



1. Contract

- 1.1 The Contract shall be constituted by the Purchase Order attached to these Terms and Conditions (**Provisions**) and any other documents attached to the Purchase Order by Autocare Services Pty Ltd (ABN 67 004 497 607) (**Purchaser**) or which Purchaser acknowledges in writing forms part of the Purchase Order. These Provisions shall take precedence over any terms or conditions contained in any documentation provided by the Supplier or any documentation which forms part of the Contract, except if the Purchase Order is issued pursuant to the terms of a separate contract entered into between Purchaser and the Supplier and duly executed by both parties, then the terms of that contract take precedence over these Provisions in the event of any inconsistency. For convenience, the Contract shall be described in these Provisions as "**this Order**".
- 1.2 In accepting this Order, by signature or delivery of the goods or services, the Supplier agrees to all its terms and conditions. This Order, when received by the Supplier, is the only document which will be recognised by Purchaser as the basis for the Supplier having the right to invoice the Purchaser for the goods to be delivered (the **Goods**) or services to be provided (the **Services**) under this Order.
- 1.3 This Order supersedes all previous oral or written quotations, communication and negotiations not attached to or referred to in this Order (including any terms and conditions implied by the course of previous dealings between the Purchaser and the Supplier), except to the extent that any such quotations, communication or negotiations may be included in this Order by virtue of the provisions of any relevant or applicable statute.

2. Quality of Goods

The Goods shall be free from defects, of merchantable quality and fit for their intended purpose.

3. Inspection and Rejection of Goods

- 3.1 The Purchaser shall be entitled to inspect any of the Goods at any stage prior to or upon delivery.
- 3.2 The Purchaser may (without prejudice to any of its other rights) reject any of the Goods which are defective or which otherwise do not comply with the requirements of this Order (including any Goods which are not delivered by the time specified in this Order). If requested by the Purchaser, any of the Goods rejected must be collected from the Purchaser (if delivered) and be rectified or replaced by the Supplier at its own cost.
- 3.3 The Purchaser at its discretion may accept any of the Goods which it has rejected, at a price agreed between the Supplier and the Purchaser however this shall not relieve the Supplier of any of its remaining obligations under this Order.
- 3.4 Any inspection by the Purchaser shall not relieve the Supplier of any of its obligations under this Order. The Purchaser shall not be liable for any of the Supplier's costs

in connection with inspection of the Goods or any work related to the Goods.

- 3.5 Any amount paid for any of the Goods which are subsequently rejected shall be a debt due from the Supplier to the Purchaser which is payable immediately.

4. Quality of Services

- 4.1 The Services must be supplied by the Supplier to the Purchaser:
- diligently, faithfully and conscientiously;
 - with the same or higher level of care and skill as would reasonably be expected of a person qualified and experienced in the supply of the same or similar Services; and
 - in good faith, in the best interests of the Purchaser and in a manner which is consistent with the maintenance of the business and goodwill of the Purchaser.

5. Safety of Goods

- 5.1 The Supplier must ensure the Goods supplied to the Purchaser are:
- safe, free from risk to health and safety, and compliant with all relevant laws and any applicable Australian standards; and
 - clearly and durably labelled identifying the Goods and providing any information in relation to use, maintenance and storage.
- 5.2 The Supplier agrees to supply the Goods with all relevant information pertaining to the use, storage and maintenance of the Goods and any relevant technical information, including health and safety information.
- 5.3 If the Goods supplied are hazardous substances or materials, radiation substances or biological substances, the Supplier agrees to supply the Goods with clear and durable labelling and copies of all relevant technical information sheets including safety data sheets (**SDS**), radiation safety data sheets and information data sheets (respectively). This information must be supplied either on or before the delivery of the Goods.
- 5.4 If the Goods supplied are electrical equipment the Supplier is responsible for the initial electrical safety of the new equipment and the Goods should be provided tagged as tested.

6. Safety of Services

- 6.1 The Supplier must ensure the Services are carried out at the relevant Purchaser site (or other location nominated by the Purchaser) in compliance with relevant laws, any applicable Australian standards and in a manner which does not pose a risk to the health and safety of others.
- 6.2 The Supplier of Services warrants it is (and any persons engaged by the Supplier are) qualified to provide the Services to the Purchaser and will provide evidence of such qualification if requested by the Purchaser.
- 6.3 The Supplier of Services agrees to abide by the current policies and procedures in force at the relevant Purchaser sites/sites or other location nominated by the Purchaser where the Services are carried out.
- 6.4 The Supplier of Services agrees to supply all relevant written safety documentation for the Services to be provided including safe work method statements (**SWMS**),



job safety analysis (**JSA**), work assessments and/or worker training, where applicable.

6.5 The Supplier of Services agrees that the Purchaser has a right to direct the suspension of Services which are provided in an unsafe manner.

