

PURCHASE ORDER TERMS AND CONDITIONS GOODS ONLY

Datatel agrees to purchase the Goods from the Supplier and the Supplier agrees to sell the Goods to Datatel.

1. CONTRACT

- 1.1 The Conditions together with the Purchase Order constitute a legally binding contract between DATATEL and the Supplier and set out the terms and conditions of the purchase of the Goods.
- 1.2 The Contract comes into existence on the issue of the Purchase Order, irrespective of whether the Supplier returns a signed copy of the Purchase Order to DATATEL or expressly confirms its agreement of these Conditions.
- 1.3 To the extent the Supplier's terms and conditions are supplied to DATATEL, including with the Goods or as printed on consignment notes or other documents (including quotations), those terms and conditions will be of no legal effect and will not constitute part of the Contract even if any of DATATEL's personnel signs those terms and conditions or annexes the terms and conditions to the Contract.

2. PRECEDENCE

- 2.1 The Purchase Order prevails to the extent of any inconsistency with these Conditions.

3. THE GOODS

- 3.1 The quantity, quality and description of the Goods are as stated in the Purchase Order.
- 3.2 The Supplier must supply the Goods in accordance with, and as specified in, the Contract.

4. TIME FOR PERFORMANCE

- 4.1 Time is of the essence in respect of all obligations of the Supplier under the Contract.
- 4.2 The Supplier must deliver the Goods to the Delivery Address by the Delivery Date.
- 4.3 The Supplier must immediately report to DATATEL any actual or likely delay in delivery of the Goods and its cause. The Supplier must take all reasonable steps to prevent delay.

5. INSPECTION AND SAMPLING

- 5.1 If inspection and testing requirements are specified in the Purchase Order, the Supplier must conduct those tests in strict accordance with the requirements of the Purchase Order.
- 5.2 In addition to any specifications as to testing and inspection in the Purchase Order, the Supplier must ensure that DATATEL has the opportunity to inspect, test, and witness any test of the Goods wherever they may be located. The Supplier must provide or ensure that its suppliers provide unrestricted access to reasonable facilities
- 5.3 The Supplier is not relieved of any of its obligations under the Contract because DATATEL has inspected the Goods or witnessed any testing prior to delivery of the Goods.
- 5.4 DATATEL shall be entitled to reject Goods that do not comply with the Specification.
- 5.5 DATATEL is entitled to request samples of the Goods or components of the Goods in connection with the supply or use of the Goods, which must be supplied by the Supplier at its cost.

6. PACKAGING

- 6.1 The Supplier must:
 - (a) suitably pack the Goods to avoid damage during loading, transit, delivery, unloading or storage;
 - (b) pack and transport the Goods in accordance with any applicable regulations and industry codes; and

- (c) clearly mark all packages of the Goods for delivery and the delivery documents for the Goods with the Contract number and any Purchase Order number and ensure that the delivery documents accompany the Goods to the Delivery Address.

7. DELIVERY

- 7.1 The Supplier must obtain all necessary permits and licenses which must be obtained in Supplier's name and are necessary for Supplier to perform its obligations under the Contract.
- 7.2 The Supplier must arrange for delivery of the Goods to the Delivery Address.
- 7.3 The Supplier must, in delivering the Goods:
 - (a) not interfere with DATATEL's activities or the activities of any third party at the Delivery Address;
 - (b) be aware of and comply with and ensure that its personnel, contractors and agent comply with all applicable laws, site standards, plans and procedures and all lawful directions and orders given by or on behalf of DATATEL at the Delivery Address.

8. TECHNICAL MATERIAL

- 8.1 The Supplier must, without additional cost to DATATEL, supply all required plans, drawings, specifications, manuals, certificates, instructions, fabrication reports and the like in the form and at the times and in the numbers of copies specified in the Purchase Order or otherwise as

