

# Sinosteel Midwest Corporation Limited (SMC)

## Purchase Order Terms & Conditions

### 1.0 Definitions

**Authorised Person** means SMC's nominated authorised person as defined in this Purchase Order.

**Defective** means Goods and/or Services (or any aspect of them) which do not comply with the terms and conditions of this Purchase Order, including the Warranties or which are damaged, deficient, faulty, inadequate or incomplete.

**Delivery Date(s)** means the date(s) specified in this Purchase Order.

**Delivery Point** means the address or site nominated by SMC in the "Delivery" section of this Purchase Order as the place for delivery of the Goods or provision of the Services.

**Formal Contract** means a long form umbrella contract between SMC and the Supplier for the supply of the Goods and/or Services over a specified period of time.

**Goods** means the goods, if any, specified in the "Item Description" section of this Purchase Order.

**Nett 30 days** means 30 days from the end of the month in which an invoice is received.

**Purchase Order** means this purchase order for Goods and/or Services between SMC and the Supplier containing amongst other things, a description of the Goods and/or Services.

**Price** means the sum in the "Order Total" section of this Purchase Order.

**Services** means the services, if any, specified in the "Item Description" section of this Purchase Order to be provided by the Supplier including all deliverables, implied deliverables and technical materials.

**SMC** means Sinosteel Midwest Corporation Limited.

**Supplier** means the person, firm or corporation specified in the "Supplier Details" section of this Purchase Order.

**Warranty Period** means the period of 12 months commencing on the date the Goods are delivered to the Delivery Point and/or 12 months from the date on which the Services are completed.

### 2.0 Supply of Goods and/or Services

- 2.1 In consideration of payment of the Price by SMC to the Supplier, the Supplier must supply to SMC the Goods and/or Services in accordance with the terms and conditions of this Purchase Order.
- 2.2 Subject to clause 2.4, this Purchase Order constitutes the entire agreement between the parties and supersedes all previous negotiations and communications.
- 2.3 This Purchase Order may only be varied by written agreement between the parties signed by the Authorised Person.
- 2.4 Where the parties have entered into a Formal Contract in respect to the provision of the Goods and/or Services, the terms and conditions of the Formal Contract will supersede and take precedence over the terms and conditions of this Purchase Order.

### 3.0 Acceptance of Orders

- 3.1 The Supplier's acceptance of this Purchase Order will be deemed to be effected and evidenced by a written acceptance, a verbal acceptance, by conduct or by performance and upon acceptance, the Supplier agrees to be bound by the terms of this Purchase Order.
- 3.2 Any qualification to the Supplier's acceptance shall not be of any force or effect UNLESS agreed to in writing by SMC as a variation to this Purchase Order or if the qualification is the provision by the Supplier of a warranty that exceeds the requirements provided under this Purchase Order.

### 4.0 Price

- 4.1 SMC must pay the Supplier the Price for the supply of the Goods and/or Services.
- 4.2 The Price stated in this Purchase Order is fixed and may only be varied in accordance with Clause 2.3.
- 4.3 Unless otherwise stated in this Purchase Order, the Price includes all costs of customary packaging, loading, transport and delivery to Delivery Point and any costs associated with quality testing, preparation of documentation, provision of certification and all other costs associated with the Goods and/or Services up to and including delivery to the Delivery Point and the costs of any items used or supplied in the performance of the Services.
- 4.4 Prices stated for hired Goods shall be deemed to include the cost for return of the Goods to the Supplier from the Delivery Point.
- 4.5 All Prices in this Purchase Order are to be in Australian Dollars, unless otherwise specified clearly in writing.

### 5.0 Delivery

- 5.1 All Goods must be delivered by the Supplier to the Delivery Point, unless the Supplier is otherwise notified in writing by SMC. Risk in the Goods will remain with the Supplier until the Goods have been delivered to the Delivery Point and accepted by SMC under the terms of this Purchase Order.
- 5.2 All necessary documentation, results of quality testing and certification must be supplied to SMC on or prior to the Delivery Date(s). SMC will not be liable to make payment hereof unless delivery has occurred and delivery shall not have occurred until all documents, results and certificates have been received by SMC.
- 5.3 The Supplier must ensure and warrant that all such documents, results of quality testing and certificates are correct, valid and in good order.

