

AURIZON PURCHASE ORDER CONDITIONS

1. FORMATION OF CONTRACT

- 1.1 The Purchase Order is an offer by Aurizon to engage the Supplier to supply the Deliverables on the terms of the Contract.
- 1.2 A Contract for the supply of the Deliverables is formed between Aurizon and the Supplier when the Supplier:
- (a) communicates (either in writing or verbally) to Aurizon in such a way that confirms or implies acceptance; or
 - (b) the Supplier supplies, or begins to supply, the Deliverables.
- 1.3 Aurizon enters into the Contract on its own behalf and as agent for and on behalf of each Related Company.
- 1.4 This document does not apply if there is a contract between the parties for the supply of the same Deliverables.
- 1.5 The Supplier will supply the Deliverables in accordance with the Contract.

2. WARRANTIES

- 2.1 The Supplier warrants that:
- (a) it has the right to sell the Deliverables to Aurizon;
 - (b) it, and its Personnel, will supply the Deliverables in a good, proper, punctual and professional manner and will exercise the standard of care, skill, judgment and diligence reasonably expected of a contractor experienced in the supply of the same or similar Deliverables;
 - (c) it will comply with all laws and standards and Aurizon's policies and procedures as amended, updated or replaced from time to time that apply to the Contract;
 - (d) no conflict of interest exists or is likely to arise in the performance of the Contract; and
 - (e) it will obtain for the benefit of Aurizon all usual manufacturers', suppliers' and any other applicable third party warranties in respect of the Deliverables, together with any other warranties required by Aurizon.
- 2.2 The Supplier warrants that the Deliverables will:
- (a) be free of encumbrances, liens and reservation of title;
 - (b) not infringe the Intellectual Property Rights of any person and Aurizon's use of the Deliverables will not infringe another person's Intellectual Property Rights;
 - (c) be designed, fabricated, tested, packaged, loaded on transport, delivered (and, if required by the Contract, installed and commissioned) in accordance with all laws and all requirements of any government agency;
 - (d) correspond to their description and conform in every way with Aurizon's requirements, standards and specifications;

- (e) be of merchantable quality, new (unless otherwise specified) and free from any defect, fault or omission; and
- (f) be fit for Aurizon's purposes as made known (expressly or impliedly) to the Supplier.

3. DELIVERY REQUIREMENTS

- 3.1 The Supplier must:
- (a) clearly mark all delivery documents with the Purchase Order number and must ensure those documents accompany the Deliverables; and
 - (b) supply the Deliverables to the Delivery Point on the Date for Delivery in accordance with the Contract or as Aurizon may otherwise authorise or direct.
- 3.2 If the Supplier foresees any delay in performance of the Contract, it must advise Aurizon in writing immediately and will implement measures to mitigate the effects of any delay at its own cost.
- 3.3 The Supplier must, in supplying the Deliverables:
- (a) not interfere with or disrupt Aurizon's activities or the activities of any other person at the Delivery Point;
 - (b) if access to an Aurizon Site is required:
 - (i) ensure that it and any of its Personnel who enter an Aurizon Site or area comply with any reasonable requirements for access and security required by Aurizon and Aurizon's directions;
 - (ii) comply with work hours required by Aurizon at the Aurizon Site or area; and
 - (iii) only access the Aurizon Site or area for the purposes approved in advance by Aurizon.
- 3.4 The Supplier acknowledges and agrees that, when the Supplier is on an Aurizon Site, Aurizon may at any time:
- (a) conduct random tests for alcohol and drugs on the Supplier's Personnel who enter Aurizon Sites; and
 - (b) exclude from any Aurizon Sites, or direct the Supplier to remove, any of the Supplier's Personnel who test positive for drugs or whose alcohol reading exceeds 0.000.

4. DELIVERY OF GOODS

- 4.1 Where the Deliverables are Goods, the Supplier must:
- (a) deliver the Deliverables at the Delivery Point between 8am and 4pm local time on the respective Date for Delivery;
 - (b) unload the Deliverables at the Delivery Point in accordance with Aurizon's directions; and
 - (c) notify Aurizon of any unloading requirements for the Deliverables prior to the Date for Delivery,

unless Aurizon agrees that the Supplier may deliver the Deliverables at other times or in another manner, in which case the Supplier must deliver the Deliverables at the time and/or in the manner agreed by Aurizon.

