

**PURCHASE ORDER TERMS AND CONDITIONS****Recitals**

- A. ASI requires the supply of the Goods and/or Services.
- B. This Agreement sets out the terms on which the parties agree that the Supplier will supply the Goods and/or Services to ASI.

**1 Definitions and Interpretation****1.1 Definitions**

In this Agreement:

**Agreement** means this document and the relevant Purchase Order.

**ASI** means Alliance Electric Pty Ltd (ACN 001 524 867), trading as Alliance SI.

**ASI Representative** means the person identified as such in the Purchase Order or such other person notified to the Supplier by ASI.

**Business Day** means any day other than:

- (a) a Saturday, Sunday or public holiday in Sydney; or
- (b) 27, 28, 29, 30 or 31 December.

**Confidential Information** means information that:

- (a) is by its nature confidential;
- (b) is designated as confidential on its disclosure; or
- (c) the Supplier knows or ought to know is confidential.

**Date of Agreement** means the date identified as such in the Purchase Order.

**Defects Liability Period** means the period identified as such in the Purchase Order, as adjusted in accordance with this Agreement.

**Delivered** means the point when:

- (a) where the Purchase Order states that the Supplier is:
- (i) to unload the Goods, the Goods have been delivered to and safely unloaded at the Delivery Point; or
- (ii) not required to unload the Goods, the Goods have been delivered to the Delivery Point and are ready for unloading;
- (b) where the Supplier is not the manufacturer of the Goods, the Supplier has provided ASI with copies of all warranties provided by the manufacturer in forms that can be directly enforced by ASI; and
- (c) the Supplier has satisfied all other delivery obligations identified in the Purchase Order.

**Delivery Date** means the date identified as such in the Purchase Order.

**Delivery Document** means a document which refers to the relevant Purchase Order and describes the Delivered Goods, including their quantity, weight, price, Delivery Date and all other things required by ASI.

**Delivery Point** means the point identified as such in the Purchase Order.

**Goods** means the goods identified in the Purchase Order.

**Insurances** has the meaning in clause 15.

**Laws** means all acts, regulations, by-laws, orders, licences, approvals and authority requirements and fees payable in connection with any of them.

**Liability Acts** has the meaning in clause 14.3(a).

**Personnel** means a party's employees, agents, officers and contractors, excluding the Supplier in the case of ASI.

**Price** means the price for the Goods and/or Services set out or determined in accordance with the Purchase Order.

**Principal** means the person identified as such in the Purchase Order.

**Purchase Order** means a purchase order issued by ASI to the Supplier in respect of the Goods and/or Services. A sample Purchase Order form is included in the Schedule.

**Services** means the services identified in the Purchase Order.

**Site Rules** means all rules, standards, procedures, directions and policies of ASI or the Principal that apply to the Delivery Point.

**Supplier** means the supplier identified in the Purchase Order.

**Supplier's Representative** means the person identified as such in the Purchase Order.

**Tax Invoice** means a tax invoice that complies with the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**WHS Laws** means the *Work Health and Safety Act 2011* (NSW) and *Work Health and Safety Regulations 2017* (NSW) and similar Laws in other relevant jurisdictions.

**1.2 Interpretation**

In this Agreement:

- (a) a reference to a document includes all variations to or replacements of it;
- (b) a reference to a person includes its executors, administrators, successors, substitutes and permitted assigns;
- (c) a reference to time is to time in Sydney;
- (d) if a period is specified, it is to be calculated exclusive of the day on which the relevant notice is given or event occurs;
- (e) if the day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day (as appropriate);
- (f) headings do not form part of and are not to be used in interpreting this Agreement;
- (g) a reference to 'dollar' or '\$' is a reference to Australian dollars;
- (h) measurements must be in the legal units of measurement of Australia;
- (i) all communications between the parties must be in English;
- (j) no term of this Agreement will be construed against a party on the basis that this Agreement or such term was put forward by that party; and
- (k) unless stated otherwise in this Agreement, ASI and the ASI Representative may exercise their discretions and rights in their absolute discretion.

