

TERMS AND CONDITIONS

1. **BACKGROUND**
These Terms and Conditions apply to each Contract for the supply or installation of Goods and/or Services by or on behalf of LWA Engineering Pty Ltd ACN 097 684 001 of 18-20 Francis Road, Wingfield South Australia 5013 (LWA) to any Client.

2. **DEFINITIONS**
2.1. **Business Day** means any Monday to Friday on which banks are open for business in South Australia;
2.2. **Client** means the entity or person as identified in each Purchase Order;
2.3. **Completion** means the completion of the work relating to the Goods and/or Services set out in the Purchase Order which may or may not include Delivery;
2.4. **Contract** has the meaning given to it in clause 3;

2.5. **Delivery** has the meaning set out in the Purchase Order which may specify one of the following:
2.5.1. the Client taking possession of the Goods from LWA;
2.5.2. completion of the loading of the Goods onto the relevant transportation vehicle provided by the Client; or
2.5.3. physical delivery of the Goods by LWA to the site designated by the Client, which may or may not include installation;

2.6. **Deposit** means the deposit (if any) as required by the Purchase Order;
2.7. **Goods** means all goods, equipment, materials, articles, or any other property or parts detailed in the Purchase Order to be supplied to the Client by LWA and includes, without limitation, all ancillary activities such as design, manufacture, inspection, testing, expediting, quality assurance and control, painting, packing and delivery as specified or required hereunder;

2.8. **Purchase Order** means the purchase order for the provision of Goods and/or Services referred to and set out in the relevant Quote signed by the Client and given to LWA authorising the manufacture of those Goods and/or Services;

2.9. **Quote** means the quote provided by LWA in writing to the Client setting out:
2.9.1. the Goods and/or Services LWA will provide to the Client;
2.9.2. the price the Client will be required to pay for the Goods and/or Services provided; and
2.9.3. any other necessary details;
with respect to the Goods and/or Services LWA will provide for the Client.

2.10. **Services** means the services (if any) as set out in the Purchase Order;

2.11. **Variation** means any subsequent change to the Purchase Order occurring after the initial acceptance of that Purchase Order by LWA requested by the Client in writing in accordance with clause 9.3. and

2.12. **Warranty Period** means:
2.12.1. in relation to Services, the period commencing on the date of Completion of the Services and lasting for a period of one (1) year; and
2.12.2. in relation to Goods, the date of Delivery of the Goods and lasting for a period of one (1) year.

3. **CONTRACT**
3.1. A contract for the supply and purchase of Goods and/or Services (**Contract**) will be formed on these Terms and Conditions upon acceptance of the Quote by the Client.

3.2. Any Quote given by LWA to the Client is an offer to enter into a Contract.
3.3. A Quote will be accepted by the Client:
3.3.1. by signing and returning the Quote to LWA; or
3.3.2. by delivering a Purchase Order based on the relevant Quote to LWA.

3.4. A Quote is open for acceptance by the Client within the period stated in the Quote or within 30 days if no period is stated.
3.5. The Client agrees that no subsequent terms and conditions will apply in substitution of these Terms and Conditions or in any way override or amend these Terms and Conditions unless agreed by the parties in writing.
3.6. These Terms and Conditions together with the relevant Purchase Order constitute the entire agreement between LWA and the Client.

4. **PRICE AND PAYMENT**
4.1. Time for payment is of the essence.
4.2. Unless otherwise stated in the Purchase Order, prices shall be fixed and not subject to change other than the:
4.2.1. cost of exotic metals used in the manufacturing process, for which LWA may alter the price set out in the Quote and/or Purchase Order;
4.2.2. cost of any Variation; and
4.2.3. any unforeseen costs incurred by LWA regarding installation of the Goods.

4.3. The Deposit is not refundable to the Client in any circumstances, except for a material breach of the Contract by LWA, in which case it will first be applied as a credit towards all amounts to which LWA is entitled under the Contract, and the remaining balance will be repaid to the Client.
4.4. The Client shall be responsible for the payment of all relevant Australian (Federal, State and Local Government) and overseas taxes, goods and services taxes, PAYG taxes, duties and charges payable with respect to the Goods and/or Services. The Purchase Order price will be deemed to be exclusive of all such taxes, duties and charges unless otherwise stated in the Purchase Order. If any such taxes are or become payable in respect of any supply made by LWA to the Client, the payment for that supply will be increased by an amount equal to the tax payable.

4.5. If the Client fails to pay any part of the monies owed to LWA specified under the Contract, the Client must pay to LWA any costs, expenses or losses incurred by LWA as a result of that failure and LWA may (without prejudice to any other rights or remedies that it may have):
4.5.1. charge interest at a rate not exceeding the Commonwealth Bank of Australia's overdraft rate plus 2% on overdue amounts for each day overdue;
4.5.2. suspend any further supply of Goods and/or Services to the Client and/or terminate the Contract; and
4.5.3. lodge a caveat and/or charge over any real property owned by the Client until all amounts outstanding by the Client to LWA are paid.

5. **NON-PAYMENT Retention of Title**

5.1. Title to and Goods will not pass from LWA to the Client, if the Client:
5.1.1. fails to pay any monies owed to LWA in full when due;
5.1.2. pays for the Goods and/or Services by cheque (in whole or in part) and that cheque is not met on presentation;
5.1.3. commits any act of bankruptcy, becomes bankrupt, becomes insolvent or is insolvent under administration, as defined in the Corporations Act or Corporations Regulations; or
5.1.4. has an administrator appointed, as defined in the Corporations Act, in respect of any of the Client's property.