4.2 The Supplier will deliver with the Deliverables any documentation required to enable the Deliverables to be used by Aurizon.

4.3 If the Deliverables are delivered other than in accordance with clause 4.1, then Aurizon may arrange for the Deliverables to be returned to the Supplier at the Supplier's expense.

5. PERFORMANCE OF SERVICES

5.1 Where the Deliverables are Services, the Supplier must perform the Services by the date specified in the Purchase Order.

5.2 The Supplier must always:

- (a) ensure that it assigns and maintains suitably qualified Personnel with suitable training, experience and skills;
- (b) provide all necessary equipment (including the certification of equipment, where required) and facilities to perform the Services; and
- (c) control, coordinate, supervise, direct and provide all activities necessary to perform the Services in accordance with the Contract.

6. ACCEPTANCE

6.1 On the date which is 10 Business Days after the Date of Delivery, Aurizon will be deemed to have accepted the Deliverables unless it issues a written notice of rejection, in which case the Deliverables are rejected by Aurizon.

6.2 If Aurizon rejects Deliverables that are Goods, the Supplier must, at its cost, promptly collect and remove the rejected Deliverables or Aurizon may return the Deliverables to the Supplier at the Supplier's expense.

7. OWNERSHIP AND RISK

7.1 Ownership of the Deliverables will pass to Aurizon upon the earlier of:

- (a) payment by Aurizon; or
- (b) delivery of the Deliverables.

7.2 Clause 7.1 does not constitute acceptance and does not affect Aurizon's rights to reject the Deliverables under clause 6.

7.3 The Deliverables will be at the risk of the Supplier until the Deliverables are accepted by Aurizon under clause 6.

8. DEFECTIVE DELIVERABLES

8.1 During the term, if Aurizon becomes aware that any Deliverables do not comply with the Contract, Aurizon may direct the Supplier to, at the Supplier's cost, rectify, replace, remove or re-supply the Deliverables so that they comply with the Contract.

8.2 If the Supplier fails to comply with a direction given under clause 8.1 within the time directed by Aurizon (or, if no time is specified, as soon as possible after the Supplier receives the direction), Aurizon may have the Deliverables rectified, replaced, removed or re-supplied by another supplier so that they comply with the Contract and the cost of doing so will be a debt due and payable from the Supplier to Aurizon.

8.3 The Supplier must ensure that, in carrying out rectification services, it causes as little inconvenience as is reasonably possible to other persons using the Deliverable.

9. PAYMENT AND INVOICING

9.1 Aurizon must pay the Supplier the Charges for the Deliverables in accordance with this clause 9.

9.2 The Charges are inclusive of all costs and expenses (other than the Reimbursable Expenses) incurred by the Supplier in:

- (a) supplying the Deliverables, including all charges for packing, insurance and delivery of the Goods and/or the cost of any items used or supplied in the performance of the Services; and
- (b) discharging its other obligations under the Contract.

9.3 Unless expressly provided otherwise, all amounts and other consideration payable under or in connection with the Contract (including the Charges) are exclusive of GST.

9.4 The Supplier may only submit a tax invoice to Aurizon once the Deliverables are accepted by Aurizon under clause 6.

9.5 Payment will not be due until receipt of an invoice by Aurizon from the Supplier that:

- (a) is a valid tax invoice in accordance with the GST Law;
- (b) complies with Aurizon's invoicing requirements as made known to the Supplier from time to time;
- (c) specifies a correctly calculated amount for Charges for Deliverables actually supplied to Aurizon in accordance with the Contract;
- (d) specifies the Date of Delivery;
- (e) states the Supplier's vendor number and the Purchase Order number;
- (f) is set out in a way that allows Aurizon to ascertain the Deliverables and the amount payable in respect of those Deliverables;
- (g) is accompanied (where necessary or where reasonably requested by Aurizon) by verifying documentation (such as proof of delivery or receipt of the Deliverables by Aurizon); and
- (h) is addressed and delivered to Aurizon's address: Accounts Payable Department, PO Box 456 BRISBANE QLD 4001.