**1.3 Ambiguity or discrepancy**

- (a) If the Supplier discovers any ambiguity or inconsistency in or between any document(s) that form this Agreement, it must promptly advise the ASI Representative in writing.
- (b) Following its receipt of a notice under clause 1.3(a), the ASI Representative must give the Supplier a direction as to the interpretation that applies and the Supplier must comply with such direction at its own risk and cost.

**1.4 Application of this Agreement**

This Agreement applies to Goods supplied and Services performed by the Supplier prior to the Date of Agreement and payments made to the Supplier by ASI prior to that date in relation to such Goods and/or Services are deemed to have been made pursuant to this Agreement.

**2 Representations and Warranties****2.1 General**

The Supplier warrants and repeats on each day of the term of this Agreement that:

- (a) prior to the commencement of this Agreement it did all things needed to ascertain the risks associated with performing this Agreement and it has the resources needed to do so;
- (b) it did not rely on any representation made to it by or on behalf of ASI in entering into this Agreement;
- (c) all Delivered Goods will:
- (i) have unencumbered title;
- (ii) comply with this Agreement and all relevant Laws and Australian Standards;
- (iii) be new, defect free (including in design, materials and workmanship), fit for the purposes for which they are to be used by ASI and the Principal and of merchantable quality;
- (iv) comply in full with all samples supplied to ASI by the Supplier;
- (v) have a life expectancy commensurate with that expected of similar goods;
- (vi) not breach any intellectual property or moral right; and
- (vii) remain defect free for the duration of the Defects Liability Period;
- (d) it and its Personnel will comply with all Site Rules, Laws and ASI directions;
- (e) ASI will have the full benefit of all manufacturer's warranties applicable to the Goods from the Delivery Date; and
- (f) it does not enter into this Agreement as the trustee of a trust.

## 2.2 Services

Where this Agreement obliges the Supplier to perform Services, the Supplier warrants and repeats on each day of the term of this Agreement that all Services will be:

- (a) supplied with the degree of skill, care and diligence expected of a skilled professional experienced in providing the same or similar services; and
- (b) performed in accordance with all Site Rules and ASI directions and relevant Australian standards and Laws.

## 2.3 Supplier acknowledgments

The Supplier acknowledges and agrees that:

- (a) ASI enters into this Agreement relying on the warranties in clause 2.1 and would not have done so without them;
- (b) time is of the essence in relation to the Delivery of the Goods and performance of the Services; and
- (c) this Agreement does not exclude or modify any conditions, warranties or guarantees implied by Law.

## 3 Engagement of the Supplier

- (a) The Supplier must Deliver the Goods and/or perform the Services in accordance with this Agreement and ASI must pay the Supplier the Price for doing so.
- (b) This Agreement will be deemed to be accepted by the Supplier on the earliest of the Supplier:
  - (i) returning a signed copy of the relevant Purchase Order to ASI;
  - (ii) indicating to ASI its intention to supply the Goods and/or perform the Services; or
  - (iii) commencing the supply of the Goods and/or Services after receipt of the Purchase Order.

## 4 Delivery

The Supplier must:

- (a) ensure that all Delivered Goods are:
  - (i) packed and labelled in accordance with all relevant Laws and Australian Standards;
  - (ii) packed in a manner that avoids damage during their transit and storage; and
  - (iii) accompanied by a Delivery Document; and
- (b) Deliver the Goods to the Delivery Point:
  - (i) on the Delivery Date; and
  - (ii) in accordance with all Laws.

## 5 Delay

### 5.1 Notice

The Supplier must, within 12 hours after it became aware of a matter likely to delay its Delivery of Goods or performance of Services, give written notice to the ASI Representative detailing the:

- (a) cause of the delay;
- (b) estimated duration of the delay; and
- (c) actions it has taken or will take to mitigate it, and thereafter:
- (d) every 2 days during the delay provide written reports to the ASI Representative updating it on the matters referred to in this clause 5; and
- (e) take all necessary steps to avoid or minimise the delay.

### 5.2 Relief

- (a) Subject to clause 5.2(b), the Supplier is not entitled to an extension of time or to recover any costs or damages from ASI for any delay or disruption in performing this Agreement.
- (b) If the Supplier:
  - (i) is delayed in performing this Agreement by a breach of this Agreement by ASI; and
  - (ii) complies with clause 5.1,
 the ASI Representative must grant a reasonable extension of time to the Delivery Date as the Supplier's sole entitlement for such breach and delay.

