

**CAPRAL LIMITED**  
**CONDITIONS OF PURCHASE**

The following terms and conditions (**Conditions**) apply to all purchase orders (**orders**) given by Capral Limited (ABN 78 004 213 692) (**Capral**) to the supplier/vendor named on the order (**Supplier**) for the supply of the goods and/or services described on the order (**goods and/or services**).

**1. GENERAL**

- (a) An order constitutes an offer to purchase the goods and/or services from the Supplier on the Conditions. If the Supplier who purports to accept the order does so subject to conditions it shall be deemed to have waived any conditions which are inconsistent with the Conditions.
- (b) In the Conditions: **contract** means an order when accepted by the Supplier, the Conditions and any other terms and conditions agreed in writing by Capral and the Supplier; **Damages** means liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis and whether incurred or awarded against a party); **GST** means goods and services tax imposed under A New Tax System (Goods and Services Tax) Act 1999, and any regulation made under that Act (as amended or replaced); and **toolage** means any dies, tools and other equipment supplied or paid for by Capral in relation to the goods and/or services (including all intellectual property in or relating to the same).
- (c) Capral reserves the right to vary the Conditions at any time upon the provision of 7 days written notice. If the Supplier does not accept these changes, it must notify Capral in writing within 7 days of receipt of Capral's notice.
- (d) The contract constitutes the entire agreement between the parties as to its subject matter and may only be amended as mutually agreed in writing signed by both parties.
- (e) If there is any inconsistency between any of the terms of a contract, the order of priority for the purpose of construction is:
  - (i) any other additional terms and conditions agreed in writing by the parties;
  - (ii) the order;
  - (iii) the Conditions.
- (f) Where the Supplier is providing services to Capral the relationship between Capral and the Supplier is that of principal and independent contractor and not employer and employee.
- (g) The Supplier acknowledges that it has read and has had a reasonable opportunity to negotiate and agree changes to these Conditions and accepts that they are fair and reasonable.

**2. PRICES AND GST**

Any prices specified in the contract are fixed, firm and not subject to escalation and include all disbursements (for example freight, cartage, insurance, packing, use or supply of pallets and containers). Unless otherwise specified in the contract, no increase in prices will be allowed unless agreed in writing in advance by the parties. All goods and/or services will be charged at these prices plus any applicable GST.

**3. PAYMENTS AND INVOICES**

- (a) Subject to Condition 3(b), unless otherwise agreed in writing with the Supplier, all valid tax invoices for the goods and/or services will be paid within 45 days of the end of the month in which (i) delivery of the goods and/or performance of the services is completed or (ii) the invoice for the same is received by Capral, whichever is the later.
- (b) Unless agreed in writing by the parties, the goods and/or services may not be delivered by instalments and the Supplier shall not be entitled to progress payments. If it is agreed in writing that the delivery of the goods and/or services may be made by instalments or that progress payments may be claimed by the Supplier in respect of the goods and/or services:
  - (i) the Supplier may invoice each instalment or progress payment separately and each such invoice will be paid within 45 days of the end of the month in which (i) delivery of the relevant goods and/or performance of the relevant services is completed, or (ii) the relevant invoice is received by Capral, whichever is the later; and
  - (ii) a failure by the Supplier to deliver one instalment or to complete any stage or part of the supply of the goods and/or performance of the services on time shall entitle Capral to terminate the contract (either as to the whole or only as to the undelivered or unperformed part).
- (c) Unless otherwise specified in the contract or requested by Capral, all invoices must be sent to any of the following:
  - Email: [accounts.payable@capral.com.au](mailto:accounts.payable@capral.com.au)
  - Fax to (07) 3816 7108
  
  - Mail to PO Box 106, Booval Fair, QLD 4304
- (d) Capral may elect to set off money due to the Supplier against any money owed by the Supplier to Capral under any contract.

**4. TOOLAGE**

- (a) All toolage shall remain the property of Capral and shall be returned to Capral on completion of the supply of the goods and/or services, unless otherwise agreed by Capral in writing.
- (b) Any toolage loaned to the Supplier by Capral is loaned as an aid to

manufacture of the goods and/or supply of the services and Capral accepts no responsibility as to the accuracy or suitability or otherwise of such toolage.

- (c) The Supplier shall keep in good order and repair any toolage referred to in Conditions 4(a) or 4(b) and in the event of loss, destruction or damage of such toolage shall, without prejudice to any other right or remedy available to Capral in respect of the same, on demand by Capral (and at Capral's option) either replace or pay to Capral the actual cost incurred by Capral in replacing or repairing such toolage.
- (d) No toolage may be used by the Supplier otherwise than for the manufacture of the goods and/or supply of the services to Capral.
- (e) Capral reserves all intellectual property rights in and associated with any toolage (to the extent that it is entitled to those intellectual property rights) and the Supplier shall not copy, modify or otherwise use any toolage except as expressly permitted by the contract.