9.6 If Aurizon, acting reasonably, disputes the whole or any part of any tax invoice issued by the Supplier, Aurizon may withhold the disputed portion of the invoice until the dispute is resolved.

- 9.7 Subject to clauses 9.5 and 9.6, Aurizon must pay the Charges or the relevant component of the Charges within 45 days from the first day of the next month after the receipt of the correctly rendered tax invoice.
- 9.8 The Charges are exclusive of GST unless stated to the contrary in the Purchase Order.

10. VARIATIONS

- 10.1 At any time before supply of the Deliverables, Aurizon may direct the Supplier, in writing or by issuing an amended Purchase Order, to perform a variation and the Supplier must, subject to clause 10.2, perform that variation.
- 10.2 The Supplier must immediately give notice in writing to Aurizon if a variation may or will affect any warranties given by the Supplier under the Contract and the Supplier must not perform that variation unless and until Aurizon gives a further direction to perform that variation.
- 10.3 The Supplier must not commence work on a variation and will not be entitled to payment for a variation unless and until:
- (a) it has notified Aurizon in writing if the variation will result in a change to the Charges;
 - (b) Aurizon has agreed to the revised Charges, if any; and
 - (c) it has received a direction in writing or in the form of an amended Contract from Aurizon to perform a variation.]

11. E-PROCUREMENT

- 11.1 The Supplier must provide Aurizon with all information required by Aurizon from time to time to enable Aurizon to use its e-Procurement program. The Supplier must accept and issue documents identified by Aurizon in a format suitable to Aurizon.
- 11.2 All costs of transacting electronically with Aurizon must be borne by the Supplier.

12. CONFIDENTIALITY

- 12.1 The Recipient and its Personnel must keep the Discloser's Confidential Information confidential during the term of the Contract, and must not disclose it or allow it to become available to any third party, except:
- (a) with the Discloser's prior written consent;
 - (b) as required by law or the rules of any stock exchange on which the Recipient's securities are listed; or
 - (c) to the Recipient's Related Companies, Personnel on a need to know basis for the purposes of performing its obligations, or exercising its rights under this Contract.
- 12.2 The Supplier and its Personnel that are engaged in the performance of the Contract must, on Aurizon's request, execute suitable confidentiality undertakings, agreements or deeds.
- The Recipient will, on demand from the Discloser, destroy, and certify to the Discloser the destruction of, any

Confidential Information of the Discloser other than one copy of any records that the Recipient is required by law to retain.

13. PRIVACY

- 13.1 The Supplier must not:
- (a) use any Personal Information for a purpose other than a Permitted Purpose without the prior written approval of Aurizon; or
 - (b) disclose any Personal Information for a purpose other than a Permitted Purpose without the prior written approval of Aurizon, unless the disclosure is required by law.
- 13.2 The Supplier must comply with the Privacy Laws at all times when performing its obligations under the Contract.
- 13.3 If the Supplier becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information held by the Supplier as a result of the Contract or its supply of the Deliverables, the Supplier agrees to:
- (a) notify Aurizon in writing as soon as possible, which must be no later than within three days after becoming aware; and
 - (b) unless otherwise directed by Aurizon, carry out an assessment in accordance with the requirements of the Privacy Laws.
- 13.4 Where the Supplier is aware that there are reasonable grounds to believe there has been, or where Aurizon notifies the Supplier that there has been, an Eligible Data Breach in relation to any Personal Information held by the Supplier as a result of the Contract or its supply of the Deliverables, the Supplier must:
- (a) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom the Personal Information relates;
 - (b) unless otherwise directed by Aurizon, take all other action necessary to comply with the requirements of the Privacy Laws; and
 - (c) take any other action as reasonably directed by Aurizon.

14. INSURANCE

- 14.1 The Supplier must, at its own cost, effect and maintain (or be insured under) the following insurances with a reputable insurer:
- (a) public and products liability insurance for the term, with a limit of indemnity not less than \$20,000,000 per claim;
 - (b) workers' compensation insurance or registrations in accordance with the applicable law (or, where the Supplier is an individual not required by law to maintain workers' compensation insurance or registrations, personal accident and sickness insurance for the term); and

- (c) any additional insurances set out in the Purchase Order.