### 6.0 Time of Delivery

- 6.1 The Supplier must supply the Goods and/or Services in accordance with the terms of the Purchase Order by the Delivery Date(s).
- 6.2 Should it become apparent to the Supplier that the Delivery Date(s) will not be met, the Supplier is required to immediately notify SMC of when delivery will occur.
- 6.3 Irrespective of notification under clause 6.2, if delivery is not effected by the Delivery Date(s) then SMC will have the right to cancel this Purchase Order without prejudice to its rights of action for breach of contract against the Supplier.

### 7.0 Invoice and Payment

- 7.1 The Supplier's invoice must clearly specify the Purchase Order to which it relates and all supporting and substantiating documentation considered necessary by SMC must be submitted with the invoice.
- 7.2 SMC will make payment within Nett 30 days or as otherwise stipulated in this Purchase Order.
- 7.3 SMC may reduce any payment due to the Supplier under this Purchase Order by any amount for which the Supplier is liable to SMC, including costs, charges, damages and expenses. This does not limit SMC's right to recover these amounts in other ways.
- 7.4 In the event of a dispute as to amount of invoice, SMC will not be required to make payment of the disputed amount until such dispute is resolved. Any undisputed portion of an invoice must be paid under the terms of this Purchase Order.

### 8.0 Force Majeure

- 8.1 Delays or failure to perform by either party will not constitute default hereunder nor give rise to any claim should such delay or failure be caused by events or reasons outside the control ("Force Majeure") of the party affected, provided that, the party affected immediately notifies the other in writing of the event of Force Majeure, its estimated duration and the steps being taken to alleviate the same.
- 8.2 The party whose performance is delayed or prevented by Force Majeure must use its best efforts to remedy the Force Majeure, minimise the delay and mitigate the effects of the Force Majeure event.
- 8.3 All additional costs and expenses incurred by the Supplier due to the Force Majeure must be borne by the Supplier.
- 8.4 Subject to Clause 9.1(c) below:
  - (a) the Delivery Date(s) will be extended by the duration of any period of Force Majeure, as such period is determined by SMC; and
  - (b) SMC holds the right to specify a maximum time of such extension, after which it may cancel the supply of the Goods and/or Services.

### 9.0 Termination

- 9.1 SMC may cancel this Purchase Order (without prejudice to any rights that SMC may have under this Purchase Order or otherwise) in the event that:
  - (a) The Supplier becomes insolvent or if insolvency, receivership or bankruptcy proceedings are commenced in respect of the Supplier;
  - (b) The Supplier defaults in the performance of this Purchase Order; or
  - (c) There exists a period of Force Majeure affecting performance of the Supplier for 14 days or such longer period as may have been specified by SMC under Clause 8.4 above.
- 9.2 SMC may cancel this Purchase Order at any time for any reason whatsoever, and in such event SMC must pay the Supplier for all costs reasonably incurred by the Supplier up to the time of cancellation, including for all Goods and/or Services properly supplied and completed. The Supplier must provide all necessary supporting and substantiating documentation to evidence the costs incurred. Any Goods and/or Services paid for by SMC under this clause 9.2, whether completed or not, will become the property of SMC on receipt of payment by Supplier.

### 10.0 Title

- 10.1 Unless Goods are supplied by way of hire, the Supplier warrants that it has and will convey good title to the Goods free from any encumbrances or liens.
- 10.2 Title to all Goods, all supporting documentation and any ancillary packaging will pass to SMC either upon delivery of the Goods to SMC or payment by SMC, whichever is earlier.

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10.3 Transfer of the title will not affect the rights of SMC as stated in this Purchase Order.

### 11.0 Indemnity

11.1 The Supplier will be solely liable for and must indemnify and hold harmless SMC, and all its Directors, Officers, Employees and Agents against any liability, loss, damages, claim, suit, action, demand, expense or proceedings of any nature whatsoever whether arising under any statute, at equity or common law in respect of:

- (a) loss or destruction of, or injury or damage to, or loss of use of any property, real and personal;
- (b) any personal injury to or death of any person whomsoever;
- (c) any claim for the infringement of any proprietary rights (including, but not limited to copyright, trademark, patents, designs or other intellectual property);

arising out of or in the course of or caused by or contributed to by the execution of or performance of the obligations expressed in or implied by this Purchase Order or as a result of the Goods and/or Services failing to conform to specification, description or drawings or not being fit for the purpose for which they were intended or any activity directly or indirectly associated therewith whether or not the same is due to the negligence, omission or default of the Supplier, his servants or agents.

