

CONDITIONS ATTACHING TO ASCIANO PURCHASE ORDER

- 1. CONTRACT**
 - 1.1 The Contract shall be constituted by the Purchase Order attached to these Conditions, these Conditions and any other documents attached to or which form part of the Purchase Order. If the Contract is not rejected by the Supplier within 7 days of when it received the Contract, it shall be deemed to have been accepted by the Supplier. These Conditions shall take precedence over any terms or conditions contained in any documentation provided by the Supplier or any other documentation which forms part of the Contract. For convenience, the Contract shall be described in these Conditions as "this Order".
 - 1.2 Asciano Executive Services Pty Ltd:
 - (a) enters into this Contract for and on behalf of all entities (as defined in the Corporations Act 2001) in which Asciano Limited ACN 123 652 862 has an equity interest (direct or indirect) of 20% or more ("Contracting Group"); and warrants that it has been duly authorised by the Contracting Group to enter into this Contract on their behalf.
 - (b) Notwithstanding clause 1.2(a) the Supplier agrees to look only to Asciano Executive Services Pty Ltd for the due performance of this Contract and nothing contained in this Contract will entitle the Supplier to commence any proceedings against any member of the Contracting Group other than Asciano Executive Services Pty Ltd.
 - 1.4 In accepting this Order (either by acknowledgment or deemed acceptance by non-rejection) the Supplier agrees to all its terms and conditions. This Order, when properly signed by Asciano Executive Services Pty Ltd or a member of the Contracting Group ("Asciano"), is the only document which will be recognised by Asciano as the basis for the Supplier having the right to invoice Asciano for the goods to be delivered ("the Goods") or services to be provided ("the Services") under this Order.
 - 1.5 This Order supersedes all previous oral or written quotations, communications and negotiations not attached to or referred to in this Order (including any terms or conditions implied by the course of previous dealings between Asciano and the Supplier), except to the extent that any such quotations, communications or negotiations may be included in this Order by virtue of the provisions of any relevant or applicable statute.
- 2. QUALITY OF GOODS**
 - 2.1 The Goods shall be free from defects, of merchantable quality and fit for their intended purpose.
- 3. INSPECTION AND REJECTION OF GOODS**
 - 3.1 Asciano shall be entitled to inspect any of the Goods at any stage prior to or upon delivery.
 - 3.2 Asciano may (without prejudice to any of its other rights) reject any of the Goods which are defective or which otherwise do not comply with the requirements of this Order (including any Goods which are not delivered by the time specified in this Order). If requested by Asciano, any of the Goods rejected must (if delivered, be collected from Asciano and) be rectified or replaced by the Supplier at its own cost.
 - 3.3 Asciano at its discretion may accept any of the Goods which it has rejected, at a price agreed between the Supplier and Asciano.
 - 3.4 Any inspection by Asciano shall not relieve the Supplier of any of its obligations under this Order.

Asciano shall not be liable for any of the Supplier's costs in connection with inspection of the Goods or any work related to the Goods.
 - 3.5 Any amount paid for any of the Goods which are subsequently rejected shall be a debt due from the Supplier to Asciano which is payable immediately.
- 4. QUALITY OF SERVICES**
 - 4.1 The Services must be supplied by the Supplier to Asciano:
 - (a) diligently, faithfully and conscientiously;
 - (b) with the same or higher level of care and skill as would reasonably be expected of a person qualified and experienced in the supply of the same or similar Services; and
 - (c) in good faith, in the best interests of Asciano and in a manner which is consistent with the maintenance of the business and goodwill of Asciano.
- 5. SAFETY OF GOODS**
 - 5.1 The Supplier must ensure the Goods supplied to Asciano are:
 - (a) safe and free from risk to health and safety and compliant with all relevant laws; and
 - (b) clearly and durably labelled identifying the Goods and providing any information in relation to use, maintenance and storage.
