

1 PREAMBLE

This Purchase Order if including a valid purchaser order number constitutes Tenix Alliance Pty Ltd's (Tenix) offer to the Supplier and acceptance of the offer shall be as outlined in Clause 2.8 Acceptance, below. Provisions printed, stated or otherwise contained in any acknowledgment by the Supplier of receipt of this Purchase Order shall not affect Tenix's offer as represented by this Purchase Order, and shall not be binding on Tenix if in conflict with or in addition to any of the provisions of this Purchase Order - including, but not limited to, delivery schedule, price, quantity, specifications and terms and conditions unless expressly agreed to in writing by Tenix. Any references in this Purchase Order to the Supplier's proposal or quotation are only to describe the materials or work covered thereby and does not constitute an acceptance of any terms set forth therein.

2 INTERPRETATIONS AND GENERAL MATTERS

2.1 Definitions and Interpretations

- 2.1.1 "day" means a calendar day.
- 2.1.2 "Tenix" means Tenix Alliance Pty Ltd.
- 2.1.3 "Goods" means all goods, equipment, materials, articles or any other property or parts to be provided to Tenix by the Supplier under the Purchase Order and includes, without limitation, all services including design, manufacture, inspection, testing, expediting, quality assurance and control, painting, packing, delivery and installation or fixing as specified or required hereunder.
- 2.1.4 "Purchase Order" means the purchase order issued by Tenix to the Supplier as evidenced by Purchase Order Form if including a valid purchaser order number.
- 2.1.5 "Purchase Order Form" means the section of the Purchase Order to be completed by Tenix which includes a valid purchaser order number and identifies the Supplier and includes but is not limited to a brief description of the Goods and a list of the documents comprising the Purchase Order.
- 2.1.6 "Supplier" means the person providing the Goods as identified in the Purchase Order Form.
- 2.1.7 "Warranty Period" means the period commencing on the date of final supply of the Goods to the nominated delivery point and lasting for a period of one (1) year unless otherwise stated in the Purchase Order.
- 2.1.8 Words importing the singular are deemed to include the plural and vice versa. Headings and subheadings are inserted for convenience only and shall not be used to interpret the text. Words denoting a natural person shall include a corporation and vice versa.

2.2 Supplier to inform itself

The Supplier shall be deemed to have carefully examined all documents furnished by Tenix and fully satisfied itself regarding all the conditions, risks, contingencies and other circumstances which might affect the supply of the Goods. No increase in the Purchase Order price will be allowed for the Supplier's failure to ensure that it is fully informed regarding all the circumstances relating to the Purchase Order.

2.3 Order of Precedence

Unless otherwise stated the order of precedence of any of the following documents listed in the Purchase Order form shall be as follows:

- (I) The Purchase Order Form

- (ii) Special Terms and Conditions
- (iii) General Terms and Conditions
- (iv) Specifications
- (v) Drawing(s)

2.4 Ambiguities

If the Supplier discovers any ambiguity in the Purchase Order it shall immediately notify Tenix in writing. Tenix shall then determine the correct interpretation of the Purchase Order. The determination of Tenix shall be final and binding on the Supplier and have no effect on the Purchase Order price.

2.5 Use of Documentation

The documents which form part of the Purchase Order, shall not be copied or used for any other purpose than the supply of the Goods without the prior written approval of Tenix.

2.6 Confidentiality

2.6.1 Any information provided by Tenix to the Supplier which is noted as confidential shall not be disclosed to any third party without the prior consent of Tenix. The obligations under this clause shall be continuing obligations and shall survive the completion or termination of the Purchase Order.

2.6.2 The Supplier shall not issue any information which includes details about the Goods or the Purchase Order for publication in any news or communication media without the prior written approval of Tenix.

2.7 Waiver

No failure or delay on the part of Tenix in exercising any of its rights under the Purchase Order shall be construed as constituting a waiver of any such rights.