- reasonably required by DATATEL.
- 9. PRICE**
- 9.1 The price for the Goods is the price stated in the Purchase Order. Unless otherwise agreed and clearly stated in the Purchase Order the price stated on the Purchase Order excludes GST but includes any other applicable taxes, customs, excise and import duties, tariffs, fees, levies, charges, costs or expenses incurred by the Supplier, including transport, packing and insurance costs.
- 9.2 Unless otherwise agreed and clearly stated in the Purchase Order the Price is fixed and firm and not subject to adjustment due to currency fluctuation or any other reason.
- 10. PAYMENT**
- 10.1 The Supplier must claim payment for the supply of the Goods by submitting to DATATEL invoices monthly. Each such invoice must:
- (a) be a tax invoice;
 - (b) be correctly dated;
 - (c) refer to the Purchase Order;
 - (d) list the particular Goods supplied; and
 - (e) be supported by relevant records to calculate and verify the amount set out in the invoice.
- 10.2 Compliance by the Supplier with clause 10.1 is a condition precedent to the Supplier's entitlement to claim the amount stated in an invoice submitted by the Supplier to DATATEL.
- 10.3 If the Supplier submits an invoice earlier than the time for submission of that invoice set out in these Conditions, the Supplier agrees that the invoice shall not be taken to have been submitted until that time.
- 10.4 Save to the extent provided for in these Conditions, DATATEL shall not be liable to pay for the Goods until the Goods have been supplied in accordance with, and as specified in, the Contract.
- 10.5 DATATEL may, within 7 days of receiving a Supplier invoice, request by written notice that the Supplier provides DATATEL with all additional relevant records to calculate and verify the amount set out in any Supplier invoice, by the time stated in the notice or, whether no time is specified, within 48 hours.
- 10.6 Subject to clause 10.2, DATATEL shall pay the Supplier the amount claimed in an invoice within 30 days of the end of the month in which the invoice was submitted.
- 10.7 If DATATEL disputes any amount claimed in an invoice, DATATEL shall make a determination of the amount payable and provide a payment certificate to the Supplier of its determination within 10 days of the receipt of the invoice. The payment certificate may take any form.
- 10.8 DATATEL shall pay any amounts not in dispute in accordance with clause 10.6.
- 10.9 Without limiting clause 10.7, DATATEL may issue a revised payment certificate at any time correcting any omission or error discovered in any previous payment certificate or modifying any previous payment certificate issued by it, including as a result of the provision of information under clause 10.5.
- 10.10 DATATEL may deduct from moneys due to the Supplier any debt or other monies which are due from the Supplier to DATATEL, whether under the Contract or otherwise.
- 10.11 Payment to the Supplier is on account only and does not constitute approval of the Goods or any other matter or thing in respect of which payment is made.
- 11. TITLE AND RISK**
- 11.1 Risk in the Goods passes to DATATEL upon delivery to the Delivery Address.
- 11.2 Property in the Goods passes to DATATEL upon delivery to the Delivery Address.
- 12. WARRANTIES**
- 12.1 The Supplier represents and warrants that the Goods:
- (a) match the description of the Goods in the Purchase Order;
- (b) if the Supplier gave DATATEL a sample of the Goods before DATATEL issued the Purchase Order, correspond with the sample;
 - (c) strictly comply with the Specifications;
 - (d) are fit for the purpose for which Goods of the same kind are commonly supplied and for any other purpose described in the Purchase Order;
 - (e) are of new and of merchantable quality;
 - (f) are free from all Defects;
 - (g) do not infringe the IP Rights of any third party; and
 - (h) are completely owned by the Supplier and will be supplied to DATATEL free of any third party interests, liens, charges or encumbrances.
- 12.2 The Supplier must immediately rectify or replace at DATATEL's option and at Supplier's sole cost any Defective Goods discovered within 15 months after delivery or 12 months after the Goods are first used or enter into the service for which they are purchased, whichever occurs first.
- 12.3 If DATATEL reasonably considers that it is necessary to immediately rectify or replace Defective Goods then DATATEL is not obliged to give the Supplier an opportunity to rectify or replace such Goods before DATATEL does so or causes a third party to do so. The Supplier must reimburse DATATEL for the full cost of such replacement or rectification.
- 12.4 The Supplier's obligation to replace or rectify Defective Goods is cumulative of other remedies available to DATATEL.
- 12.5 The Supplier must ensure that DATATEL has the full benefit of any manufacturer's warranties that may be applicable to the Goods and the Supplier must pursue any manufacturer's warranties on DATATEL's behalf if DATATEL requests.
- 12.6 If the Supplier has replaced or