 - 5.2 The Supplier agrees to supply the Goods with all relevant information pertaining to the use, storage and maintenance of the Goods and any relevant technical information, including health and safety information.
- 5.3 If the Goods supplied are hazardous substances or materials, radiation substances or biological substances, the Supplier agrees to supply the Goods with clear and durable labelling and copies of all relevant technical information sheets including Material Safety Data Sheets (MSDS), radiation safety data sheets and information data sheets (respectively).
 - 5.4 If the Goods supplied are electrical equipment the Supplier is responsible for the initial electrical safety of the new equipment and the Goods should be provided tagged as tested.
- 6. SAFETY OF SERVICES**
 - 6.1 The Supplier must ensure the Services are carried out at the relevant Asciano site in compliance with relevant laws and in a manner which does not pose a risk to the health and safety of others.
 - 6.2 The Supplier of Services warrants it is (and any persons engaged by the Supplier are) qualified to provide the Services to Asciano and will provide evidence of such qualification if requested by Asciano.
 - 6.3 The Supplier of Services agrees to abide by policies and procedures at the relevant Asciano sites.
 - 6.4 The Supplier of Services agrees to supply all relevant written safety documentation for the Services to be provided including safe work method statements (SWMS), job safety analysis (JSA), work assessments and/or worker training, where applicable.
 - 6.5 The Supplier of Services agrees that Asciano has a right to direct the suspension of Services which are provided in an unsafe manner.
- 7. WARRANTIES**
 - 7.1 The Supplier warrants that it has good and complete title to the Goods and that the Goods are free from all liens and encumbrances, do not infringe any patent, trademark, copyright or other intellectual property and comply with all applicable laws and regulations.
- 8. CONFIDENTIALITY**
 - 8.1 Data furnished to the Supplier by Asciano for the purpose of this Order is confidential and shall not be disclosed to any third party without prior written consent by Asciano, unless otherwise required by law.
- 9. DELIVERY**
 - 9.1 The Supplier shall ensure that the Goods are delivered undamaged to the address nominated on the Purchase Order on the date for delivery advised by Asciano (unless otherwise notified in writing by Asciano) and in accordance with any other instruction by Asciano regarding transportation.
- 10. TITLE AND RISK**
 - 10.1 The Goods shall be at the sole risk of the Supplier until delivery at which time title to and risk in the Goods shall pass to Asciano regardless of whether Asciano has paid the Supplier for the Goods, except that title to and risk in Goods rejected by Asciano shall remain with the Supplier.
- 11. INDEMNITY**
 - 11.1 The Supplier shall indemnify and keep indemnified Asciano and all related bodies corporate, employees agents and sub-contractors of Asciano ("Associates") and hold them harmless from and against any loss or damage that Asciano or its Associates may suffer, incur or sustain and all liability in respect of any action or claim or proceeding which may be taken, made or filed against Asciano or any of its Associates by any person in connection with any breach of this Order or any willful, deliberate or negligent act or omission of the Supplier or any of the Supplier's related bodies corporate, employees, agents or subcontractors related to this Order.
- 12. TAX INVOICES**
 - 12.1 The Supplier must provide Asciano with a tax invoice for the Goods delivered or Services provided and accepted under this Order which must show the Order number, date and address nominated on the Order and fully itemise the Goods and Services delivered or provided, including any amounts of tax payable on those Goods or Services.
- 13. PRICES AND PAYMENT**
 - 13.1 Price adjustments for any variations notified by Asciano shall be at the prices or rates included in this Order or, if there are no applicable prices or rates, they shall be agreed between the Supplier and Asciano.
 - 13.2 Subject to clause 17 and to the receipt of a properly rendered tax invoice, Asciano shall pay the value of the Goods or Services supplied by reference to the price set out in this Order or as otherwise agreed under clause 3.2 within 30 days from the last day of the month in which the invoice was received by Asciano.