2.8 Acceptance

The Purchase Order shall be effective upon the Supplier acknowledging its acceptance of the Purchase Order or supplying Goods pursuant to the Purchase Order, whichever occurs first.

2.9 Subcontracting and Assignment

2.9.1 The Supplier shall not subcontract nor assign all or any part of the Purchase Order without the prior written approval of Tenix. The Supplier shall provide full particulars of any work to be subcontracted together with details of the proposed subcontractor.

2.9.2 Approval of Tenix to any subcontract shall in no way relieve the Supplier of any of its obligations under the Purchase Order.

2.10 Entire Agreement

The Purchase Order constitutes the entire agreement between Tenix and the Supplier. The parties shall not be bound by or liable for any statement, representation, promise or understanding not set forth herein. Nothing contained in proposals, correspondence, discussions or negotiations prior to the date of the Purchase Order has any effect on the Purchase Order unless specifically incorporated herein.

2.11 Communications

Any notice or other communication required under the Purchase Order shall be delivered in writing and shall be in a form which can be read, copied and recorded conveniently. Verbal instructions or directions from Tenix shall be confirmed in writing to the Supplier within a reasonable time. The notice shall take effect from the time when it is delivered to or received at the

- address of the relevant party stated in the Purchase Order.
- 2.12 Licences and Laws**
The Supplier shall comply with all applicable laws, by-laws, ordinances, regulations, proclamations, orders and rules and with the lawful requirements of governmental and other authorities having jurisdiction in any way related to its obligations under the Purchase Order.
- 3 INSURANCE**
The Supplier shall be responsible for ensuring that it complies with its occupational health and safety obligations, and that it carries insurance for Public Liability (personal and property) for an amount not less than \$10,000,000, and for the use of Motor Vehicles, including third party property damage cover of not less than \$5,000,000.
- 4 INDEMNIFICATION**
The Supplier shall indemnify and keep indemnified Tenix and its officers, employees and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses arising as a result of any act, neglect, default or accident of the Supplier, its employees or agents related to its obligations under the Purchase Order.
- 5 PERFORMANCE AND QUALITY**
- 5.1 Materials and Workmanship**
All Goods shall be suitable for the purpose for which they are required. The Supplier shall use new and undamaged materials, unless otherwise specified in the Purchase Order and the workmanship shall be of the highest quality and standard. The work shall be carried out in accordance with good relevant industry practice and comply with all applicable Australian Standards and / or other referenced codes.
- 5.2 Supplier Qualifications**
The Supplier represents and warrants to Tenix (and Tenix relies on that representation) that it has the necessary skills, resources and experience to successfully supply the Goods in accordance with the requirements of the Purchase Order.
- 5.3 Testing and Inspection**
- 5.3.1** The Goods must be tested in accordance with the requirements of the specification. Unless otherwise set out elsewhere in the Purchase Order, any test and the costs thereof shall be the responsibility of the Supplier. The results of tests shall be promptly supplied to Tenix in writing.