- rectified Defective Goods, the rectified or replacement Goods must be subject to the same warranty period as the original Goods, from the date of rectification or replacement.
- 12.7 If DATATEL elects to accept Defective Goods, such election does not bind DATATEL to accept any other Defective Goods and does not affect any of DATATEL's other rights under the Contract in respect of those Replacement Goods.
- 12.8 DATATEL may assign any or all of the above warranties to any of its clients or related companies and the Supplier consents to such assignment.
- 13. LIABILITY AND INDEMNITY**
- 13.1 The Supplier is liable for, indemnifies and will indemnify and keep DATATEL indemnified against all Loss, and hereby releases and will release DATATEL from any Action arising directly or indirectly from any breach of any warranty or obligation of the Supplier under the Contract, except to the extent caused or contributed to by any wrongful act or omission of DATATEL.
- 13.2 Notwithstanding any other provision of the Contract, in no event shall either party be liable to the other in respect of any Consequential Loss arising out of or in connection with this Contract.
- 13.3 The rights and obligations under clauses 12 and 13 survive termination of the Contract.
- 14. CANCELLATION**
- 14.1 In addition to its rights under clause 14, DATATEL may cancel all or any part of the Purchase Order at any time for any reason, in its sole and absolute discretion by written notice of cancellation to the Supplier but:
- (a) DATATEL shall pay for any Goods delivered prior to the cancellation;
 - (b) if Goods have been shipped, but not delivered, at the time of cancellation DATATEL shall either:
 - (i) accept those Goods when delivered, and pay the Price for them; or
 - (ii) return those Goods to the Supplier at DATATEL's expense;
 - (c) if the Goods have not been shipped at the time of cancellation, on receiving the cancellation notice the Supplier must stop manufacturing (or cancel any third party supply of) the Goods in accordance with and to the extent specified in the cancellation notice, and do everything possible to mitigate any costs incurred in relation to the Goods;
 - (d) if clause 14.1(b)(ii) or clause 14.1(c) applies:
 - (i) to the extent that the Goods were manufactured or fabricated in accordance with the Specification, DATATEL shall pay costs reasonably incurred by the Supplier prior to the date of the cancellation which is directly attributable to the placing of the Purchase Order and which the Supplier is not able to recoup in some other way;
 - (ii) the Supplier is not entitled to the Price of those Goods or to any compensation for that cancellation other than as specified in clause 14.1(d)(i); and
 - (iii) the maximum compensation payable under clause 14.1(d)(i) must not exceed the Price of the relevant Goods.

15. DEFAULT AND TERMINATION

15.1 The Contract may be terminated by DATATEL immediately on giving written notice of termination to the Supplier if the Supplier:

- (a) fails to remedy any breach of its obligations under the Contract within 7 days after receiving written notice from DATATEL requiring it to do so;
- (b) is unable to pay its debts when they fall due;
- (c) ceases to hold any licence, qualification, approval, authority or consent required to supply the Goods;
- (d) threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvent administration;
- (e) enters into any negotiations for any arrangement or composition with its creditors;
- (f) being a company, goes into liquidation, whether voluntary or compulsory, or has a receiver or receiver and manager or administrator appointed, or an application is made for the Supplier to be wound up;
- (g) being an individual, has a trustee in bankruptcy appointed;
- (h) ceases or threatens to cease to carry on business; or
- (i) assigns or subcontracts the Contract or any part of the Supplier's obligations under the Contract without the prior written consent of DATATEL,

in which case DATATEL's liability to the Supplier must be limited to payment of the Price for Goods delivered prior to such termination.

15.2 Termination of the Contract does not affect or prejudice any rights of DATATEL which have

accrued prior to the termination. DATATEL's exercise of its rights under this clause does not affect or limit its ability to exercise any other rights under the Contract, at law or in equity.

16. INSURANCE

16.1 The Supplier must for as long as it has obligations outstanding in connection with the supply of the Goods, effect and maintain:

- (a) all insurances specified in the Purchase Order; and
- (b) insurances with the following minimum limits, unless otherwise specified in the Purchase Order:
 - (i) public and product liability: \$20 million;
 - (ii) workers' compensation: as required by applicable Legislative Requirements.

16.2 Compliance by the Supplier with this clause is a condition precedent to the Supplier being entitled to:

- (a) make a claim for payment for the supply of the Goods;
- (b) payment for the supply of the Goods.