**5. DELIVERY**

- (a) The goods and/or services shall be delivered and/or performed in the manner and by the date specified in the contract and time shall be of the essence.
- (b) All invoices, packing slips, delivery dockets and correspondence must show the order number. Failure to do so may result in delays in processing such documents, in inspection and acceptance of goods and/or services and in payment, and shall entitle Capral in such circumstances to claim an extension of time for attending to the same.
- (c) The goods and/or services shall be delivered free at the destination indicated on the order, unless otherwise specified in the contract.
- (d) Capral reserves the right to refuse goods and/or services delivered in excess of the quantity ordered or not in accordance with any delivery schedule referred to in the contract.
- (e) All deliveries must be accompanied by a delivery docket and receipt of goods and/or services must be acknowledged in writing by an authorised representative of Capral. The Supplier will keep copy receipts.

**6. PACKAGING**

All goods must be suitably packed or otherwise prepared for transportation in such a way as to avoid damage, to comply with carrier's requirements and to secure minimum transportation costs and insurance rates.

**7. INSPECTION AND TITLE**

- (a) All goods and/or services delivered to Capral are subject to Capral's inspection and the signing of a delivery docket does not constitute acceptance of them.
- (b) All goods and/or services shall, notwithstanding acceptance of delivery or the payment by Capral of the whole or any part of the purchase price, be subject to inspection and testing by Capral after arrival and unpacking at the ultimate destination. If goods are to be incorporated into any plant or premises such inspection and testing may be carried out after installation or incorporation and under operating conditions. If the goods and/or services are found to be unsatisfactory, defective or of inferior quality or workmanship or not in accordance with the contract, Capral may, without prejudice to any other right or remedy available to it in respect of the same, reject the goods and/or services and return the same to the Supplier at the Supplier's cost, whereupon the Supplier shall at Capral's option either reimburse Capral for any amount paid by Capral to the Supplier, replace or repair the goods or re-perform the services, or supply equivalent goods and/or services. In addition the Supplier shall reimburse Capral for the cost incurred by Capral in returning the goods and/or services.
- (c) Capral reserves the right to inspect, and where practicable test, the goods whilst they are in the course of being produced or installed and may for this purpose enter upon the premises of the Supplier from time to time during normal business hours. Capral may reject any work performed or being performed that does not confirm to the contract, whereupon the work rejected shall be redone at no additional cost to Capral. Any such inspection shall not relieve the Supplier of its obligations under the contract.
- (d) Except in respect of goods and/or services rejected by Capral where title does not pass, or as otherwise provided in the contract, title to goods and/or services shall pass to Capral on payment.
- (e) If any part payment has been made by Capral in respect of goods and/or services and the same have been accepted by Capral (whether delivered or not) title to the same shall pass to Capral, but in the case of undelivered goods and/or services the risk shall remain with the Supplier.

**8. WARRANTIES**

The Supplier warrants and represents that:

- (a) the goods and/or services shall comply with specification and with any examples previously supplied by the Supplier and otherwise be in accordance with the contract and applicable laws, regulations, Australian standards, industry codes of conduct and Capral

policies;

- (b) the goods shall be of merchantable quality and free of defects in materials or workmanship;
- (c) the goods and/or services shall be reasonably fit for the purpose or results for which they are required by Capral and shall be of such a nature and quality that they might reasonably be expected to achieve that result;
- (d) the services shall be rendered with due care and skill and any materials supplied in connection with those services will be reasonably fit for the purpose for which they are supplied;
- (e) the goods shall, unless otherwise specified in the contract, be new; and
- (f) it has a right to supply the goods and/or services and they shall be free from all charges, liens or encumbrances whatsoever.

The foregoing are in addition to any express warranties or conditions given by the Supplier and any warranties or conditions implied by law.

#### **9. CONFIDENTIAL INFORMATION**

Any specifications, engineering and other data, software, drawings, sketches, blueprints and other documents provided by Capral (or any third party at the request of Capral) to the Supplier for the purposes of the order or produced by the Supplier specifically for Capral for the purpose of or in the course of meeting the order, belong to Capral and are confidential. The Supplier shall:

- (a) not use or copy them for any purpose other than the fulfilment of the contract;
- (b) not disclose them to any other person without the prior written consent of Capral; and
- (c) return or hand the same (including, if so demanded by Capral, all copies) to Capral on completion of the delivery of the goods and/or performance of the services.

#### **10. INTELLECTUAL PROPERTY**

The Supplier warrants and represents that the manufacture, supply or use of the goods and/or the services will not infringe upon the intellectual property rights of any third party (whether copyright, registered design, patent, trade mark, confidential information or otherwise). The Supplier shall indemnify and keep Capral indemnified from and against any loss, liability, claim, suit and costs arising from a breach of this warranty. This Condition does not apply to intellectual property owned or licensed by Capral and supplied to the Supplier for the purposes of the order.

#### **11. NON ASSIGNMENT**

The contract may not be assigned, mortgaged, charged or dealt with in any way. Without limiting this, the Supplier may not, except with the prior written consent of Capral, subcontract the whole or any part of its obligation under the contract.

