

CONDITIONS FOR THE SUPPLY OF GOODS AND/OR SERVICES

1. DEFINITIONS

In this Agreement:

Agreement means the Conditions and the Purchase Order and includes any other documents referred to therein.

Conditions mean these Conditions for the Supply of Goods and/or Services.

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

Deliver means packaging, transporting and unloading the Goods.

Delivery Point means the place for delivery of the Goods stated in the Purchase Order.

Force Majeure means any events or circumstances which are outside of the reasonable control of a party.

Goods means the good stated or described in the Purchase Order.

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

Legislative Requirements includes any:

- (a) federal, state or local acts, ordinances, regulations, by-laws, orders, awards, proclamations; and
- (b) certificates, licences, consents, permits approvals and requirements of organisations having jurisdiction in connection with the supply of Goods or the provision of Services.

St Barbara's Policies and Procedures includes any policy, procedure, publication or guideline of St Barbara (as amended from time to time) that is specifically provided by St Barbara to the Vendor or publicly available and relevant to the provision of the Goods or Services.

Price means the price for the Goods or Services stated in the Purchase Order.

Purchase Order means the St Barbara Ltd Purchase Order which is governed by these Conditions.

Services means the services stated or described in the Purchase Order.

Specification means the specification for the Goods or Services approved in writing by St Barbara, together with any measurements, performance data, plans, drawings or other information provided by the Vendor to St Barbara or contained in any catalogues, brochures or descriptive literature produced by the Vendor.

Tax Invoice has the meaning defined in the GST Act.

Vendor means the vendor listed in the Purchase Order.

Warranty Period means, if no other time period is stated in the Purchase Order, 12 months from the date of acceptance of the Goods.

2. PRELIMINARY

- (a) Acceptance of the Purchase Order by the Vendor constitutes acceptance of the terms set out in the Agreement to the exclusion of any other terms unless otherwise agreed by St Barbara in writing. Therefore, upon acceptance of the Purchase Order by the Vendor:
 - (i) the Vendor's standard terms and conditions do not apply;
 - (ii) the terms set out in the Agreement applies to the supply of Goods and/or performance of the Service; and
 - (iii) unless expressly provided in the Purchase Order, any prior representations, negotiations, arrangements, understandings or communications between the parties about the supply of Goods and/or the performance of the Service are superseded and replaced by this Agreement.
- (b) No changes to a Purchase Order may be made without St Barbara's written consent.
- (c) St Barbara may at any time prior to delivery or performance, cancel a Purchase Order in whole or in part by written notice to the Vendor and no penalty or liability will be incurred by St Barbara in connection with such cancellation.
- (d) The Vendor must in carrying out this Agreement comply with all Legislative Requirements.

3. SUPPLY AND DELIVERY OF GOODS

- (a) The Vendor must Deliver the Goods to the Delivery Point by the Delivery Date. The Vendor must notify St Barbara as soon as practicable if the Delivery of the Goods is likely to be delayed.
- (b) The Goods must be accompanied by a packaging slip or delivery docket detailing the Goods, all relevant manufacturer's or supplier's instructions concerning the use of the Goods and all relevant manufacturer's or supplier's warranties in respect of the Goods.

- (c) Unless otherwise stated in the Purchase Order, the Vendor is responsible for all transport costs, including freight and insurance charges, incurred in Delivering the Goods to the Delivery Point.
- (d) Risk in the Goods remains with the Vendor until acceptance of the Goods at the Delivery Point by St Barbara. Title to and risk in the Goods passes to St Barbara on acceptance of the Goods by St Barbara.

4. HAZARDOUS MATERIALS

- (a) If the Goods comprise any hazardous materials or dangerous goods, the Vendor must transport and store the Goods in accordance with all Legislative Requirements and must provide St Barbara with the relevant materials safety data sheet (**MSDS**) for all such Goods.
- (b) No hazardous goods may be Delivered until the relevant MSDS has been provided to St Barbara.

