

ACRAN GENERAL CONDITIONS OF QUOTATION

1. DEFINITIONS

"The company" means Penina Pty Ltd trading as Acran.

"The quotation" means the document together with plans drawings specifications and other material referred to in schedule 'A' if applicable.

"The purchaser" means the party or parties from whom an order is received in respect of the quotation.

"The contract" means any agreement reached between the company and the purchaser based upon the quotation and any further terms and conditions which may be agreed to in writing between the company and the purchaser.

"The works" means the works including material and labour the subject of the contract.

"Materials" means any machine, appliance, device, equipment, parts, items or other substances whatsoever necessary for completion of the works.

"Normal Working Hours" means between 7.30am and 4.00pm Monday to Friday excluding Public Holidays and such Industry rostered days off as shall bind the company.

"Insolvency Event" means if the purchaser, being a corporation, resolves to be wound up voluntarily or has any winding up petition presented against it or is placed under official management, administration or provisional liquidation or a receiver, receiver and manager or controller is appointed over part or all of its undertaking or property or if the purchaser, being a natural person, becomes insolvent or bankrupt or commits any act of bankruptcy or enters into any arrangement or assignment for the benefit of its creditors or if a mortgagee of any of the purchaser's property takes possession of any of that property.

2. In this quotation the singular include plural and vice-versa and words importing gender include all others.

3. The quotation is not an offer and no order issued in respect of this quotation shall bind the company until accepted by it in writing.

4. This quotation is limited to those materials and services specified in writing in the quotation.

5. The company reserves the right to change modify or alter the construction or design of the works if in the company's sole discretion, such change modification or alteration is in the interests of the company.

6. Except where the company undertakes in writing to obtain any permit licence or approval as may be necessary or required for the performance of the works, such permit licence or approval shall be obtained by the purchaser at the purchaser's cost and the purchaser shall take all steps and do all things reasonably required to ensure that such a permit licence or approval shall be obtained within such time as may be necessary having regard to the provisions of the contract.

7. The company shall not be liable for any claim, loss or damage howsoever or whensover arising from any failure or delay in supply or delivery of materials or completion of the works or where such failure is contributed to or caused by industrial disturbances, delays in transit, shortages of materials or any other cause whatsoever beyond the control of the company, nor shall such failure constitute a breach of the contract and, subject to this clause, the contract shall remain of full force and effect and such extensions thereof as shall be necessary as a result of these failures and/or delays shall be deemed to have been granted by the purchaser to the company.

8. Where the works involve the provision of labour by the company the works shall be carried out during normal working hours unless otherwise agreed to in writing by the company.

9. The purchaser shall provide suitable access to and possession of the site of the works, proper foundations and necessary structures and all other necessary amenities to permit the company to complete the works, including, but not limited to power, light and water, suitable protection including security for the plant and equipment used by the company on site and materials placed by the company on site from the time of delivery thereof. All specified amenities, and any others that shall be reasonably necessary having regard to the contract shall be supplied by the purchaser at its expense unless otherwise agreed by the company in writing. In so far as the purchaser is required to supply power and light, the purchaser shall ensure that supply of 240V, 415V power and light shall be within convenient working distance from usage points as required by the company.

10. This quotation shall exclude any extra cost expense or damage incurred by the company as a result of termination of the contract by the purchaser, lack of instructions by the purchaser or its servants or agents, interruptions, delays, overtime, unusual hours, mistakes or work for which the company is not responsible and such extra cost expense or damage howsoever or whensover arising shall be added to contract price and paid for by the purchaser.

11. Where the contract includes supply by the company of any materials within a stated time or provides for a programme for the supply of materials or completion of the works or any part thereof and that time or programme is for any reason not met or complied with by the company or the purchaser then notwithstanding any extension of the stated time or programme under the contract and subject to the materials being clearly marked for identification and insured against loss or damage, the value of those materials plus any additional or extraordinary costs such as storage demurrage and insurance may be the subject of a progress claim by the company which the purchaser shall pay for.

12. If at any time any question, dispute or difference shall arise between the company and the purchaser in respect of the meaning or construction of any technical or trade aspect of the contract or its performance, the Arbitration clause as included in the general conditions of the current contract approved at the time the dispute is first notified in writing, by the Institute of Engineers Australia shall apply, however the company and the purchaser acknowledge that any claim for monies payable under the contract or for damages for breach thereof may be brought by either party in a Court of competent jurisdiction and without reference to arbitration.

13. The contract shall be deemed by the company and the purchaser to have been entered into in Queensland and shall be subject to the laws at the material time having effect within that State.

14. The contract shall be deemed to have been performed by the company when the works are ready or available for operation or use for the purposes for which those works were intended. Where the contract is for the supply of materials only it shall be deemed to have

been performed at the time the materials are available for delivery from the company's premises or premises of the company's agents.

