

# MARAND PRECISION ENGINEERING PTY LTD

## TERMS AND CONDITIONS OF PURCHASE

### 1 Definitions

#### 1.1 In these Conditions:

- (a) Agreement means the Purchase Order, these Conditions and all documents attached or incorporated by reference;
- (b) Conditions mean these conditions of purchase;
- (c) Confidential Information means all documentation, data, drawings, intellectual property, and other information of a party (and includes without limitation Personal Information) except to the extent that such information is in the public domain through no breach of this agreement.
- (d) GST Act means A New Tax System (Goods and Services Tax) Act 1999 as amended.
- (e) Product means all goods or other materials to be supplied by the Vendor pursuant to the Purchase Order including work produced by the output of Services;
- (f) Personal Information has the meaning given in the Privacy Act 1988 (Cth);
- (g) Privacy Laws means:
  - (i) the Privacy Act 1988 (Cth) ("Privacy Act"), the Telecommunications Act 1997 (Cth), Telecommunications (Interception) Act 1979 (Cth) and the privacy protection policy issued by Marand from time to time; and
  - (ii) any other legislation, principles, industry codes and policies relating to the collection, use, storage or granting of access rights to Personal Information, which Marand notifies the Vendor is a Privacy law for the purposes of this Agreement;
- (h) Purchase Order shall mean the document entitled "Purchase Order" in which these Conditions are referred to or attached to;
- (i) Services means services to be provided by the Vendor specified in a Purchase Order;
- (j) Marand means Marand Precision Engineering Pty Ltd A.B.N. 59 004 763 688
- (k) Vendor means the company, firm, person or persons named in the Purchase Order and;
- (l) Work means performance of the Services or delivery, supply, or manufacture in whole or in part of the Product.

### 2 Formation of Contract

- 2.1 Acceptance of the Purchase Order shall be deemed to be an acceptance of these Conditions to the exclusion of any other terms, unless and to the extent that Marand expressly agrees in writing to the incorporation of such terms or any variation of these Conditions by re-issue of the Purchase Order specifying the amendments as special conditions under clause 18.4.
- 2.2 If the Vendor commences Work, the Vendor shall be deemed to have accepted the Purchase Order and these Conditions notwithstanding its failure to provide written acknowledgement.
- 2.3 If the Vendor has accepted the Purchase Order, it will be bound to provide the Product and Services specified in the Purchase Order in accordance with this Agreement

including any project or other plan, specification or installation instructions incorporated by reference into this Agreement.

### **3 Vendor's Obligations and Warranties**

The Vendor:

- 3.1 shall be responsible for any discrepancies, errors or omissions in specifications, drawings or any particulars supplied by it and carefully check information of any kind provided to it by Marand;
- 3.2 shall comply with all Privacy Laws in relation to the Personal Information (as that term is defined in the Privacy Act), whether or not the Vendor is an organisation bound by the Privacy Act and if it is a small business under the Privacy Act, then upon reasonable request by Marand, the Vendor agrees to choose to be treated as an organisation bound by the Privacy Act in accordance with Section 6EA of that Act during the term of this Agreement;
- 3.3 shall ensure that its employees, agents and contractors do not make public or disclose any Confidential Information of Marand except to the extent required by law to do so and subject to giving Marand reasonable notice prior to disclosure;
- 3.4 shall at its cost comply with all relevant laws, orders, regulations or bylaws and bear any additional costs arising from non-compliance;
- 3.5 shall comply with relevant state and federal Environmental Protection Authority requirements in not polluting the environment or procuring goods or services for Marand which would do so and will not encourage other sub-vendors to pollute.;
- 3.6 acknowledges that the National Code of Practice for the Construction Industry (the Code), the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, issued September 2005 and reissued June 2006, and the Australian Government Industry Guidelines for the National Code of Practice for the Construction Industry revised September 2005 (the Guidelines), may apply to this Agreement and by agreeing to undertake the Work, it is taken to have read and agreed to comply with the Code and Guidelines and be able to demonstrate compliance;
- 3.7 warrants, without limiting its other warranties under this Agreement or otherwise, that:
  - (a) all Product will:
    - (i) be new, of merchantable quality, and fit for its intended purpose;
    - (ii) provide the full functionality and performance claimed for the Product;
    - (iii) operate in accordance with its specifications; and
    - (iv) (in case of software and hardware) when in operation, calculate dates correctly for the period of the useful life of the Product and
  - (b) all services will be provided with due skill and care to the standard reasonably to be expected of a person performing the business of the Vendor.
- 3.8 shall indemnify Marand against all loss, costs, damages, or expenses arising out of any breach of its obligations under this Agreement.

