event, the Supplier is entitled to payment of all out of pocket costs incurred in the satisfaction of the Contract up to the date of such termination, subject to verification of such costs by the Company. If any advance payment has been made by the Company in respect of this Contract, monies shall firstly be deducted from this payment, with the balance remaining, if any, being returned to the Company.

### **19. SEVERABILITY**

If any provision of these terms and conditions shall at any time be or become void voidable or unenforceable for any reason whatsoever that provision shall be severed from the rest of these terms and conditions and shall not effect or invalidate the remaining provisions hereof which shall continue in full force and effect.

### **20. ARBITRATION**

Any dispute, difference or question which may arise at any time hereafter between the Supplier and the Company with respect of the true construction of the Contract or the rights and liabilities of the parties hereunder shall be referred to the decision of a single arbitrator in the State of Western Australia to be agreed upon between the parties hereto and in default of agreement within fourteen (14) days to be appointed in accordance with and subject to the provisions of the Commercial Arbitration Act, 1985 or any statutory modification or re-enactment thereof for the time being in force.

### **21. LAW OF CONTRACT**

The Contract shall be deemed to have been made in the State of Western Australia, and performance of the Contract shall be governed in all respects by the laws of that State.