15. Subject to clauses 28 and 29 and the warranties herein provided, once the contract is deemed to have been performed the purchaser shall accept full responsibility for maintenance, security and insurance of the works.
16. Until the company has been paid in full under the contract the works are at the risk of the purchaser and the purchaser will fully insure and keep insured for the benefit of the company the works and all other equipment and materials delivered to the site of the works and shall, upon demand by the company provide such evidence as is reasonably necessary to satisfy the company that insurance of that kind has been obtained.
17. The company will indemnify the purchaser for claims for a third party personal injury or property damage caused by the work undertaken by the company, except to the extent that the third party personal injury or property damage is caused or contributed to by the purchaser. However, the extent of the company's indemnity of the purchaser is limited to the amount of the actual indemnity extended to the company by the company's public liability insurer in respect of that claim and the company accepts no responsibility for any loss or damage suffered by the purchaser in relation to that claim exceeding the amount of the indemnity received by the company from its insurer. The company's public liability policy shall be made available for the purchaser's inspection upon written request.
18. Payment for works or materials, subject to approval by the company of a credit application submitted by the purchaser, shall be made to the company within 7 days of the date of the company's invoice to the purchaser. The company may at its option, at any time make progress claims for work or materials supplied under the contract.
19. If required and at the company's absolute discretion, security shall be in the form of a bank guarantee. Where security is supplied to the purchaser it does not form part of this quotation and the company's cost of providing security will be added to any quotation provided by the company in this document or any other document.
20. The prices quoted are based on current rates of exchange, freight, insurance, duty prime and cartage and additional expenses incurred by variations in the foregoing shall be to the purchaser's account. War risk insurance has not been included and if required by the purchaser, shall be at the purchaser's expense.
21. Goods and Services Tax shall be additional to the quotation based upon the relevant rate prevailing on taxable items as at the date of the quotation. Any additional tax payable by changes and or interpretation of those Acts shall be at the purchaser's expense.
22. The company warrants the works of its own manufacture against faulty workmanship or materials PROVIDED that any part of the works not manufactured by the company are warranted only to the extent of the warranty (if any) extended to the company by the manufacturer thereof.
23. The company's warranty is limited to the replacement or repair at its option, of such parts as have been returned to the company's offices or, if return is impractical, specifically advised in writing to the company and which are in the opinion of the technical executive of the company for the time defective in materials and/or workmanship. The cost of returning any materials or works to the company or notification to the company shall be at the sole cost of the purchaser and the purchaser shall have the onus of proof to show that such return or notification has occurred.
24. The warranty period is twelve (12) months commencing on the date the contract is deemed to have been performed, as defined in clause 14.
25. Any warranty shall be avoided if the works have been operated, used or maintained by any but competent qualified tradesmen and in accordance with such instructions by the company in respect of those works as may apply. The company accepts no liability for damage to the works due to fair wear and tear, normal deterioration of such works including but not limited to rusting, erosion, electrolytic action or corrosion of any other kind, malicious damage or incorrect power supply.
26. The company shall not be responsible for any loss damage or expense howsoever or whensover arising from any clause by reason of the operation or failure of operation of the works or for any consequential loss damage or liability of any kind arising from such operation or failure of operation.
27. The terms and conditions of supply of materials by the company's suppliers shall apply to the contract except where the supplier's terms are inconsistent with the terms hereof.
28. The works and any part thereof shall remain the property of the company until paid for in full. Until payment for the works in full, the purchaser must store any Materials in such a manner to show they are the property of the company. In the event of failure by the purchaser to make any payment required under the contract, if the purchaser suffers an Insolvency Event, or any other breach by the purchaser of the terms or conditions of the contract, the company may, without prejudice to any other rights it may have whether at law or in equity and without notice to the purchaser, cease all work under the contract and enter upon the site, or location at which the materials or works are situated, and take such steps as necessary to remove the materials or works. The purchaser grants an irrevocable perpetual and payment free licence to the company and its authorised representatives to enter upon such site, or location as may be needed and to the extent required appoints the company as its agent for the purposes of entry onto such sites or location and removal of the works or any part thereof.
29. The company shall be entitled to use such force, and effect such changes to the works or any structure to which the works are attached or which obstruct retrieval any part thereof as shall be necessary to remove the works, provided that such force or changes shall not dangerously affect the structural aspects of that site or location.

The terms and conditions of quotation shall apply to the contract and the purchaser acknowledges, by placing an order in respect of the quotation that it shall be bound by these terms and conditions unless otherwise agreed in writing by an authorised officer of the company.

To the extent to which any terms and conditions proposed by the purchaser are inconsistent with the terms and conditions of the quotation, these terms and conditions shall be paramount and such inconsistent terms and conditions as may exist shall give way to them.