### 12.0 Insurance

12.1 The Supplier must obtain and maintain insurance for the Goods and/or Services for full replacement value including but not restricted to the cost of packaging and packing (including any container), loading, transport, customs and other duties and clearance and delivery charges connected with the delivery of the Goods.

12.2 The Supplier is responsible for the payment of any excess payable in respect of any claim and such excess payment will not be recoverable from SMC.

12.3 In respect to the supply of Services, the Supplier must obtain professional indemnity insurance with a limit of indemnity of not less than \$10 million per occurrence and in the aggregate.

12.4 Where the Supplier is required to enter an SMC site or premises for the purposes of providing the Goods and/or Services, the Supplier must before entering, have in place:

- (a) Workers Compensation insurance with a limit of indemnity of not less than \$50 million per occurrence;
- (b) Public & Products Liability insurance with a limit of indemnity of not less than \$20 million per occurrence and in the aggregate; and
- (c) Comprehensive motor vehicle insurance with a limit of indemnity of not less than \$30 million per occurrence and in the aggregate, and compulsory 3<sup>rd</sup> party motor vehicle insurance for all Supplier vehicles used on an SMC site or premises. All operators of the Supplier vehicles must hold applicable licences as required under Australian Law and such Supplier vehicles are to be registered and appropriately maintained.

### 13.0 Inspection

13.1 In addition to any testing and certification required under Clause 5, SMC may, prior to delivery and upon providing reasonable notice, enter onto the Supplier's premises to make inspections and tests as may be necessary to ensure that the Goods and/or Services (if relevant) are in compliance with this Purchase Order. The Supplier must render all necessary assistance with such inspections and tests and any such inspection or test will not relieve the Supplier from any of its obligations under this Purchase Order.

13.2 The Supplier is required, at its own cost and expense, to correct any defects or faults and to take all and any necessary corrective action to the satisfaction of SMC.

### 14.0 Warranty

14.1 The Supplier warrants that the Goods and/or Services comply with the description specified in the Purchase Order.

14.2 The Goods and/or Services must be fit for purpose for which Goods and/or Services of the same kind are commonly supplied or bought and for any other purpose SMC specifies.

14.3 The Goods must be of merchantable quality, conform to manufacturers specifications and free of defects in materials, workmanship and design.

14.4 Unless specifically agreed in writing, the Supplier also warrants that the Goods will be new and made from first class materials and by first class workmanship.

14.5 If any manufacturing drawings, specifications or description of the Goods are supplied to the Supplier by SMC, the Supplier warrants that the Goods will be rendered and supplied strictly in accordance with such drawings, specifications or description.

14.6 The Supplier must transfer/assign to SMC any manufacturer's warranties which may be applicable to any Goods, materials or components that will be supplied to SMC in accordance with this Purchase Order.

14.7 The Supplier warrants that the Services will be undertaken by persons who are appropriately licensed, qualified and/or trained to provide the Services and the results of the Services will be of high quality and workmanship and otherwise satisfactory, including without limitation, that the Services will be to quality standards in accordance with any relevant Australian or international standards.

14.8 Without limiting clause 15, if within the Warranty Period the:

- (a) Goods do not comply with this clause 14 or are found to be Defective, at SMC's discretion, the Supplier must either replace or repair and make good the supplied Goods at the Delivery Point at the Supplier's cost.
- (b) Services do not comply with this clause 14 or are found to be Defective, at SMC's discretion, the Supplier must re-perform and make good the Services at the Supplier's cost.

14.9 Should SMC notify the Supplier that it requires defects to be remedied in accordance with clause 14.8 and the Supplier fails to do so within 15 days from such notification, SMC may subsequently take whatever actions are necessary to remedy the defects and the Supplier must pay to SMC all costs incurred in taking such action. SMC holds the right to recover such costs as a due debt from the Supplier, including the right to offset such costs from the Price of the Goods and/or Services.

### 15.0 Rejection

15.1 If the Goods and/or Services are, in SMC's opinion, Defective and do not comply with Clause 14 of this Purchase Order, then SMC may, by notifying the Supplier within 14 days of delivery, reject the Goods and/or Services and cancel this Purchase Order. This right remains irrespective of whether the Supplier believes the Goods and/or Services may be repaired or the quality issues remedied.