- 5.3.2** Tenix shall have the right to inspect, expedite and monitor the Goods prior to delivery and the Supplier shall give Tenix access to the Supplier's premises for such purposes during its normal working hours. The Goods will not be accepted by Tenix until inspected and approved by Tenix. Any inspection by Tenix shall not relieve the Supplier from its obligations to comply with the requirements of the Purchase Order and shall in no way impair Tenix's right to require subsequent correction of non-conforming Goods.
- 5.4 Quality Standards**
The Supplier shall comply with the standards of quality specified in the Purchase Order. If no standards are specified the Supplier shall comply with the best quality standards applicable to the Goods concerned.
- 5.5 Defects and Warranty**
- 5.5.1** In addition to any statutory warranties applicable to the Goods, the Supplier represents and warrants that the Goods shall:
- (i) Be free from liens, charges, encumbrances, mortgages or other defects in title.
 - (ii) Be free from defects in design, materials and workmanship.
 - (iii) Conform to the conditions and specifications of the Purchase Order.
 - (iv) Conform to all applicable laws and regulations to which the Goods are subject.
- Be new and made to the specified quality.
- 5.5.2** During the Warranty Period Tenix shall give written notice to the Supplier of any failure or defect in the Goods. The Supplier shall without delay and at no cost to Tenix correct any defect or failure in the Goods covered by the warranty by way of repair, replacement, modification or other means acceptable to Tenix.
- 5.5.3** If the Supplier fails to correct any defects and failures of which it has been notified by Tenix, within the time specified in the notice (which shall not be unreasonable), Tenix shall have the right to rectify the Goods itself or have the rectification undertaken by a third party. All costs so incurred shall be a debt due and payable by the Supplier to Tenix, and may be deducted from monies which may otherwise be owing to the Supplier.
- 6 DELIVERY AND INSTALLATION**
- 6.1** Unless otherwise specified in the Purchase Order, the Goods shall be delivered FOT (Free on Transport), adequately packaged and protected to ensure safe delivery to the delivery point and by the delivery date(s) specified in the Purchase Order Form. The Goods shall be accompanied by a delivery docket which shall be signed by a duly authorised representative of Tenix at the point of delivery.
- 6.2** The Goods shall become the property of Tenix upon delivery of the Goods to Tenix, as evidenced by the signature on the delivery docket by the duly authorised representative of Tenix. Notwithstanding that Tenix has taken delivery of the Goods, the Supplier shall retain responsibility for any loss or damage to the Goods which may have occurred prior to delivery, and for any non-compliance of the Goods with the requirements of the Purchase Order.
- 6.3** The Supplier shall take all reasonable steps to minimise and prevent any delay to the delivery of the Goods. Tenix may grant an extension of time to the nominated delivery date provided:
- (i) the delay is caused by any reason completely beyond the control of the Supplier, including acts of prevention of Tenix, industrial disputes, war, riot, fire, storm or flood, and
 - (ii) the Supplier has notified Tenix in writing prior to the delivery date, and within fourteen (14) days of the delay occurring of its claim for an extension of time. Tenix shall not be liable to grant any extension of time claim that is not lodged in writing with Tenix in accordance with Paragraph (i) above.
- 6.4** If the Supplier fails to deliver the Goods by the specified delivery date(s), Tenix shall be entitled to terminate the Purchase Order for default, either in whole or in part, in accordance with the provisions of Clause 8.2 or deduct from monies due to the Supplier a fair and reasonable