14.2 The Supplier must produce evidence, on demand and to the satisfaction of Aurizon, that such insurances have been effected and maintained.

15. TERMINATION

15.1 If the Supplier is unable to supply Deliverables to the requirements (including quality) set out in the Purchase Order or by the Date for Delivery, Aurizon may terminate the Contract for those Deliverables by notifying the Supplier prior to the delivery of the Goods or the performance of the Services.

15.2 Either party may terminate the Contract in whole or in part by notice in writing immediately if the other party:

- (a) commits a breach of the Contract and, where the breach is capable of remedy, such breach is not remedied within 5 Business Days of written notice by the first party, or 20 Business Days in the case of a failure to pay by Aurizon under clause 9; or
- (b) becomes, threatens to become or is in jeopardy of becoming insolvent.

15.3 If Aurizon terminates a Contract and has paid any amount to the Supplier under the Contract (including a deposit):

- (a) Aurizon is entitled to be refunded in full, unless otherwise agreed in writing; and
- (b) the Supplier undertakes to refund any such deposit as soon as practicable but in any event within 7 days from the date the Contract was terminated by Aurizon.

15.4 Upon termination or expiry, the Supplier must provide all reasonable assistance necessary to enable the transfer of Aurizon's property and all related data, documentation and records to Aurizon or a third party nominated by Aurizon at no cost to Aurizon.

16. INDEMNITY

16.1 The Supplier indemnifies the Indemnified Parties against any claim, damage, expense (including legal costs on a full indemnity basis), loss, liability or obligation, compensation, fine, penalty, charge, payment or cost suffered or incurred in respect of:

- (a) loss of, or damage to, or loss of use of, any real or personal property arising out of the Supplier's performance of the Contract;
- (b) personal injury, disease or illness to, or death of, any person arising out of the Supplier's performance of the Contract;
- (c) any IP Claim; and
- (d) any wilful, fraudulent, unlawful or negligent act, error or omission (including misconduct) of the Supplier or its Personnel.

16.2 The Supplier's liability under clause 16.1 will be reduced proportionately to the extent that an act or omission of the parties indemnified, contributed to the damage, expense, loss

liability or obligation, compensation, fine, penalty, charge, payment or cost indemnified against.

17. LIMITATION OF LIABILITY

17.1 Neither party will be liable to the other party in relation to the Contract for any loss of profits, loss of revenue, loss of any contract value, loss of anticipated profit or damages for lost opportunity, cost of finance or loss of use.

17.2 Aurizon's maximum aggregate liability to the Supplier in connection with the Contract is limited to the amount of the Charges payable under the Contract.

17.3 The Supplier's maximum aggregate liability to Aurizon in connection with the Contract is limited to the greater of:

- (a) the Charges paid or payable under the Contract; and
- (b) the amount to which the party who is liable is entitled to be indemnified under a contract of insurance or, in the case of the Supplier, would have been entitled to be indemnified had the Supplier:
 - (i) effected, maintained and otherwise complied with its obligations to insure under the Contract;
 - (ii) complied with such contract of insurance; and
 - (iii) fully enforced its rights under such contract of insurance.

17.4 Clauses 17.1 and 17.3 does not apply to the Supplier's liability under the indemnities in clause 16.1.

17.5 Any terms (including conditions of sale that purport to limit the Supplier's liability in relation to the Deliverables) which may be contained in sales literature, tenders, quotations, information, notices, delivery dockets, acceptance letters, invoices or any other material provided by the Supplier but which are not expressly contained in the Contract are excluded from the Contract.

18. DOCUMENTATION

18.1 The Supplier must ensure that any documentation supplied with the Deliverables is suitable, accurate, comprehensive, complete and compliant with all laws, relevant standards, and quality assurance requirements in the Contract.

18.2 If there is an error, ambiguity or inadequacy in the documentation supplied with the Deliverables, the Supplier must rectify that documentation. No additional amount will be paid to the Supplier for any change to the documentation which is necessary as a consequence of that error, ambiguity or inadequacy.