7. Warranties

The Supplier warrants that it has good and complete title to the Goods and that the Goods are free from all liens and encumbrances, do not infringe any patent, trademark, copyright or other intellectual property rights and comply with all applicable laws and regulations.

8. Confidentiality

Any information or data furnished or disclosed to a party to this Order, in connection with this Order, is confidential and shall not be disclosed to any third party without the prior written consent of the disclosing party, unless otherwise required by law or in connection with the enforcement of this Order.

9. Delivery

The Supplier shall ensure that the Goods are delivered undamaged to the address nominated on the Purchase Order, on the date for delivery advised by the Purchaser (unless otherwise notified in writing by the Purchaser) and in accordance with any reasonable instruction by the Purchaser regarding transportation.

10. Title and Risk

The Goods shall be at the sole risk of the Supplier until delivery, at which time, except in respect of Goods rejected by the Purchaser under clause 3.2, title to and risk in the Goods shall pass to the Purchaser regardless of whether the Purchaser has paid the Supplier for the Goods, except that title to and risk in goods rejected by the Purchaser shall remain with the Supplier.

11. Exclusion of Liability

11.1 Neither party will be liable to the other, in connection with this agreement for any loss of profits, loss of revenue, loss of access to markets, loss of goodwill or credit, loss of reputation or future reputation, loss of production, loss of business, loss of opportunity, adverse publicity, damage to credit rating, loss of use, increased overhead cost, production or other down time, remote or abnormal loss or loss of anticipated savings or any financial or economic loss (whether direct or indirect), or loss which results from some special circumstance or supervening event, subject only to clause 15.2.

12. Invoices

12.1 The Supplier must provide the Purchaser with a tax invoice (**Tax Invoice**) for the Goods delivered or Services provided and accepted under this Order, which must show the Order number, date and address nominated on the Order and fully itemise the Goods and/or Services delivered or provided, including any amounts of tax payable on those Goods or Services.

12.2 The Purchaser will not process any Tax Invoice for payment unless it references the Purchase Order number provided to the Supplier.

12.3 The words and expressions used in clause 12 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning.

12.4 If any supply made under this Order is subject to GST, the Tax Invoice rendered by the Supplier in clause 12.1 must be a valid Tax Invoice.

13. Prices and Payments

13.1 Price adjustments for any variations notified by the Purchaser shall be at the prices or rates included in this Order or, if there are no applicable prices or rates, they shall be agreed between the Supplier and the Purchaser.

13.2 Subject to clause 16 and to the receipt of a properly rendered Tax Invoice, the Purchaser shall pay the value of the Goods or Services supplied by reference to the price set out in this Order or as otherwise agreed under clause 3.3 within 45 days from the last day of the month in which the Tax Invoice was received by the Purchaser.

14. Subcontracting and Assignment

14.1 The Supplier shall not, without the prior written consent of the Purchaser (acting reasonably), subcontract the supply or provision of any of the Goods or Services. Any such consent shall not relieve the Supplier of any of its obligations under this Order.

14.2 The Supplier shall not, without the prior written consent of the Purchaser, assign, charge, or encumber this Order or any rights under this Order or any part of this Order or any Goods.

14.3 The Purchaser shall not, without the prior written consent of the Supplier, assign, charge, or encumber this Order or any rights under this Order or any part of this Order.

15. Default

15.1 If a party:

- a) is in breach of any warranty or material term or condition of this Order and fails to remedy such breach within seven days after notice of such breach is given to such party in breach;
- b) becomes insolvent or is unable to pay its debts when they fall due;
- c) is the subject of an event described in section 459C (2)(b) or section 585 of the *Corporations Act 2001*;
- d) has imposed on it any arrangement for the benefit of its creditors; or
- e) any part of its property or undertaking has a receiver, receiver and manager, agent for a mortgagee, administrator, controller or provisional liquidator appointed,

then the other party (**Terminating Party**) may, without prejudice to any other rights it may have, terminate this Order.

15.2 If the Purchaser is the Terminating Party, in addition to the rights pursuant to clause 15.1:-

- (i) the Purchaser may, recover as a debt due any sums paid for undelivered Goods and for Services not provided;
- (ii) The Purchaser may deduct or set-off any



sums due to the Supplier; and

(iii) the Supplier shall be liable to the Purchaser for any extra costs, losses, expenses or damages it may suffer or incur in purchasing similar goods or services from alternative suppliers.

15.3 No waiver of a breach of any provision of this Order shall constitute a waiver of any other breach or any other provision.

16. Dispute

Without affecting the rights of the Purchaser or of the Supplier at law or under any relevant or applicable statute, any dispute or difference in connection with this Order may be referred to be resolved by mediation by a person and process agreed upon by the Supplier and the Purchaser or, failing such agreement or resolution by or through that process, shall be submitted to arbitration in accordance with and subject to the Resolution Institute Arbitration Rules in effect at the commencement of the arbitration

17. Law

The Provisions of this Order shall be governed by the laws in force in the State or Territory in which the Goods are to be delivered or the Services are to be provided.