17. SECURITY OF PAYMENT

17.1 The parties agree that for the purposes of any adjudication under any security of payment Legislative Requirement in relation to the Contract or the Goods:

- (a) the prescribed appointor shall be the Chairperson from time to time of the Chapter of Institute of Arbitrators and Mediators Australia in the State where the Delivery Address is located;

- (b) the amount set out in a payment certificate given by DATATEL under clause 10.7 is the amount of the 'progress payment' calculated in accordance with the terms of the Contract to which the Supplier is entitled; and
- (c) the date under clause 10.1 on which the Supplier must claim payment is the 'reference date'.

18. GENERAL

18.1 **Entire Agreement:** The Contract comprises the entire agreement between the Parties in respect of its subject matter and supersedes all prior agreements, quotation requests and quotations, understandings, representations, warranties, promises, statements, negotiations, letters and documents in respect of its subject matter.

18.2 **Severance:** If any provision of the Contract is determined to be void by any court then that determination does not affect any other provision of the Contract which otherwise remains in full force and effect.

18.3 **Waiver:** No waiver by a Party of any breach of a provision of the Contract is a waiver of any subsequent breach of that provision or any other provision. A waiver is not effective unless it is in writing.

18.4 **Variations:** An amendment or variation to the Contract is not effective unless it is in writing and signed by the Parties.

18.5 **Assignment:** The Supplier must not assign the Contract or any part of the Supplier's obligations under the Contract without the prior written consent of DATATEL, which must not be unreasonably withheld.

18.6 **Subcontracting:** The Supplier must not subcontract all or any of its obligations under the Contract without the prior written consent of DATATEL, which must not be unreasonably withheld.

18.7 **Exclusion and apportionment:** The operation of the Convention and, to the extent not prohibited

by law, Apportionment Legislation is excluded. The Supplier indemnifies DATATEL against any claim, cost, expense or liability whatsoever arising out of or in connection with the Contract which are caused or contributed to by the Supplier's Personnel and for which the Supplier would have been liable to DATATEL but for, or which DATATEL is not able to recover from the Supplier because of, any apportionment under any Apportionment Legislation.

18.8 **Governing Law:** The Contract is governed by, and is to be interpreted in accordance with the laws in force in the State where the Delivery Address is located and the Parties submit exclusively to the jurisdiction of the courts in that State.

19. DEFINITIONS

In these Conditions:

Action means any claim, action, suit, proceeding or demand.

Apportionment Legislation means any legislation under which an apportionment may be made.

apportionment includes an apportionment of liability for damages, a limit on the amount of damages that may be awarded against a party or a determination of or judgment for the proportion of any damages which should be borne by a party.

Conditions means these terms and conditions of purchase including any additional special conditions stated

in the Purchase Order, and any variations agreed by the Parties in writing.

Contract means the Purchase Order and the Conditions.

Consequential Loss means consequential loss, damage or expense (including but not limited to loss of profit or revenue, loss of market or loss of contracts or damage to commercial reputation)

Convention means the United Nations Convention on Contracts for the International Sale of Goods, adopted at Vienna, Austria on 10 April 1980.

Defect means any aspect of the Goods not in accordance with this Contract, or which is damaged, deficient, faulty, inadequate or incomplete in design, performance, workmanship, quality or makeup and **Defective** has an equivalent meaning.

Delivery Address means the address for delivery stated in the Purchase Order.

Delivery Date means the date for delivery stated in the Purchase Order.

Goods means the goods specified in the Purchase Order and any Specification including, without limitation, manuals, operating instructions, reports and drawings.

GST has the meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999.

IP Rights means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all

copyright and similar rights which may subsist or may hereafter subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registrable), rights in relation to registered or unregistered trademarks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers.

Loss means any loss, damage, expense, payment or liability, but excludes Consequential Loss.

Party means DATATEL or the Supplier, and a reference to Parties is a reference to both of them.

Price has the meaning given in clause 9.1.

Purchase Order means the written order signed by or on behalf of DATATEL and given to by the Supplier for the purchase of the Goods.

DATATEL means Datatel Electrical & Communications Pty Ltd (ABN 24 082 372 834).

Supplier means the Supplier of the Goods specified in the Purchase Order.

Specification means all codes, standards, drawings, scopes of work and specifications applicable to the Purchase Order, referred to in the Purchase Order or otherwise incorporated into the Purchase Order by reference and to be complied with by the Supplier.