- sum as general damages, having regard to the period of delay.
- 6.5 Where the Supplier is required to supply Goods which are or may be hazardous or dangerous to persons or property, the Supplier shall, at the time of delivery of such Goods (or sooner if requested by Tenix), provide Tenix with relevant and appropriately detailed Material Safety Data Sheets.
- 7 **VARIATIONS**
- 7.1 Tenix may vary the work under the Purchase Order and the Supplier shall carry out any such variation as directed in writing by Tenix. The Supplier's price (addition or reduction) for any variation and any effect on the delivery date(s) of the Goods shall preferably be agreed between Tenix and Supplier prior to the Supplier carrying out any such variation. If agreement is not reached, Tenix shall determine the price for the variation and its effect on the delivery date(s) of the Goods.
- 7.2 The Supplier shall not vary the Purchase Order except as directed and approved by Tenix in writing. Any direction to vary the Purchase Order by Tenix shall only be accepted as valid if confirmed in writing by Tenix. No variation shall invalidate the Purchase Order.
- 8 **SUSPENSION / TERMINATION**
- 8.1 **Suspension**
Tenix may, at any time by written notice, suspend all or part of the Purchase Order for any reason whatsoever. Upon receipt of a notice of suspension, the Supplier shall cease work in accordance with the directions of the notice. The Supplier shall recommence the work under the Purchase Order within forty eight (48) hours of being directed to do so by Tenix. In the event of suspension of the Purchase Order, the Supplier shall be entitled to payment by Tenix for any reasonable costs it may incur as a result of any such suspension.
- 8.2 **Termination by Default**
In the event of a substantial breach by the Supplier of any of the terms and conditions of the Purchase Order, which in the opinion of Tenix may significantly delay the completion of the Purchase Order, and which is not remedied within seven (7) days of Tenix notifying the Supplier in writing of any such breach, Tenix may forthwith, by written notice to the Supplier, terminate the Purchase Order in whole or part.
- 8.3 **Termination for Insolvency**
If, in the opinion of Tenix, the Supplier is unable to effectively perform its obligations under the Purchase Order due to insolvency, bankruptcy or related reasons, Tenix shall be entitled to terminate the Purchase Order, by written notice to the Supplier.
- 8.4 **Termination at Tenix's Option**
Notwithstanding any other provisions of the Purchase order, Tenix may at any time, terminate the Purchase Order upon giving written notice to the Supplier. In the event of termination under this Clause 8.4 and provided the Supplier is not in default, Tenix shall pay the Supplier its reasonable costs for the work carried out prior to termination.
- 8.5 **Suppliers Rights and Obligations on Termination**
In the event of insolvency of the Supplier or its default under Clause 8.2, Tenix shall immediately suspend any further payment to the Supplier. Upon termination of the Purchase Order, any additional costs incurred by Tenix arising from the Supplier's default or insolvency, in excess of that which Tenix would have paid under the Purchase Order, shall be a debt due and payable by the Supplier to Tenix.
- 9 **PRICE AND PAYMENT**
- 9.1 Unless otherwise stated in the Purchase Order, prices shall be fixed and not subject to any variation, including but not limited to variations in the cost of labour, material or exchange rates.
- 9.2 The Supplier shall be responsible for the payment of all relevant Australian (Federal, State and Local Government) and overseas taxes (including GST as detailed in Clause 9.4), duties and charges payable with respect to the Goods. The Purchase Order price shall be deemed to be inclusive of all such taxes, duties and charges.
- 9.3 Unless otherwise specified in the Purchase Order, invoices for payment shall be submitted to Tenix for payment following delivery of the Goods. Payment of the correct amount shall be made by Tenix only against the Supplier's invoice referencing Tenix's valid purchaser order number for the Goods concerned and then no later than thirty (30) days from the end of the month in which such invoice is received.
- 9.4 (i) In this Clause 9.4, "GST", "input tax credit", "supply" and "tax invoice" have the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999.
(ii) Subject to this clause, the price for a supply includes any GST payable in respect of the supply.
(iii) The parties agree to provide tax invoices and other documentation necessary to ensure that any input tax credit for GST applicable to the supply can be claimed.
(iv) No amount is payable for any supply made on or after 1 July, 2000 unless a tax invoice is provided for the supply except where the supplier is exempted from issuing a tax invoice.
- 10 **DISPUTES**
- 10.1 Disputes or differences arising between Tenix and the Supplier shall preferably be settled quickly and by negotiation.
- 10.2 In the event of any unresolved dispute between Tenix and the Supplier, the Supplier shall ensure that the progress of the work under the Purchase Order is continued without any effect on the specified delivery date.
- 10.3 The preferred method of determination of unresolved disputes shall be by amicable agreement at the senior management level of Tenix and the Supplier.
- 10.4 Failing such agreement, the dispute shall be resolved by the determination of an Arbitrator agreed to by both parties. If the parties fail to agree on the identity of the Arbitrator, the Arbitrator shall be nominated by the chairperson of the Institute of Arbitrators & Mediators Australia (Victorian Chapter). In any arbitration, the parties shall be entitled to be legally represented.
- 11 **APPLICABLE LAW**
Unless otherwise specified, the Purchase Order shall be governed and construed in accordance with the laws of Victoria and the Commonwealth and Tenix and the Supplier shall submit to the jurisdiction of the courts thereof.