18. Interpretation

In this Order, reference to a person includes a corporation or other entity, the singular includes the plural and vice versa and, if more than one, the persons comprising the Supplier shall be jointly and severally bound by the Provisions of this Order.

19. No Limitations or Statutory Rights and Severance

20.1 Nothing in this Order shall have the effect of or be taken to have the effect of excluding, restricting or modifying the provisions of any relevant or applicable statute. If it is determined that a word, phrase, sentence, paragraph or clause is unenforceable, illegal or void then it shall be severed, and the other provisions of this Order shall remain operative.

20.2 Without limiting the foregoing, if the Contract / this Order is 'small business contract' and a 'standard contract', each within the meaning of the *Competition and Consumer Act 2010* or any amendment, replacement, reinactment or substitution thereof or therefor ('the Act'), then, any 'term' (within the meaning of the Act) of this contract which is 'unfair' (within the meaning of the Act) shall not apply or be of legal effect or be relied on by either the Purchaser or the Supplier.

20.3 This clause 20 shall be of paramount and overriding force under the Contract / this Order.

20. Anti-Bribery & Corruption

The Supplier warrants and undertakes to the Purchaser that:

a) it has not offered, promised, given or agreed to give and shall not during the term of this Order offer, promise, give or agree to give to any person any bribe on behalf of the Purchaser or otherwise with the object of obtaining a business advantage for the Purchaser or otherwise;

b) it will not engage in any activity or practice which would constitute an offence under any applicable anti-bribery and corruption laws, including but not limited to the United States Foreign Corrupt Practices Act of 1977, the United Kingdom's Bribery Act 2010 and Canada's Corruption of Public Officials Act and that it shall not cause the Purchaser to be in breach of any of the applicable Anti-bribery and corruption laws;

c) it has and during the term of this Order will maintain in place its own policies and procedures to ensure compliance with any applicable anti-bribery and corruption laws;

d) it will ensure that any person who performs or has performed services for or on its behalf) in connection with this Order (**Associated Persons**) complies with this clause 20;

e) it will not enter into any agreement with any Associated Person in connection with this Order, unless such agreement contains undertakings on the same terms as contained in this clause 20;

f) it has and will maintain in place effective accounting procedures and internal controls necessary to record all expenditures in connection with this Order;

g) from time to time during the term of this Order, at the reasonable request of the Purchaser, it will confirm in writing that it has complied with its undertakings under this clause 20 and will provide any information reasonably requested by Purchaser to demonstrate such compliance;

h) it will report to the Purchaser as soon as practicable any request or demand for any improper payments or other improper advantage of any kind received by the Supplier from the Purchaser or any other person in connection with this Order; and

i) it will notify the Purchaser as soon as practicable of any breach of any of the undertakings contained in this clause 20 of which it becomes aware.

This clause 20 survives completion or termination of this Order.

21. Right to Audit

a) In connection with this Order, the Supplier shall establish and maintain a reasonable accounting system that enables the Supplier to readily identify the Supplier's assets, expenses, costs of goods, and use of funds. The Purchaser and its authorised representatives shall have the right to audit, to examine, and to make copies of or extracts from, all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Order kept by or under the control of the Supplier, including, but not limited to those kept by the Supplier, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files; all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; backcharge logs and supporting documentation; insurance



documents; payroll documents; timesheets; memoranda; and correspondence (**the Records**).

- b) The Supplier shall, at all times during the term of this Order and for a period of 2 years after completion or termination of this Order, maintain the Records, together with such supporting or underlying documents and materials. The Supplier shall at any time requested by the Purchaser, whether during or after completion of this Order or following termination of this Order, and at the Supplier's own expense, make such records available for inspection and audit (including copies and extracts of records as required) by the Purchaser.
- c) Such records shall be made available to the Purchaser during normal business hours at the Supplier's office or place of business upon 3 days written notice.
- d) In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the Purchaser.
- e) The Supplier shall procure that the Purchaser has the rights under parts (a) to (d) of this clause 21 relating to or pertaining to this Order, with the Supplier's employees, agents, assigns, successors and subcontractors, and that such rights shall be explicitly given effect to in any subcontracts or agreements formed between the Supplier and any subcontractors to the extent that those subcontracts or agreements relate to fulfilment of the Supplier's obligations to the Purchaser.

22. Modern Slavery

The Supplier acknowledges that the Purchaser is committed to eradicating human rights abuses and instances of modern slavery. The Supplier must do all things (and must procure that its suppliers and permitted sub-contractors do all things) requested by the Purchaser in order to facilitate the Purchaser's compliance with the *Modern Slavery Act 2018* (Cth) or the *Modern Slavery Act 2018* (NSW) (including all related regulations and policies adopted by the Purchaser in relation to the same).