## 5.3 ASI rights

If the Goods are not Delivered or Services performed by the Date for Delivery then, without limiting its other rights, ASI may:

- (a) refuse to take further deliveries of Goods and/or Services;
- (b) cause the Supplier to use another form of delivery nominated by ASI and at the Supplier's risk and cost;
- (c) direct the Supplier to obtain the Goods and/or Services from a third party within a nominated period;
- (d) cancel the supply and obtain substitute goods and/or services from a third party; or
- (e) terminate this Agreement with immediate effect.

## 6 Inspection, testing and acceptance

### 6.1 Offsite inspection

- (a) ASI and its nominees:
  - (i) must be given full and free access at all times to inspect the manufacture and supply of the Goods; and
  - (ii) have the right to reject Goods in manufacture that do not comply with this Agreement.
- (b) Any inspection or failure to inspect by ASI will not relieve the Supplier of any obligation under this Agreement and a failure to reject a Good does not constitute acceptance of it.

### 6.2 Inspection and testing after Delivery

- (a) Acceptance of Goods by ASI is subject to Goods passing all inspections and testing required by ASI.
- (b) If ASI believes Delivered Goods do not comply with this Agreement, without limiting its other rights, it may:
  - (i) reject some or all of the Delivered Goods and require the Supplier to immediately refund all amounts paid by ASI in respect of them;
  - (ii) require the Supplier (at its risk and cost) to repair or replace the defective Goods within a nominated period; or
  - (iii) convert the Goods into a condition acceptable to ASI and all associated costs will be due and payable from the Supplier to ASI.

## 7 Risk and title

- (a) Risk in Goods passes to ASI upon their Delivery in accordance with clause 4.
- (b) Title in Goods passes to ASI upon their Delivery, unless ASI has paid an amount for the relevant Goods prior to their Delivery in which case title will pass upon payment.

## 8 Variations

### 8.1 Directions to vary

- (a) ASI may, by written notice titled 'Variation Direction', direct the Supplier to vary the Goods and/or Services (including by way of increase, decrease, omission or change) and the Supplier must comply with such direction.
- (b) If the Supplier receives a direction from ASI which, although not identified as a 'Variation Direction', it considers to be a direction to carry out a variation, the Supplier must:
  - (i) immediately advise the ASI Representative of this belief; and
  - (ii) not comply with the direction until the ASI Representative confirms in writing whether:
    - (A) the direction is a Variation Direction;
    - (B) the Supplier should comply with it; or
    - (C) ASI withdraws the direction.
- (c) If the Supplier does not comply with clause 8.1(b), it is not entitled to make any claim in relation to its compliance with the relevant direction.
- (d) If ASI issues a Variation Direction which omits Goods and/or Services, it may obtain them from or have them performed by a third party.

### 8.2 Valuation of variations

Unless otherwise agreed in writing by the parties, variations must be valued by the ASI Representative using:

- (a) relevant rates included in the Purchase Order; or
- (b) if the Purchase Order does not include a relevant rate, rates that ASI considers reasonable.

## 9 Suspension of Delivery

- (a) Except where directed to do so by the ASI Representative, the Supplier must not suspend the Delivery of Goods and/or the performance of Services.
- (b) The ASI Representative may immediately suspend the Delivery of some or all Goods and/or Services by written notice to the Supplier and it must comply with such direction.
- (c) The Supplier must resume Delivery of suspended Goods and/or Services promptly after being directed to do so by the ASI Representative.
- (d) The Supplier is not entitled to compensation as a result of a suspension of any Delivery.