15.2 Upon notification of rejection by SMC, the Supplier must:

- (a) collect any rejected Goods from the Delivery Point within 10 days from the date of notification at the Supplier's cost; and
- (b) refund any monies paid by SMC to the Supplier for the rejected Goods and/or Services within 30 days from the date of notification (any debt owed to SMC under this clause 15.2(b) which remains outstanding following the 30 day period will incur interest at the prevailing cash rate set by the Reserve Bank of Australia).

15.3 Risk and responsibility for the rejected Goods will revert to the Supplier on and from the date being the earlier of 10 days from notification of rejection or upon collection of the rejected Goods by the Supplier.

15.4 Title in the rejected Goods will revert to the Supplier upon SMC's receipt of any refund owed in accordance with clause 15.2(b).

15.5 Any rejection under this Clause will be without prejudice to any rights of action of SMC against the Supplier for breach of contract.

### 16.0 GST

16.1 Unless otherwise stated, the Price or any other amounts payable by SMC to the Supplier, is exclusive of GST.

16.2 If a supply under this Purchase Order is subject to GST, SMC will pay to the Supplier an additional amount equal to the amount of the Price multiplied by the prevailing GST rate.

16.3 The additional amount under clause 16.2 is payable at the same time as the Price is to be paid. However, the GST need not be paid until the Supplier provides a Tax Invoice to SMC.

16.4 If the amount of GST payable in accordance with clause 16.3 is found to differ from the amount paid in relation to a supply of Goods and/or Services:

- (a) if the amount of GST paid is more than is required under the GST law the Supplier shall refund the excess amount to SMC;
- (b) if the amount of GST paid is less than is required under the GST law, SMC shall pay the Supplier the difference.

### 17.0 Set Off

17.1 In the event of any claim arising in favour of SMC against the Supplier, whether for Defective Goods and/or Services, short delivery or any other claim whatsoever, SMC is entitled to withhold payment in respect of payment for other Goods and/or Services received from the Supplier to the amount of such claim and by way of set-off in respect of the claim.

17.2 In no circumstances will the Supplier make a set-off against SMC.

### 18.0 Future Dealing

18.1 The terms specified in this Purchase Order will be incorporated by implication and conduct into all future agreements by SMC with the Supplier for the supply of Goods and/or Services, unless such transaction/s are specifically otherwise documented in writing between the parties.

### 19.0 Confidentiality

19.1 The Supplier must treat all information in connection with this Purchase Order as confidential and must not disclose the information to any third party.

### 20.0 Assignment

20.1 The Supplier must not assign, delegate, subcontract or sublet its rights or obligations under this Purchase Order (or any part thereof) without the prior written consent of SMC.

### 21.0 Waiver or Amendment

21.1 Waiver or amendment of any provision of this Purchase Order will not be of any force or effect, unless it is clearly stated to be a waiver or amendment and is in writing, and signed by both parties.

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21.2 A waiver by either party of a breach of any provision of this Purchase Order will not constitute a waiver of any other breach of such provision or any other provision.

### **22.0 Service of Notice**

22.1 Service of any notice will be deemed to be effected, if sent to the Supplier's place of business stated in this Purchase Order or registered office.

### **23.0 Disputes**

23.1 In the event of a dispute not resolved by discussions between the parties, then the matter will be resolved by an arbitrator acting as an expert appointed by the parties or by the President of the Institute of Arbitrators Australia. Each party must accept the Arbitrator's determination on that issue as final and binding. The provisions of the Commercial Arbitration Act 1985 do not apply in respect of such determination.

### **24.0 Governing Law**

24.1 This Purchase Order is to be construed and interpreted in accordance with the laws of Western Australia.

### **25.0 Compliance with Laws and SMC Policies**

25.1 The Supplier must:

- (a) comply with the requirements of all laws (Federal, State or municipal) in any way affecting the supply of the Goods and/or Services to SMC;
- (b) comply with SMC's policies (including SMC's Occupational Health & Safety policies) when entering onto an SMC site; and
- (c) obtain all necessary permits, licences or approvals as may be necessary in respect to such supply of Goods and/or Services to SMC.

### **26.0 General**

26.1 A day is defined as 24 hours and a week as 7 days. Where, by virtue of the terms of this Purchase Order, the day on or by which any act, matter or thing is to be done is a Saturday, Sunday or public holiday ("Holiday") it may be done the next succeeding day which is not a Holiday, except in the event of specifically indicated urgent requirements or emergency, in which case the act, matter or thing must be done in accordance with SMC's specific directions.