5. REJECTION

St Barbara may, at any time and despite acceptance of the Goods, reject the Goods if it reasonably determines that:

- (a) the Goods do not comply with this Agreement;
- (b) the Vendor has breached any of the terms of this Agreement; or
- (c) Goods are Delivered in excess of the quantities stated in the Purchase Order.

St Barbara may, at the Vendor's cost, sell or dispose of the rejected Goods if the Vendor does not repossess the Goods within 30 days of being notified of the rejection. St Barbara shall be under no obligation to pay for rejected Goods.

6. WARRANTY PERIOD

- (a) The Vendor must rectify or replace any Goods which St Barbara notifies the Vendor during the Warranty Period are defective or which do not comply with this Agreement, failing which St Barbara may engage others to repair or replace those Goods at the Vendor's cost.
- (b) Where the Specification so provides, the Vendor must obtain for St Barbara the benefit of any manufacturer's warranty in respect of the Goods.

7. PROVISION OF SERVICES

- (a) The Vendor must provide the Services:
 - (i) competently, diligently, safely and to the standard that would be reasonably expected of an experienced, professional provider of similar services;
 - (ii) at the time or times specified in the Purchase Order or otherwise in a timely manner;
 - (iii) in accordance with all directions given by St Barbara;
 - (iv) in compliance with all Legislative Requirements; and
 - (v) in compliance with St Barbara's Policies and Procedures.
- (b) Where the Services are to be performed on St Barbara's premises, the Vendor must at its own cost:
 - (i) comply with any site safety and induction requirements specified by St Barbara;
 - (ii) if required by St Barbara, submit a Health, Safety and Environment Management Plan (**HSEMP**) to St Barbara for approval, and not commence the Services until the HSEMP is approved;
 - (iii) perform the Services in accordance with the approved HSEMP.
- (c) At any time, if St Barbara is dissatisfied with the Vendor's provision of the Services, it may request the Vendor to provide the Services again and the Vendor must perform the work at no extra charge.
- (d) The Vendor must not subcontract or delegate the provision of the Services to any other party without the prior written consent of St Barbara. In any event, any subcontracting or delegation by the Vendor will not relieve the Vendor of any of its obligations under this Agreement.

8. VENDOR'S WARRANTIES

- (a) The Vendor warrants to St Barbara that it has the right to sell and transfer unencumbered title to the Goods to St Barbara and that the Goods:
- (i) will be new, free from defects and of merchantable quality when Delivered to St Barbara;
 - (ii) will be fit for the purpose stated in the Specification, or if no purpose is stated, the purpose for which the Goods would ordinarily be used;
 - (iii) will conform to the description, model number and the sample (if any) provided by the Vendor or, if no sample or description has been provided, to the highest industry quality standards for their manufacture; and
 - (iv) do not, and St Barbara's use of the Goods will not, infringe any intellectual property rights of any person.
- (b) The Vendor warrants to St Barbara that the Services:
- (i) will comply in every aspect with the description in the Specification, or if there is no description, with the highest industry quality standards for performance;
 - (ii) will be performed with all due care and skill; and
 - (iii) will comply in all respects with any representations made by the Vendor;
- (c) The Vendor acknowledges that St Barbara has relied upon such warranties in entering into this Agreement.
- (d) If the Vendor breaches any of warranty, St Barbara may:
- (i) require the Vendor to resupply the Goods or Services at the Vendor's cost; or
 - (ii) deduct from the Price the cost of having the Goods repaired or resupplied, or the Services resupplied, so as to comply with this Agreement.

9. INDEMNITY BY VENDOR

- (a) To the maximum extent permitted by law, the Vendor indemnifies St Barbara against all actions, claims, costs, charges, damages, expenses, liabilities, losses or damages (including legal costs on an indemnity basis whether incurred by or awarded against St Barbara) that St Barbara may incur or sustain arising out of or in connection with the performance or non-performance by the Vendor of its obligations under this Agreement.
- (b) The Vendor's ability to indemnify St Barbara will be reduced proportionally to the extent that any negligent or unlawful act or omission of St Barbara contributes to the loss or liability.
- (c) The Vendor is deemed to be aware of the inherent dangers and risks in St Barbara's activities, and accordingly the Vendor:
- (i) releases St Barbara from all liability arising from or in connection with any injury or death of the Vendor's employees, agents or contractors; and
 - (ii) must insure itself fully in respect of all potential liability arising out of the supply of the Goods or the performance of the Services.

