

ACRAN TERMS AND CONDITIONS OF ORDER

1. Definitions

The following terms used in this Contract shall have the following meanings:-

"Purchaser" shall mean **Penina Pty Ltd trading as Acran**;

"Seller" shall mean that entity identified overleaf to whom this order is directed by the Purchaser and includes his servants, agents or representatives;

"Works" means that work described overleaf to be completed in accordance with this Contract and includes but is not limited to the manufacture and supply of goods, plant, equipment, units, components, fittings, attachments of whatsoever kind or nature, the repair, maintenance, improvements, supply of labour and the performance of work on site;

"Site" means that location where the works are to be undertaken.

2. Conditions of Contract

This Contract constitutes the complete agreement between the Purchaser and the Seller and supersedes all prior arrangements written or oral. Representations and agreements not contained herein shall not be binding on the Purchaser as conditions, warranties or representations.

3. Assignment

The Seller shall not assign, charge or factor this Contract or any payment made to the Seller pursuant to this Contract without the written consent of the Purchaser.

4. Performance

The Seller shall complete the works (including the supply of goods) in accordance with this Contract and all relevant acts of Parliament, regulations and by-laws.

5. Time

The Seller shall undertake the works on the dates and times specified by the Purchaser or as stated overleaf. The Seller shall be entitled to an extension of time for undertaking the works only if he is delayed by any act, default or omission by the Purchaser. The Seller acknowledges he shall not be entitled to or claim from the Purchaser time extension costs or damages for any reason whatsoever arising out of or pursuant to this or any other clause of the Contract.

6. Default

If the Seller fails to undertake the works or deliver goods to the site nominated by the Purchaser at the times or the dates specified by the Purchaser or fails to comply with a condition of this Contract the Purchaser may without notice to the Seller and without prejudice to any of its other rights refuse to allow the Seller to undertake the works or deliver goods to site and may in its discretion procure others to undertake the works or supply goods. The Seller shall be liable to the Purchaser for any additional costs or loss (including consequential loss) incurred by the Purchaser as a consequence of the Seller's failure or default pursuant to this clause.

7. Variations

7.1 The Seller shall carry out variations to the works instructed by the Purchaser provided the variation is within the scope of works.

7.2 The Seller shall not execute variations or be entitled to payment for variations unless same are instructed in writing by the Purchaser.

7.3 The price of any variation shall be agreed between the Seller and the Purchaser or failing agreement an amount valued by the Purchaser.

8. Responsibility for Works

Until the Purchaser has received notification from his client that completion of its works has been achieved the Seller shall be responsible for the care of its works and any good supplied from the date same are respectively undertaken or supplied to site and shall make good any loss or damage to the works or the goods at his own expense occasioned by any act, neglect, default or omission by himself, his employees or agents.

9. Defects

9.1 The Seller shall be responsible for and will at his own cost rectify any defects in the works.

9.2 Where the works involve the supply of goods by the Seller the Purchaser may if the goods do not comply with the order, at the Seller's expense either convert such goods into a condition acceptable to the Purchaser or return such goods to the Seller and deduct from any monies payable to the Seller any losses incurred by it in such repair or return.

10. Warranty

The Seller warrants to the Buyer that any goods forming part of the works delivered to site shall be manufactured strictly in accordance with any plans and specifications provided and will comply with any standard issued by the Standards Association of Australia.

11. Intellectual Property

11.1 The Seller shall protect and indemnify the Purchaser from and against all claims, judgements and losses arising from infringement of any patent, registered design, trademark, copyright or other protected right in respect of the works and the Purchaser shall have no liability in respect of any goods forming part of the works being intermingled or combined with the works and goods of others.

11.2 All drawings, specification/s and any other documents issued by the Buyer to the Seller pursuant to this Contract and the copyright therein are and shall remain as between the Purchaser and the Seller the property of the Purchaser and the Seller undertakes not to use, copy or reproduce for any purpose other than that stated in this Contract such drawings, specification and documents.

12. Price

The Seller warrants the price of the works overleaf are fixed and firm.