#### **12. CANCELLATION**

- (a) Capral may, at any time prior to the delivery of the goods and/or full performance of the services, cancel all or part of the contract.
- (b) Without limiting Condition 12(a), should default be made by the Supplier in complying with the contract which it fails to remedy within 7 days of written notice from Capral, or should the Supplier be or become insolvent, Capral may, without any liability to the Supplier, immediately terminate the contract by notice in writing to the Supplier, without prejudice to any other right or remedy of Capral under or in respect of the contract. In this paragraph **insolvent** means and includes the situation where the Supplier ceases or threatens to cease to carry on its business or where execution has been levied upon the whole or any part of its assets, and in respect of a Supplier who is an individual where he has committed an act of bankruptcy or is or becomes bankrupt or subject to any deed of assignment, arrangement or composition with his creditors in accordance with the bankruptcy laws, and in respect of a Supplier which is a corporation, where the Supplier is the subject of the presentation of a petition or the making of an order or the proposing or passing of a resolution for its winding up, or has a receiver, receiver and manager, liquidator, provisional liquidator or insolvency administrator appointed in respect of itself or all or any part of its assets, or has a compromise or arrangement proposed between itself and its creditors or any class of them.
- (c) Where a cancellation is not a termination of contract pursuant to Condition 12(b), Capral shall:
  - (i) give written notice to the Supplier whereupon the Supplier shall cease all work in relation to the goods and/or services;
  - (ii) provided the Supplier is not in default under the contract, be liable, where goods are not yet completed for delivery or services not yet fully performed, only for:
    - (1) costs actually incurred by the Supplier up to the date of cancellation;
    - (2) that part of the profit element of the price for the goods and/or services which is the same fraction of the total profit element as the stage reached in the completion of the goods and/or services at the date of cancellation is of the completion of the goods and/or services as a whole; and
    - (3) such winding down or disestablishment expenses as shall be agreed between Capral and the Supplier; and
  - (iii) provided the Supplier is not in default under the contract, be

liable, where the goods are completed for delivery, for the cost thereof as specified in the contract only where the Supplier is not able readily to dispose of the goods elsewhere.

If there is any dispute regarding the amount of Capral's liability under this Condition 12(c), such amount shall be determined by Capral's auditors for the time being, who shall act as experts and not as arbitrators, and whose decision shall be final and binding on the parties. Upon payment of any such amounts, title to any materials or goods, whether completed or not, intended for the fulfilment of the contract shall pass to Capral.

#### **13. SAFETY PRECAUTIONS**

If any work necessary for the purposes of the contract is to be performed on Capral premises, the Supplier shall at all times (a) exercise all necessary precautions for the safety of persons who might be affected by such work, and without limiting this, (b) duly comply with the requirements of any applicable statute, regulation, ordinance or by-law, and of any authority or instrumentality having jurisdiction in the matter, and with any direction that may from time to time be given by any supervisor or other responsible employee of Capral.

#### **14. INDEMNITY & INSURANCE**

- (a) The Supplier must defend and indemnify Capral and its personnel from and against all Damages suffered or incurred by any of those indemnified to the extent that those Damages are suffered or incurred, whether directly or indirectly, as a result of:
  - (i) any breach of the contract by the Supplier;
  - (ii) any claim, demand, suit, action or proceeding by a third party arising from an act or omission of the Supplier or its personnel in connection with the contract whether negligent or not, including claims in respect of personal injury or death or loss of or damage to Capral's or a third party's physical property.
- (b) The Supplier must take out and maintain valid and enforceable insurance policies to adequately cover any liability to Capral under a contract. If requested by Capral, the Supplier must provide Capral with certificates from the Supplier's insurers certifying that the Supplier has insurance as required by this Condition 14.

#### **15. TAXATION DEDUCTIONS AND WITHHOLDINGS**

- (a) Where payment for services provided against the contract constitutes a prescribed payment within the meaning of the Income Tax Assessment Act 1936 (as amended or replaced), Capral shall be entitled to deduct from such payment, such amount as is required under that Act unless, prior to payment, the Supplier submits satisfactory proof that it is the holder of the necessary deduction exemption certificate or deduction variation certificate.
- (b) Capral shall be entitled to make such withholdings payable by it in respect of supplies of goods and/or services by the Supplier under the contract as it may from time to time be required to make in accordance with the PAYG system (within the meaning of the Taxation Administration Act 1953), and will not be required to compensate the Supplier (whether by the payment of an additional amount or otherwise) for any such withholding.

#### **16. WAIVER**

Failure by Capral or the Supplier to insist on strict performance of any term, warranty or condition of the contract will not be taken as a waiver of it or any rights that party may have and no waiver will be taken as a waiver of any subsequent breach of any term, warranty or condition.

#### **17. NOTICES**

Any notice to be given under a contract must be sent by email, facsimile or prepaid mail to the other party's email address, facsimile number or address (as notified by that party from time to time).

#### **18. SEVERANCE**

A term or part of a term of a contract that is illegal or unenforceable may be severed from a contract and the remaining terms or parts of the term of a contract continue in force.

#### **19. GOVERNING LAW**

The contract shall be governed and construed with the law of New South Wales and each party submits to the non-exclusive jurisdiction of the courts of that State.

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