- 14. SUBCONTRACTING AND ASSIGNMENT**
 - 14.1 The Supplier shall not, without the prior written consent of Asciano, subcontract the delivery or provision of any of the Goods. Any such consent shall not relieve the Supplier of any of its obligations under this Order.
- 14.2 The Supplier shall not, without the prior written consent of Asciano, assign, charge, or encumber this Order or any rights under this Order or any part of this Order or any Goods.
- 15. DEFAULT**
 - 15.1 If the Supplier is in breach of any warranty or material term or condition of this Order or becomes insolvent or is unable to pay its debts when they fall due or is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act 2001 or has imposed on it any arrangement for the benefit of its creditors or a receiver, receiver and manager, agent for a mortgagee, administrator, controller or provisional liquidator is appointed with respect to the Supplier or any part of its property or undertaking, Asciano may, without prejudice to any other rights it may have, cancel this Order, cease payments and recover as a debt due any sums paid for undelivered Goods and for Services not provided and any extra costs, losses, expenses or damages it may suffer or incur in purchasing similar goods or services from alternative suppliers. No waiver of a breach of any provision of this Order shall constitute a waiver of any other breach or any other provision.
- 16. TERMINATION FOR CONVENIENCE**
 - 16.1 Asciano may terminate this Order at any time by notice in writing to the Supplier for any reason regardless of whether the Supplier is in default. In the event that the Supplier is not in default, the Supplier shall, in full settlement of any claim in respect of the termination, be entitled to payment of:
 - (a) the amount which, but for the termination, would have been payable for the Goods delivered or the Services provided and accepted up to the date of termination (after taking into account any previous payments, and moneys due to Asciano);
 - (b) the cost of materials, goods or services reasonably ordered and which the Supplier is legally liable to accept, provided the materials, goods or services become the property of Asciano upon payment; and
 - (c) any other costs reasonably incurred by the Supplier in expectation of completing the supply of the whole of the Goods or Services, provided that the sum of payments under this clause 16.1 plus any previous payments shall not exceed the total price of this Order.
 - 16.2 The Supplier must use its best endeavours to use any materials, goods or services ordered in relation to this Order but no longer required due to termination of this Order in accordance with clause 16.1 in relation to another order or part of its business, and otherwise mitigate any costs it may incur in accordance with clause 16.1(b) and (c).
- 17. RECOVERY OF MONEYS**
 - 17.1 Any debt due from or moneys payable by the Supplier to Asciano whether under this Order or otherwise may be deducted by Asciano from any moneys due or to become due to the Supplier under this Order. Asciano shall be entitled to recover from the Supplier any balance that remains owing after deduction.
- 18. DISPUTE**
 - 18.1 Without affecting the rights of Asciano or of the Supplier at law or under any relevant or applicable statute, any dispute or difference in connection with this Order shall be resolved by mediation by a person and process agreed upon by the Supplier and Asciano or, failing such agreement or resolution by or through that process, shall be submitted to arbitration in accordance with and subject to the Institute of Arbitrators & Mediators Australia's Rules for the Conduct of Commercial Arbitrations.
- 19. LAW**
 - 19.1 The terms and conditions of this Order shall be governed by the laws in force in the State or Territory in which the Goods are to be delivered or provided or as may otherwise be agreed.
- 20. INTERPRETATION**
 - 20.1 In these Conditions, reference to a person includes a corporation or other entity, the singular includes the plural and vice versa and, if more than one, the persons comprising the Supplier shall be jointly and severally bound by the terms and conditions of this Order.
- 21. NO LIMITATION OF STATUTORY RIGHTS AND SEVERANCE**
 - 21.1 Nothing in this Order shall have the effect of or be taken to have the effect of excluding, restricting or modifying the provisions of any relevant or applicable statute. If it is determined that a word, phrase, sentence, paragraph or clause is unenforceable, illegal or void then it shall be severed and the other provisions of this Order shall remain operative.