## 10 Safety

- (a) The Supplier must perform this Agreement safely, in accordance with the Site Rules and WHS Laws and so as to prevent any loss, damage or injury to any person or property.
- (b) Without limiting clause 10(a), the Supplier must:
  - (i) notify the ASI Representative immediately of all work health and safety matters arising out of, or in any way in connection with, the Supplier's performance of this Agreement;
  - (ii) exercise duties of utmost good faith to ASI and the Principal in performing this Agreement to enable them to discharge their respective duties under the WHS Laws;
  - (iii) ensure that, if any Law requires that a:
    - (A) person:
      - (1) be authorised or licensed to carry out particular work, that person is so authorised or licensed, and complies with all conditions of such authorisation or licence; or
      - (2) has prescribed qualifications or experience or, if not, is supervised by a person who has prescribed qualifications or experience, that person has the required qualifications or experience or is so supervised; or
    - (B) workplace, plant, substance or design, or work or class of work, be authorised or licensed, that thing is so authorised or licensed;
  - (iv) not direct or allow a person to perform Services unless such person satisfies all relevant requirements of this clause 10;
  - (v) if directed by the ASI Representative or required by the WHS Laws, produce evidence of all approvals, authorisations, licences, prescribed qualifications and experience, or any other information relevant to work health and safety to the satisfaction of the ASI Representative before the Supplier or any subcontractor commences any relevant activity; and
  - (vi) ensure that the Supplier and all relevant Personnel complete all inductions relevant to the Delivery Point before attending it.

## 11 Payment

### 11.1 Payment

- (a) The Supplier must claim payment of the Price progressively by issuing Tax Invoices in accordance with the Purchase Order that detail the Goods Delivered and Services performed in the relevant month along with reasonable supporting documentation.
- (b) Subject to its rights under clause 11.4, ASI must pay the Supplier the amount claimed in a Tax Invoice within 45 days after the date of its receipt by ASI.

### 11.2 No other payments

Except as expressly provided in this Agreement, the Supplier is not entitled to payment from ASI other than the Price and acknowledges and agrees that the Price includes:

- (a) all charges for packaging, packing, insurance and Delivery of the Goods in accordance with this Agreement;
- (b) all Supplier costs associated with performing this Agreement; and
- (c) the cost of performing any miscellaneous services.

### 11.3 Conditions Precedent

The Supplier must not serve a Tax Invoice on ASI and ASI is not obliged to make a payment in accordance with clause 11.1(b), unless the Supplier has:

- (a) effected all insurances required by this Agreement; and
- (b) supplied ASI with a Delivery Document in relation to the Delivered Goods referred to in the Tax Invoice.

## 11.4 Set off

If ASI has a claim to money against the Supplier, it may set off that money against any sum the Supplier is or may be entitled to in connection with this Agreement.

## 12 Taxes and GST

- (a) Subject to the remainder of this clause 12, the Supplier must pay all taxes concerning the supply of Goods and/or performance of Services.
- (b) Each party warrants to the other that it is registered for GST and must immediately notify the other if it ceases to be so registered.
- (c) If consideration given by a party (Payer) in connection with this Agreement does not include GST and is consideration for a taxable supply for which the party who makes the supply (Supplying Party) is liable for GST, the Payer must pay the Supplying Party an additional amount equal to the consideration multiplied by the rate of GST.

## 13 Defects Liability Period

- (a) The Defects Liability Period will commence on the date on which Delivered Goods are accepted by ASI by written notice to the Supplier and expires on the date specified in the Purchase Order, as adjusted in accordance with clause 13(d).
- (b) Upon receipt of a notice from ASI of a defect in a Delivered Good during the Defects Liability Period, the Supplier must repair or replace the affected Good (at ASI's election) at no cost to ASI and within the period directed by ASI.
- (c) If the Supplier fails to rectify a defect in accordance with clause 13(b), ASI may rectify or cause to be rectified the defect at the Supplier's risk and expense and all costs incurred by ASI in doing so will be a debt due and payable from the Supplier to ASI.
- (d) Where a defect is rectified, a separate Defects Liability Period will apply in respect of such Good and commence on the date its rectification is finished.

## 14 Indemnity and Liability

### 14.1 Indemnity

- (a) The Supplier must indemnify ASI and its Personnel from and against all claims, damages, expenses, losses and liabilities in respect of any:
  - (vii) breach of this Agreement by the Supplier;
  - (viii) wilful, unlawful or negligent act or omission of the Supplier or any of its Personnel;
  - (ix) loss of, loss of use of, destruction or damage to, property, caused or contributed to by the Supplier or its Personnel;
  - (x) injury to, or disease, illness or death of, persons caused or contributed to by the Supplier or its Personnel;
  - (xi) breach by the Supplier or its Personnel of a duty of confidence owed to ASI; or
  - (xii) act of abandonment of some or all of this Agreement by the Supplier.
- (b) The Supplier's liability under clause 14.1(a) is reduced to the extent a negligent act or omission of ASI contributed to the relevant claim, damage, expense, loss or liability.
- (c) Each indemnity in this Agreement is a continuing obligation, separate and independent from all other obligations and survives the termination or expiration of this Agreement.
- (d) It is not necessary for a party to incur an expense before enforcing an indemnity.
- (e) A party must pay on demand any amount it must pay under an indemnity in this Agreement.