19. DISPUTES

19.1 Notwithstanding the existence of a dispute, each party must continue to perform its obligations under the Contract. The existence of a dispute will not prejudice either party's right to terminate the Contract for any reason.

19.2 Within 10 Business Days of a dispute arising, the parties must:

- (a) convene a without prejudice meeting between the parties;
- (b) appoint a person not involved in the supply of the Deliverables to chair the meeting; and
- (c) ensure that each party's representative who attends the meeting has the authority to settle the dispute and attempts to do so.

quality has been maintained during all stages of the supply of the Deliverables; and

- (b) maintain any quality certifications that it may have relating to the Deliverables and immediately notify Aurizon if any such quality certification is revoked, suspended or amended in any way.

20. COMPLIANCE

20.1 The Supplier warrants that it will:

- (a) comply with Aurizon's Supplier code of conduct or Supplier requirements as made known by Aurizon to the Supplier from time to time;
- (b) comply with all laws and standards;
- (c) implement procedures for it and its Personnel engaged in the provision of the Deliverables to comply with clause 20.1(a) and 20.1(b);
- (d) provide any documents or information reasonably requested by Aurizon as soon as reasonably practicable after that request is made; and
- (e) notify Aurizon immediately of any failure to comply with its obligations under this clause 20 and immediately remedy such failures to the fullest extent possible.

21. CHAIN OF RESPONSIBILITY

21.1 The Supplier must:

- (a) comply with Chain of Responsibility Laws, to the extent that they apply to the Supplier in connection with the performance of its obligations under the Contract during the term of the Contract;
- (b) ensure that each subcontractor engaged under clause 24.7 of the Contract complies with Chain of Responsibility Laws during the term of the subcontract;
- (c) comply, and ensure that any Personnel complies, with any directions, enquiries or requests for information or documents made by Aurizon to the Supplier for the purpose of checking or ensuring compliance with Chain of Responsibility Laws; and
- (d) comply, and ensure that any Personnel complies with any Aurizon Policy which deals with chain of responsibility, as applicable and as advised to the Supplier by Aurizon, and as amended from time to time.

22. QUALITY ASSURANCE

22.1 The Supplier must:

- (a) implement and maintain a quality system that is:
 - (i) compliant with the quality requirements set out in the Contract and ISO9001:2008; and
 - (ii) structured in a way that provides Aurizon with objective evidence that an acceptable level of

23. AUDIT

23.1 The Supplier must allow Aurizon access to;

- (a) the Supplier's premises during normal working hours;
- (b) any technical, financial and operational records and other documentation related to the Deliverables and the Contract,
 - as is reasonably necessary for Aurizon to conduct an audit of:
- (c) the Deliverables;
- (d) the Supplier's quality certification documentation;
- (e) invoicing and basis for calculation of the Charges;
- (f) the Supplier's compliance with Aurizon's policies and procedures as amended, updated or replaced from time to time; and
- (g) other matters reasonably determined by Aurizon to be relevant to the performance of the Supplier's obligations under the Contract.

24. GENERAL

- 24.1 The Contract can only be varied by agreement in writing signed by both parties.
- 24.2 The Contract is governed by the law in force in Queensland, Australia and each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland, Australia. The United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) is excluded.
- 24.3 If any part of the Contract is or becomes illegal, void or unenforceable, this does not invalidate the rest of the Contract.
- 24.4 Each party will promptly do further acts and execute and deliver further documents (in a form and content reasonably satisfactory to that party) required by law or reasonably requested by the other party to give effect to the Contract. The Supplier will cooperate with Aurizon and its Personnel and provide assistance reasonably required by them for purposes related to the Contract.
- 24.5 Notices, approvals, consents or other communications in connection with the Contract must be in writing and sent by prepaid post or email to a party's address set out in the Purchase Order.
- 24.6 A right may only be waived in writing, signed by the party giving the waiver and a waiver of a right on one occasion does not operate as a waiver of that right if it arises again.
- 24.7 The Supplier will not subcontract its obligations under the Contract without Aurizon's prior written consent. Where Aurizon consents to a subcontractor and the Supplier

subcontracts its obligations, the Supplier retains prime contract responsibility for all the obligations of the Supplier under the Contract.