The Seller warrants that neither the works undertaken nor the goods supplied by it shall be subject to price escalation or increase for any reason including but not limited to sales tax, fluctuations in exchange rates, increase in the price of materials or labour, or any increased costs resulting from any industrial award agreement or contribution to superannuation or redundancy schemes.

13. Determination

13.1 If the Seller shall:-

13.1.1 suspend the works or fail to supply goods;

13.1.2 fail to proceed with the works;

13.1.3 refuse to comply with a notice or direction from the Purchaser;

make any assignment for the benefit of or enter into any arrangement or composition with its creditors or go into liquidation or have a receiver, manager or administrator appointed to it or commit any act of bankruptcy or have a Mortgagee in possession appointed to any property owned by him;

13.1.4 otherwise be in breach of this Contract,

the Purchaser may without prejudice to any other rights and remedies which he may have under this Contract and without notice to the Seller determine this Contract,

13.2 If the Purchaser determines this Contract he shall pay the Seller for that part of the works completed or goods supplied provided same are performed or supplied to the satisfaction of the Purchaser. The Seller shall not be entitled to recover from the Buyer damages for loss of profit or otherwise resulting from the determination of this Contract.

14. Title to Goods

The Seller warrants that any goods supplied to the Purchaser in undertaking the works are free from all liens, charges, mortgages, encumbrances or any other impediments to title that the Seller has title to same, that such goods are of merchantable quality and fit for the purpose for which they are delivered to the Buyer. Title in the goods so supplied by the Seller to the Purchaser shall pass immediately upon payment to the Seller by the Purchaser and the Seller warrants it shall exercise no right of repossessing such goods from site.

15. Client's Contract

Notwithstanding clause 2 hereof the Seller acknowledges that the terms and conditions of the Purchaser's Contract with its client shall to the extent they do not conflict with these terms and conditions form part of this Contract and the Seller agrees to be bound by the client's said terms and conditions.

16. Specified Requirements

The Seller acknowledges that the Purchaser and the Purchaser's client shall be entitled at any time to verify at its source that the works undertaken or the goods supplied to the Purchaser conform to specified requirements. Verification by the Purchaser pursuant to this clause shall not absolve or detract from the Seller's responsibility to provide acceptable works or goods to be incorporated in the works nor shall it detract from the Purchaser's right to reject the works or goods.

Verification by the Purchaser shall not constitute evidence or acceptance by it of effective quality control by the Seller. The Seller acknowledges that the Purchaser's right to verify at source as stated in this clause includes the client's right to have access to the Purchaser's or Sellers premises, facilities or site where the works are undertaken or the goods supplied.

17. Payment

Progress payments made by the Purchaser to the Seller shall be on account only. The Purchaser shall be entitled to withhold payment of any claim or part thereof for the value of any part of the works which is defective or not otherwise to the satisfaction of the Purchaser. The Purchaser shall not be obliged to make payments to the Seller of any monies under this Contract until the Seller provides to the Purchaser with an original Tax Invoice. Payment will be released 45 days from the end of the month that the original invoice is received by the Purchaser's Registered Office unless otherwise agreed in writing.

18. Insurance

Prior to the commencement of works the Seller shall effect and maintain during this contract public and products liability insurance with a limit of liability of not less than \$10 million for any one occurrence, Contracts works cover and adequate Workers' Compensation insurance for all employees. The Seller shall be liable for and hereby indemnifies the Purchaser against any legal liability, claim, loss or damage suffered by the Purchaser caused by the Seller's execution of or failure to execute the works, including damage to the works of others, liquidated damages and any consequential loss.

19. Workplace Health & Safety

The Seller shall comply in all respects with the provisions of the Workplace Health & Safety Act 1989, its regulations and codes of practice and ensure that all other persons in its employ also comply with the provisions, regulations and codes of practice.

The Seller indemnifies the Purchaser against all liability that the Purchaser may incur as result of a failure by the Seller to comply with his obligations pursuant to the said act.

20. Deductions

Any debt or sum claimed by the Purchaser under this Contract whether liquidated or unliquidated may be deducted from any sums held by the Purchaser and otherwise due or to become due to the Seller.