10. PAYMENT TERMS AND GST

- (a) The amount payable for the Goods and/or Services by St Barbara will be the Price exclusive of GST, subject to clause 10(b). The Price includes all applicable taxes, levies, duties and charges.
- (b) St Barbara must pay to the Vendor any amount which is payable by the Vendor on account of GST as a consequence of any taxable supply made to St Barbara under this Agreement. Any reimbursement of cost or expense incurred in connection with this Agreement must not include any GST component of the cost or expense to the extent that the Vendor is entitled to claim an input tax credit on the expenditure.
- (c) Following receipt of a valid Tax Invoice under clause 10(d), but subject to clause 10(e), St Barbara will pay the Vendor within 30 days from the end of the month in which the Tax Invoice is received.
- (d) The Vendor must give to St Barbara within 28 days of Delivery of the Goods or the performance of the Services a Tax Invoice which:

- (i) is fully compliant with the GST Act; and
- (ii) states the Purchase Order number, full details of the Goods delivered or Services performed, the Price and any other information St Barbara may require.

St Barbara shall be under no obligation to pay any invoice which is not rendered in accordance with this clause 10(d).

- (e) Payment is subject to St Barbara being satisfied that the Goods have been supplied, or the Services have been performed, strictly in accordance with this Agreement. Making a payment will not be construed as evidence or an admission that the Goods or Services have been supplied in accordance with this Agreement but is a payment on account only.

The Vendor may not vary the Price without the prior written consent of St Barbara.

11. CONFIDENTIALITY

If, in the performance of this Agreement or otherwise, the Vendor obtains or becomes aware of any sensitive or confidential information relating to St Barbara or its business (**Confidential Information**), the Vendor must not, without St Barbara's prior written consent, disclose to any person the Confidential Information, except to those of its employees that are involved in the supply of the Goods or the performance of the Services and need to know the information, and then only on a strictly confidential basis. The Vendor must immediately notify St Barbara if it knows of, or suspects, any unauthorised disclosure of the Confidential Information. This obligation survives the satisfaction or termination of this Agreement.

12. INTELLECTUAL PROPERTY

The Vendor assigns to St Barbara ownership of all copyright and other intellectual property rights in and to all documents, drawings, maps, characters, images, photographs, artwork, blueprints, calculations, information and instructions prepared in connection with or arising from this Agreement.

13. NO RELATIONSHIP

The Vendor is not an employee, agent or representative of St Barbara and has no authority to act on St Barbara's behalf.

14. TERMINATION

St Barbara may, at any time and for any reason, terminate a Purchase Order by giving the Vendor notice in writing. Following such termination, St Barbara will value any Goods supplied and/or Services delivered to determine the Price payable for such Goods and/or Services, and may deduct from the Price any costs incurred by St Barbara as a result of the breach or termination.

15. FORCE MAJEURE

- (a) Where a party is unable, wholly or in part, by reason of Force Majeure, to carry out any obligations under this Agreement and that party:
- (i) gives the other party prompt notice and reasonable particulars of that Force Majeure;
 - (ii) uses all possible diligence to remove and mitigate the effect of Force Majeure; and
 - (iii) has not caused or contributed to the Force Majeure, then that obligation is suspended so far as it is affected by Force Majeure during the continuance thereof.
- (b) Any costs, losses or savings due to Force Majeure will be borne, incurred or retained by the party incurring or receiving them.

16. GOVERNING LAW

This Agreement is governed by the laws of the State or Territory in which the Goods are to be delivered or the Services performed, and the Parties submit to the jurisdiction of the courts in that State or Territory.