

#### 1. Application

These terms and conditions apply to the supply of all goods and services by P & A Welding Pty Ltd ("P & A"). Any tender incorporates these terms and conditions unless P & A expressly states in writing that these terms and conditions shall not apply. Any subsequent contract ("Contract") shall be governed by these terms and conditions as varied by any other terms expressly agreed to in writing between the Purchaser and P & A. In these conditions, "tender" means a tender, submission, proposal, offer or quotation in connection with goods and services, the subject of a Contract.

#### 2. Acknowledgement & Acceptance

By requesting a tender from P & A, the Purchaser:

- (a) acknowledges that the Purchaser has read and understood these Terms and Conditions; and
- (b) agrees to be bound by these Terms and Conditions.

#### 3. Quotation & Specification

a. P & A may vary or withdraw any tender at any time prior to acceptance. Unless otherwise stated by P & A, any tender shall remain valid for thirty (30) days from the date thereof.

b. Goods and services shall be supplied in accordance with these conditions and any specification included in the Contract, and the purchaser is responsible for satisfying itself as to the suitability of such goods and services for the purchaser's use or application.

c. P & A is not bound by any representation concerning the scope of supply, performance or characteristics of goods or services unless that representation is expressly incorporated in the contract.

d. Each tender accepted by the purchaser shall be a separate individual contract.

#### 4. Payment And Other Obligations

a. The Purchaser must pay P & A's price for the goods and services (the "Contract Price") as provided for in the Contract. If the Contract does not set out a date for payment, invoices submitted by P & A must be paid within the time period stipulated in the invoice and if no time period is stipulated, within thirty (30) days after the date of the invoice issued by P & A.

b. P & A may, in its absolute discretion, decline to release goods or materials (or commission any project) until payment of all invoices is made in full (including if such invoice has remained unpaid for less than 30 days).

c. If payment of P & A's invoice is not made by the due date, the Purchaser shall pay interest to P & A on any moneys outstanding on and from the due date until the actual date of payment at the rate of 14% per annum.

d. If payment of P & A's invoice is not made by the due date, or if the Purchaser otherwise breaches these terms and conditions, the Purchaser must pay all of P & A's losses, expenses and costs (including legal fees on an indemnity basis) that relate to the failure pay by the due date or the breach of terms and conditions.

#### 5. Delivery Of Goods/transfer Of Title And Risk

a. P & A will endeavour to deliver goods and provide services as required under a Contract by the Contract's delivery date, but:

- i. The delivery date is subject to extension for any delay caused by any matter beyond the reasonable control of P & A; and
- ii. P & A will not be liable for any loss, damage or other liability (whether in contract, tort [including negligence] or otherwise) and whether directly or indirectly arising from the materials or services not being delivered by the delivery date for any reason;

b. P & A may, with the agreement of the Purchaser, deliver any of the materials to the Purchaser in instalments and in which case P & A may separately invoice the Purchaser for payment for each delivery instalment.

c. Title (legal and beneficial ownership) in any goods or materials sold shall not pass to the Purchaser until P & A has been paid the contract price for them in full.

d. Until the passing of title in the goods delivered to the Purchaser:

- i. the Purchaser shall hold the goods as Bailee, shall clearly identify the goods as belonging to P & A;
- ii. the Purchaser must not modify, sell, dispose or grant to a third party any interest in the goods and shall store and maintain the goods in good condition and allow P & A unrestricted access to them for the purposes of inspection and removal and the Purchaser hereby grants to P & A an irrevocable license to enter the premises where the goods are and sever them from any other property to which they may be attached and be removed.

#### 6. Defective Goods Or Defective Performance

a. Prior to the delivery of any goods or materials to be supplied by P & A under the Contract to the agreed location, the Purchaser shall carry out an inspection (or testing if applicable) to confirm the goods and materials comply with the Contract and notify P & A in writing of the extent to which any of the goods or materials do not comply with the Contract. The inspection must be carried out prior to the release of the goods.

b. The Purchaser must not use the goods (other than to the extent reasonably necessary for the inspection and testing) before the Purchaser completes the inspection and testing and satisfies itself that the goods comply with the Contract.

c. If the Purchaser does not comply with this clause, the Purchaser shall be taken to have unconditionally accepted that the goods comply with the Contract.

d. To the full extent permitted by law, all warranties, terms and conditions implied by the Sale of Goods Act or the Trade Practices Act or any other legislation are excluded. In the event that P & A may be in breach of any warranty, term or condition as is implied in this Contract by law, the liability of P & A shall be limited:

- i. in respect of goods, at P & A's option, to the repair or replacement of the goods or the cost of repairing or replacing the goods;
- ii. in respect of services, at P & A's option, to the re-performance of the services or the cost of re-performing the services.

#### 7. Limitation Of Liability

a. Notwithstanding any other provision of this Contract, the liability of P & A to the Purchaser, whether arising under or in connection with the Contract or the performance or non-performance thereof and whether by way of indemnity, by statute (to the extent where possible to exclude such liability), or on any other basis in law or equity is hereby limited and excluded as follows:

- i. P & A shall have no liability whatsoever to the Purchaser for loss of use, production, profit or for any financing costs or increase in operating costs or consequential loss or damage;
- ii. The total aggregate liability of P & A to the Purchaser is at all times limited to the amount equal to the Contract Price.

#### 8. Governing Law

a. The laws of Western Australia apply to the Contract and the parties submit to the jurisdiction of the Courts in Western Australia.

#### 9. Incorporation Of AS 4000 1997 General Conditions Of Contract

a. To the extent that they are not inconsistent with these terms and conditions, the provisions of AS 4000 - 1997 General Conditions of Contract (as published by Standards Australia from time to time) ("the General Conditions") apply to the supply of all goods and services by P & A and any Contract for the supply of goods and services by P & A.

b. Without limitation, any provision of these terms and conditions which is inconsistent with the General Conditions, to the extent of any inconsistency, these terms and conditions prevail and will apply and the inconsistent provisions of the General Conditions will not apply.

#### 10. General

a. All legislation which varies, prevents or prejudicially affects the exercise by P & A of any right conferred upon it under these Terms and Conditions to the extent permitted by law is excluded.

b. A right in favour of P & A under these Terms and Conditions, subject to any express provision of these Terms and Conditions to the contrary, may be waived prospectively or retrospectively by notice in writing signed by P & A.

c. No other act, omission or delay by P & A will constitute a waiver of a right.

d. A single or partial exercise or waiver by P & A of any right relating to these Terms and Conditions will not prevent any other exercise of that right or the exercise of any other right.

e. Time is of the essence in respect of any obligation of the Purchaser under these Terms and Conditions.

f. These Terms and Conditions supersede all prior representations, arrangements, understandings and agreements between the parties and represent the entire complete and exclusive understanding and agreement between the parties relating to the subject matter of these Terms and Conditions.

g. The Purchaser acknowledges and agrees that the Purchaser has not relied on any written or oral representation, arrangement, understanding or agreement not expressly set out or referred to in these Terms and Conditions.

h. If any provision of these Terms and Conditions shall be or be determined to be illegal, invalid, void or voidable the legality or validity of the remainder of these Terms and Conditions will not be affected and will continue in full force and effect.

i. These Terms and Conditions shall be governed by and construed in accordance with the laws of Western Australia.

j. The parties each irrevocably and unconditionally submit to the non exclusive jurisdiction of the courts of Western Australia whether State or Federal and each waives any immunity or any objection it may have to any action in those courts and to a claim that any action has been brought in an inconvenient forum or to those courts not having jurisdiction.

**P & A WELDING PTY LTD**  
Proudly Australian 

It's what we do...



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