### 14.2 Indirect Loss

To the fullest extent permitted by all relevant Laws, ASI has no liability to the Supplier or any of its Personnel under or arising out of this Agreement for any:

- (a) loss of revenue, use, production, goodwill, profit, business, data, contract or anticipated savings;
- (b) financing costs or increase in operating costs; or
- (c) other purely financial or economic or other special or indirect loss or damage.

### 14.3 Proportionate Liability

The parties acknowledge and agree that:

- (a) to the fullest extent permitted by Law, Part 4 of the *Civil Liability Act 2002* (NSW) and equivalent Laws in other jurisdictions (together, the **Liability Acts**) are excluded in relation to claims arising out of this Agreement; and

- (b) if any provision of a Liability Act applies to any claim between the parties arising out of this Agreement, the Supplier must indemnify ASI and its Personnel from and against all losses, costs, expenses and claims they suffer or incur which the Supplier would be liable but for the operation of the Liability Act.

## 15 Insurance

- (a) Before the Date of Agreement and until the expiry of the last Defects Liability Period, the Supplier must effect and maintain the following insurances (together, the **Insurances**):
- (xiii) a public and product liability insurance policy in the names of the parties (including a 'cross liability' clause) for at least \$20 million per claim;
  - (xiv) transit insurance for the full value of all Goods whilst they are in transit; and
  - (xv) workers' compensation insurance as required by Law, and ensure that all subcontractors do likewise.
- (b) Whenever directed by ASI, the Supplier must produce certificates of currency in respect of the Insurances.
- (c) If, after being so requested by ASI, the Supplier fails to produce certificates of currency in respect of the Insurances, ASI may suspend all payments to the Supplier and effect some or all relevant Insurance(s) and the premiums paid will be a debt due and payable from the Supplier to ASI.
- (d) The Supplier must:
- (xvi) not do or permit, or omit to do, anything which prejudices any Insurance or insurance policy maintained by ASI or the Principal;
  - (xvii) immediately rectify anything which prejudices or could prejudice any Insurance or insurance policy maintained by ASI or the Principal;
  - (xviii) promptly reinstate any Insurance should it lapse;
  - (xix) give full details to its insurer(s) of all matters the non-disclosure of which might prejudice any Insurance or reduce its cover;
  - (xx) comply with the terms of each Insurance and insurance policy maintained by ASI or the Principal; and
  - (xxi) to the extent it is able to recover under an Insurance (or could have but for a failure to maintain it), recover and indemnify ASI and its Personnel up to the relevant level of cover.
- (e) The effecting of the Insurances does not limit its obligations and liabilities under this Agreement.

## 16 Dispute resolution

- (a) If a dispute arises under or out of this Agreement, either party may issue a notice to the other setting out details of the dispute.
- (b) Within 10 days after a notice is received by a party in accordance with clause 16(a), senior representatives from each party must meet to attempt to resolve the dispute in good faith.
- (c) If a dispute is not resolved within 15 days after the meeting referred to in clause 16(b), either party may commence litigation to resolve it.
- (d) The Supplier must continue to perform this Agreement despite the existence of a dispute.
- (e) Nothing in this clause 16 prejudices the right of a party to seek injunctive or urgent relief.

## 17 Default and Termination

- (a) If the Supplier commits a substantial breach of this Agreement, ASI may issue it with a written notice to show cause which states:
- (xxii) the alleged substantial breach;
  - (xxiii) that the Supplier is required to show cause in writing; and
  - (xxiv) the time by which the Supplier must do so.
- (b) If the Supplier fails to show cause to ASI's satisfaction by the required time, ASI may immediately terminate this Agreement by written notice to the Supplier.
- (c) Notwithstanding the remainder of this clause 17, if the Supplier commits a substantial breach of this Agreement that is incapable of remedy, ASI may immediately terminate this Agreement by written notice to the Supplier.