- 24.8 The Supplier will not assign its rights and obligations under the Contract without Aurizon's written consent.
- 24.9 The Supplier is an independent contractor. Nothing in the Contract gives rise to a relationship of employment, agency, partnership or joint venture between the parties.
- 24.10 Subject to clause 1.4, the Contract contains the entire agreement between the parties in relation to its subject matter.
- 24.11 Clauses 12 (Confidentiality), 13 (Privacy), 14 (Insurance), 15 (Termination), 16 (Indemnity), 17 (Limitation of Liability) and this clause 24 (General) will survive the termination or expiry of a Contract.

25. DEFINITIONS

Aurizon means Aurizon Operations Limited ACN 124 649 967 or such other Related Company as specified in the Purchase Order.

Aurizon Site means any site owned, occupied or controlled by Aurizon or any of its Related Companies and at which the Deliverables will be supplied.

Business Day means a day that is not a Saturday, Sunday or public holiday in Brisbane, Queensland, Australia.

Chain of Responsibility Laws means any laws that address chain of responsibility in the context of heavy vehicle regulation.

Charges means the amount specified in the Purchase Order that is payable by Aurizon for the Deliverables.

Confidential Information means information that is, by its nature, confidential or the receiving party knows, or ought to know, is confidential, including the terms of the Contract.

Contract means the contract between Aurizon and the Supplier for the supply of Goods and/or Services, which comprises a Purchase Order, clauses 1 - 25 of this document and the Sitework Conditions. To the extent of any inconsistency between those documents, a document listed earlier prevails.

Date for Delivery means the date or dates specified in the Purchase Order.

Date of Delivery means the date on which the Deliverables are actually supplied to Aurizon in accordance with the Contract.

Deliverable means any Goods to be supplied or Services to be performed by the Supplier as set out in the Purchase Order and includes the documentation supplied with those Goods or Services.

Delivery Point means the place identified in the Purchase Order.

Discloser means a party providing or disclosing Confidential Information.

Eligible Data Breach has the same meaning in the *Privacy Act 1988* (Cth).

Goods means the goods described, including quantity, in the Purchase Order.

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

Indemnified Parties means Aurizon, its Personnel and any Related Companies of Aurizon and each of their respective Personnel.

Intellectual Property Rights means all existing and future rights throughout the world, whether conferred by statute, common law or equity, in relation to any copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions, trade secrets and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields.

IP Claim means a claim by any person that its Intellectual Property Rights or moral rights are being, or may be, infringed by the Deliverables or the use of any material provided under the Contract.

Permitted Purpose means a purpose for which it is necessary for the Supplier to collect, use, disclose, store or handle Personal Information to comply with its obligations under the Contract.

Personal Information has the meaning given in the *Privacy Act 1988* (Cth) where such information is collected, used, disclosed, stored or handled by the Supplier for the purposes of the Contract.

Personnel means the officers, employees, agents, contractors and consultants of each party and, in the case of the Supplier, its subcontractors and any employees of those subcontractors.

Privacy Law means the *Privacy Act 1988* (Cth) and any other applicable legislation affecting privacy, Personal Information or the collection, handling, storage, use or disclosure of data (including Personal Information).

Purchase Order means a purchase order issued by Aurizon in a form suitable to Aurizon in its absolute discretion.

Recipient means a party that acquires Confidential Information from the Discloser.

Reimbursable Expenses means those expenses set out in the Purchase Order and incurred by the Supplier to third parties in supplying the Deliverables in respect of which the Supplier can claim reimbursement provided that Aurizon has given its prior written consent to the Supplier incurring those expenses.

Related Company means each company which is a subsidiary, holding company or related body corporate of Aurizon Operations Limited ACN 124 649 967.

Services means the services described in the Purchase Order.

Sitework Conditions means Aurizon's sitework conditions, policies and procedures for an Aurizon Site, as amended from time to time, copies of which are available from Aurizon on request.

Supplier means the entity identified as such in the Purchase Order.