### **4 Defects**

- 4.1 The Vendor shall, at its cost and without prejudice to any of Marand's other rights and remedies, rectify all defects occurring in the Work within the greater of 18 months of the date of receipt of delivery by Marand or the period of warranty provided by the

Vendor in relation to the Product or Services. Such rectification shall be affected as a matter of urgency. The Vendor shall fully indemnify Marand against any loss, costs and expenses arising from Marand rectifying any defect in the Vendors product, work or services including any consequential damage requiring rectification resulting from defects in the Vendors product, work or services.

- 4.2 Any non-conforming product or services detected by the Vendor, which the Vendor is unable to rectify to be in full compliance with the Purchase Order, shall result in the Vendor notifying Marand of the non-conformance. Delivery of non-conforming or repaired product shall only be permitted after written approval from Marand is received by the Vendor.

## **5 Marand Property**

- 5.1 Legal title to and property in all material supplied by Marand in respect of the Purchase Order shall remain with Marand and shall not pass to the Vendor or its successors or assignees under any circumstances whatsoever. The Vendor may only use such material in performing its obligations under the Agreement and shall bear the risk of damage or loss and indemnify Marand for all costs and expenses incurred or suffered because of such damage or loss including the cost of replacing such material.
- 5.2 All drawings, specifications, information, and samples provided by Marand shall remain Marand's sole and exclusive property, shall be deemed to be Confidential information and shall not be disclosed by the Vendor to a third party except with the prior written consent of Marand. Marand makes no warranties regarding the accuracy of, and shall not be liable for, any defects, mistakes or inaccuracies in such documents, information, or samples.

## **6 Intellectual Property Rights**

- 6.1 Copyright, patent, database rights, registered designs, trademarks, eligible layout rights and all other rights of a proprietary nature created or arising as a result of intellectual activity in carrying out the Work, vest in and are transferred by the Vendor to Marand on creation. This clause does not alter the ownership of any such rights pre-existing the date of the Purchase Order.
- 6.2 The Vendor
  - (a) warrants that Marand's use of the Products provided by the Vendor under this Agreement shall not infringe any author's moral rights under the Copyright Act 1968.
  - (b) shall indemnify Marand, its employees and sub-contractors against any claims against, or costs, expenses, losses or damages suffered or incurred by Marand arising out of, or in any way in connection with, any actual alleged infringement of any author's moral rights under the Copyright Act 1968.
- 6.3 For the purposes of this clause 6, Marand's use of the material provided by the Vendor includes Marand's right to reproduce, publish, copy, adapt, communicate to the public, materially distort, destroy, mutilate or in any way change the materials or part of the Works to which the materials or any other work provided by the Vendor under this Agreement relates:
  - (a) with or without attribution of authorship;
  - (b) in any medium; and
  - (c) in any context and in any way it sees fit.

- 6.4 The Vendor shall fully indemnify Marand against any loss, costs (including legal fees) and expenses arising from any claim by a third party in respect of the Works including a claim that the use of the Product or any part of the Product constitutes an infringement of a registered design, trademark or copyright or patent (other than a part based on a design specified by Marand). The Vendor shall at its expense either replace such infringing part with a non-infringing part or modify such part so as to render it to be non-infringing (in either case, to deliver the same functionality and performance as the infringing part) or procure for Marand the right to use such part.

## **7 Time and Delivery**

- 7.1 The times and dates stated in the Purchase Order for delivery or completion including an extension of such time or date granted in writing by Marand shall be binding and be of the essence of the Purchase order. Delivery will not be accepted by Marand prior to the date indicated on the Purchase Order unless prior arrangements have been made.
- 7.2 Unless otherwise specified in the Purchase, Product is to be delivered without additional charge to Marand, to the forwarding address stated in the Purchase Order.