## 18 Termination for Insolvency

If ASI believes the Supplier is or may soon be financially unable to proceed with this Agreement, ASI may, to the extent permitted by Law, immediately terminate this Agreement by written notice to the Supplier.

## 19 Termination for Convenience

- (a) ASI may:

- (xxv) at any time, for its convenience and by written notice to the Supplier, terminate this Agreement effective from the time stated in the notice; and
- (xxvi) thereafter procure some or all undelivered Goods and/or unperformed Services from others.

- (b) If ASI terminates this Agreement under clause 19(a):

- (xxvii) it must pay the Supplier the applicable portion of the Price for Delivered Goods and performed Services up to the date of termination; and
- (xxviii) except as set out in clause 19(b)(xxvii), the Supplier is not entitled to compensation in respect of such termination.

## 20 Confidentiality

- (a) Subject to clause 20(b), the Supplier must not, without the prior written consent of the ASI Representative, divulge or permit its Personnel to divulge (other than to properly perform this Agreement) any Confidential Information.
- (b) Clause 20(a) does not apply to Confidential Information which is:
- (xxix) made public through no default of the Supplier or any of its Personnel; or
  - (xxx) required to be disclosed by Law.

## 21 Media

The Supplier must not discuss this Agreement, the Principal or ASI (including its Personnel) with any media without the ASI Representative's prior written approval and must refer all such enquiries to the ASI Representative.

## 22 Notices

A notice under this Agreement is only effective if it is in writing, signed by the party's Representative, addressed to the other party's Representative and left at or mailed or emailed to the addressee's address in the Purchase Order. If:

- (a) left at the addressee's address in the presence of a member of its Personnel between 9:00am and 5:00pm on a Business Day, it is taken to have been immediately received;
- (b) sent by mail, it is taken to have been received 3 Business Days after posting; or
- (c) sent by email, the *Electronic Transactions Act 2000* (NSW) applies to determine when it is received.

## 23 Assignment and Subcontracting

- (a) The Supplier must not:
- (xxxi) assign any of its rights under this Agreement; or
  - (xxxii) subcontract the performance of any of its obligations under this Agreement, without the prior written consent of the ASI Representative.
- (b) The Supplier is liable for the acts and omissions of its subcontractors as if they were acts and omissions of the Supplier.

## 24 Waiver

Nothing in this Agreement will be waived, discharged or released unless it is done so in writing.

## 25 Governing Law

This Agreement is governed by the laws of New South Wales and each party irrevocably submits to the jurisdiction of the courts of that State.

## 26 Entire Agreement

This Agreement contains the entire agreement between the parties in respect of its subject matter.

## 27 Giving effect to this Agreement

The Supplier must do anything, and ensure that its Personnel do anything, ASI may reasonably require to give full effect to this Agreement.

## 28 Invalidation and enforceability

The invalidity or unenforceability of any provision of this Agreement does not affect the validity or enforceability of any other provision of this Agreement and the invalid or unenforceable part is severable.

## 29 Amendment

This Agreement may only be amended by a document signed by or on behalf of each party.

## 30 Survival

This clause 30 and clauses 1, 2, 5.3, 6.2 and 7 - 29 survive the expiry or termination of this Agreement.

## Schedule – Pro Forma Purchase Order

Issue	Variable
ASI Address for Service	Address: [insert] Email: [insert]
ASI Representative	Name: [insert] Address: [insert] Email: [insert] Telephone: [insert]
Supplier	Name: [insert] ABN: [insert] Address: [insert] Email: [insert] Telephone: [insert]
Supplier Representative	Name: [insert] Address: [insert] Email: [insert] Telephone: [insert]
Date of Agreement	[insert]
Defects Liability Period	[insert]
Additional Conditions Precedent to Delivery	[insert]
Party responsible for unloading	[insert]
Delivery Date	[insert]
Delivery Point	[insert]
Goods	[insert]
Services	[insert]
Price	[insert]
Principal	[insert]
Rates for Variations	[insert]
Time for Submitting Tax Invoice	[insert]