## **8 Risk, Title, Acceptance and Baled Property**

- 8.1 Risk in the Product shall remain with the Vendor until the Product has been accepted by Marand.
- 8.2 If the Product does not perform or is not substantially in accordance with this Agreement (including any specifications), Marand may reject all or part of the Product. Services (excluding any services which give rise to goods) will be accepted as completed when Marand confirms in writing that the Services have been completed to its reasonable satisfaction.
- 8.3 All right, title and interest in and to any product to be paid for by Marand, shall vest in Marand as soon as it is acquired, or its fabrication commences in accordance with Marand's Purchase Order. All such Marand owned product in the possession on the Vendor shall be deemed to be Baled Property and shall not be deemed to be a fixture or a part of the Vendor's real property. To the extent permitted by law, the Vendor waives its right to object to the repossession of Marand owned product by Marand in the event the Vendor is involved in bankruptcy proceedings, becomes insolvent or has a receiver, manager, administrator, or liquidator appointed over any or all of its assets.
- 8.4 The Vendor bears all responsibility for loss and damage to any property and or product owned by Marand and in the Vendor's possession or control for use in performing a Purchase Order, including responsibility for loss or damage which occurs despite the Vendor's exercise of reasonable care. Marand will have the right to enter the Vendor's premises at reasonable times to inspect such property and or product and the Vendor's records pertaining thereto. Where permitted by law, the Vendor waives any lien that the Vendor might otherwise have on any of Marand's property and or product for work done thereon or otherwise. Upon request the Vendor will immediately deliver such property and or product at Marand's option CIF Marand's premises, properly packed and marked in accordance with the requirements of the carrier and Marand. The Vendor will cooperate with Marand's removal of the property and or product from the Vendor's premises.

## **9 Price and Payment**

- 9.1 Prices are, unless otherwise specified, fixed and not subject to variation except as permitted under this Agreement.
- 9.2 Subject to clause 9.3 prices in the Purchase Order include all Government taxes and charges.
- 9.3 If GST is payable in relation to a Taxable Supply made by Marand, under or in relation to the Purchase Order the amount payable for that taxable Supply will be the amount payable under the Purchase Order plus GST. Terms defined in the GST Act have the same meaning given to those terms when used in this Agreement.
- 9.4 Invoices submitted by the Vendor must be a tax invoice as required by the GST Act and specify the Purchase Order number, Product item number and other Invoices submitted by the Vendor must be a tax invoice as required by the GST Act and specify the Purchase Order number, Product item number and other relevant details as required by Marand. invoices may only be rendered in accordance with the Purchase Order.
- 9.5 Subject to any contrary term of this Agreement, payment will be made on the last day of the month following the month in which the Vendor's invoice is received.
- 9.6 Marand may set off any amount due and payable by Marand to the Vendor against any amount owing by the Vendor, however or whenever incurred.

## **10 No Inducement**

- 10.1 If the Vendor either directly or indirectly provides to an employee of Marand either before or after the placing of the Purchase Order, any benefit of any character whatsoever which might reasonably be construed as an inducement for the employee to show favour to the Vendor in respect of any matter including the placing of the Purchase Order, then Marand may at its option give notice to the Vendor that this Agreement is void and of no force or effect.

## **11 Liability Indemnity and Insurance**

- 11.1 The Vendor shall be solely responsible for all loss, damage, injury or death which may be sustained by any person, firm or corporation as a result of or by reason of its execution of the Work and shall hold harmless and fully indemnify Marand and its officers, contractors, employees and agents against all loss, damage, injury, costs and expenses, actions, proceedings, claims and demands (including legal fees and disbursements) whatsoever which may be brought or made against them or any of them as a result of or arising out of the execution of the Work and agrees to accept and bear all costs which may be incurred in connection with such actions, proceedings claims and demands. The obligation of the Vendor to indemnify under this clause shall be reduced to the extent that a negligent act or omission of Marand has directly caused the loss, damage, or injury.
- 11.2 Except to the extent that liability cannot be legally limited or excluded and whether in contract, tort, negligence, under any indemnity, strict liability or otherwise:
  - (a) Marand's liability arising out of or in connection with the Agreement shall be limited to payment of the prices due and owing in accordance with clause 9.5 and

- (b) in no event shall Marand be liable for economic loss, loss of profit, loss of revenue or loss of contract, indirect or consequential loss or damage.

11.3 The Vendor shall at its expense effect and maintain:

- (a) A public liability policy for an amount not less than \$10 million per occurrence;
- (b) an insurance policy covering loss of or damage to the Works;
- (c) If the Work involves any consulting or design, a professional indemnity policy for an amount of not less than \$5million per occurrence and
- (d) such insurance as is legally required under any Workers' Compensation legislation applicable in the location where the Work is to be performed.

11.4 The policies in clause 11.3(a) and (b) must name Marand as an additional insured and include a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured. All insurance policies must be on terms and with an insurer reasonably acceptable to Marand. The Vendor shall provide satisfactory evidence of such insurance to Marand upon request.

## **12 Site Access**

12.1 The Vendor will be given access to the site where Services are to be performed ("Site") for a period sufficient to enable it to execute its contractual obligations under this Agreement. Access shall be at a mutually convenient time.

12.2 Unless otherwise agreed in writing the Vendor shall provide at its own expenses all site facilities, constructional plant and other amenities as may be necessary for the performance of the work.

12.3 The Vendor shall comply with all occupational health and safety and security regulations applying on Site and when on Marand premises, with all Marand security, sexual harassment, occupational health and safety policies and all other workplace regulations and policies of Marand.

## **13 Right of Access**

13.1 The Vendor shall provide access to all documents and all facilities where work relating to the Product or Service is being performed, to Marand, Marand's customers, and any regulatory agency personnel, to perform item inspections, surveys, or system/process surveillance as part of verification of conformance to the requirements of the Purchase Order.

## **14 Counterfeit Parts / Materials Prevention**

14.1 The Vendor shall not deliver Counterfeit parts or materials, or Suspect Counterfeit parts or materials, to Marand as part of the Vendors delivery of Products under the Purchase Order.

14.2 The Vendor shall treat any identified counterfeit parts or materials, or suspected counterfeit parts of materials, as a non-conformance and this shall be notified to Marand as per 4.2.

## **15 Packing**

15.1 The Goods shall be supplied in the minimum number of pieces consistent with the requirements for safe transportation, installation, handling, and storage. All Goods shall be packed in robust packages and be provided with adequate lifting and handling

facilities. The packages shall have secure labels stating the Purchase Order number. Each package shall be provided with an inventory listing its contents.

- 15.2 Exposed surfaces of the Goods shall be protected with an easily removable corrosion preventative. Particular attention shall be given to prevention of condensation forming within sealed packages. All open orifices on equipment, such as pipework, pumps, valves etc., shall be protected against the weather and the ingress of foreign bodies. The methods and materials used in packaging shall ensure freedom from damage or corrosion and be ocean worthy or airworthy as applicable and suitable for shipment to Australia.

## **16 Termination**

- 16.1 If the Vendor defaults in the due observance or performance of any or all of its obligations under this Agreement and does not rectify such default within 14 days of being requested to do so, or if a liquidator, administrator, receiver and manager, controller or other like officer is appointed over all or some of the assets of the Vendor or there is a change in ownership of the Vendor, then Marand may, at its option and without prejudice to any other rights Marand may have against the Vendor, by notice in writing terminate this Agreement and retain or enforce any security given. Any monetary security so retained or the proceeds of enforcement of any security may be applied by Marand against any loss and damage incurred by Marand arising from such termination.
- 16.2 Marand may at any time without cause, vary, cease or suspend the Work or terminate the Agreement by giving notice in writing to the Vendor. On receipt of a notice from Marand, the Vendor shall immediately, vary, cease or suspend Work in accordance with and to the extent specified in the notice. If such notice is given, Marand shall only be liable for any direct cost and normal overheads falling within the scope of the Purchase Order, as have accrued to the date of receipt of the notice from Marand up to a maximum of the amounts that would otherwise have been payable under the Purchase Order.

## **17 Record Retention**

- 17.1 The Vendor shall maintain records, relating to supply of Product or Service under the purchase order, of the following:
- (a) Inspection, measurement, and testing;
  - (b) Shipping;
  - (c) Non-conforming materials, dispositions, and corrective actions;
- 17.2 The Vendor shall ensure records per 17.1, are be maintained for at least 7 years from final payment of the Purchase Order.
- 17.3 The Vendor shall provide copies of records as per 17.1, to Marand on request.
- 17.4 If the Vendor ceases operations, the Vendor shall notify Marand and transfer relevant records to Marand.

## **18 General**

- 18.1 For the purpose of service of any document or notice in connection with the Purchase Order it shall be sufficient for either Marand or the Vendor to forward such document or notice by ordinary mail transmission, telegram or facsimile to the address of the

other party shown herein. The parties agree that they will conduct business electronically in relation to the purchase of Product and Services.

- 18.2 If the whole or any part of these Conditions is or becomes or is held to be illegal invalid or unenforceable, then the whole and each part of the clauses of these Conditions shall (to the extent necessary to avoid such illegality invalidity or unenforceability) be interpreted read down or severed without affecting the operation of the remaining clauses.
- 18.3 The Vendor shall not, without the prior written consent of Marand, assign, transfer or subcontract the performance of any or all of the Vendor's obligations or benefits under this Agreement to a third party.
- 18.4 This Agreement may only be amended in writing signed by both parties.
- 18.5 This Agreement shall be construed and operate in conformity with the laws of the State of Victoria, Australia and the parties irrevocably submit to the jurisdiction of the courts of that state and the appeal courts from them.
- 18.6 The Purchase Order may include additional or special terms and conditions which are expressed to override, exclude or modify these Conditions. Where such terms are included, they will take precedence in the following order:
  - (a) these Conditions;
  - (b) the terms of the Purchase Order;
  - (c) any referenced document, plan or specification whether attached or incorporated by reference.