5.2. If an event as set out in subclause 5.1 occurs and the Goods are in the Client's possession, the Client shall hold the Goods as bailee for LWA and must store the Goods so that they are clearly identifiable as the property of LWA.
5.3. LWA may call for and recover possession of the Goods (for which purposes LWA's employees or agents may enter the premises where the Goods are located and take possession of the Goods without liability to the Client) and the Client must deliver the Goods to LWA if so directed by LWA. LWA may exercise its right to repossess the Goods, notwithstanding that the Goods may have been affixed to a structure by the Client, and if necessary for the purpose, LWA may sever the Goods from any structure to which they may have been affixed.

5.4. The Client must also indemnify and keep LWA indemnified against, and pay to LWA, all expenses, losses and damages incurred or sustained by LWA as a result of, or in relation to LWA exercising its rights under:
5.4.1. this clause;
5.4.2. under any other term, express or implied, of these Terms and Conditions; or

5.4.3. otherwise at law or in equity; and
5.4.4. any bank or other costs, charges or expenses incurred by LWA resulting from any Client's cheque not being met on presentation.

6. **CLIENT'S CANCELLATION**
6.1. Unless otherwise agreed in writing, the Client shall have no right to cancel a Purchase Order which has been accepted by LWA.
6.2. If the Client does cancel the Purchase Order, the Deposit shall be forfeited to LWA and the Client will be liable to pay the remaining balance of the Purchase Order.

7. **CONFIDENTIALITY**
Any information provided by LWA to the Client, which is noted as or which is by its nature, confidential, must not be disclosed to any third party without the prior written consent of LWA. The obligations under this clause shall be continuing obligations and shall survive Completion or termination of the Contract.

8. **SUBCONTRACTING AND ASSIGNMENT**
LWA may subcontract or assign all or any part of its obligations to the Client without the prior written approval of the Client.

9. **VARIATIONS**
9.1. The Client may request a Variation to the Goods and/or Services set out in the Purchase Order.
9.2. LWA will not be required to commence any work regarding a Variation until the costs and delivery date(s) of any such Variation are agreed to in writing by the parties.
9.3. If the cost of a Variation or the Delivery date cannot be determined before the varied work commences, LWA will provide the Client with a written estimate of the cost or method of calculation prior to the Delivery date. Any such estimate will not be valid until agreed in writing by the parties.

10. **TESTING AND INSPECTION**
10.1. LWA will test the Goods to confirm that the Goods comply with the Purchase Order.
10.2. Any testing shall take place within LWA's usual business hours.
10.3. LWA will repair or correct any Goods and/or Services that do not conform with the Purchase Order within a reasonable period.
10.4. If the Client does not advise LWA that it accepts or rejects the Goods and/or Services within seven (7) days of being supplied with the test results, the Goods will be deemed to have been accepted.

11. **DELIVERY**
11.1. The risk of loss or damage to the Goods passes to the Client upon Delivery.
11.2. Unless otherwise agreed in writing, the Client will at its cost arrange for physical delivery of the Goods.
11.3. If the Client requests LWA to postpone Delivery of the Goods beyond the Delivery date or dates specified in the Purchase Order, LWA may agree to do so if the Client pays an additional fee, which will be determined by LWA, for such postponement and for storage charges.

12. **DELAYS**
12.1. LWA will not be liable for any delay in the installation or Delivery of the Goods beyond LWA's reasonable control including, but not limited to:
12.1.1. the availability of any necessary exotic metals or other substances which, by their nature, are difficult to obtain;
12.1.2. weather sufficiently inclement to prevent LWA or a third party producing or installing the Goods or performing the Services;
12.1.3. disputes between employers and employees or strikes or lockout affecting the trades employed in the provisions of the Goods or Services;
12.1.4. any delay in the delivery to LWA of any equipment required necessary to carry out the provision of the Goods and/or Services to the extent such a delay arises from circumstances beyond the control of LWA;
12.1.5. a Variation requested by the Client;
12.1.6. LWA or the Client acting in accordance with a notice or order given by any governmental or semi governmental or local government authority; or
12.1.7. any other delay beyond the reasonable control of LWA.

12.2. If, for any of the reasons specified in clause 12.1, LWA is prevented from supplying the Goods and/or Services by the Delivery date, then the date will be extended for such period as LWA determines (in its absolute discretion) acting reasonably. If the delay exceeds ninety (90) days, either party may terminate the Contract with immediate effect by giving notice in writing to the other party. This clause does not apply to any obligation to pay money.
12.3. LWA is not responsible for any delays or failure in providing the Goods and/or Services to the extent that those delays are caused by any act or omission by the Client.

13. **DEFECTS AND WARRANTY**
13.1. LWA warrants that the Goods and/or Services will:
13.1.1. conform to the conditions and specifications as set out in the Purchase Order;
13.1.2. conform to all applicable laws and regulations to which the Goods and/or Services are subject; and
13.1.3. be free from defects in workmanship and material under normal use (as described in the documents provided with the Goods) for the Warranty Period.

13.2. This warranty does not cover:
13.2.1. any accessories and parts of Goods which are not manufactured by LWA and in that case, the Client will only have the benefit of the warranty (if any) of the manufacturer of such parts and accessories which forms part of the contract between LWA and the manufacturer; or
13.2.2. damage or defects caused by sulphate reducing bacteria or other anaerobic organisms;
13.3. For the purpose of making any claim in accordance with this clause the Client must:
13.3.1. make the claim within the Warranty Period;
13.3.2. immediately upon becoming aware of circumstances giving rise to a claim under this clause, notify LWA in writing setting out full particulars of the claim;
13.3.3. allow LWA, its employees and agents full and free access to the Goods in relation to which the claim is made and to the place where the Goods have been applied or used for the purposes of conducting such tests as LWA may in its absolute discretion consider necessary to determine whether or not the claim is justified.

13.4. The Client warrants it has examined all documents furnished to it by LWA and fully satisfied itself regarding all the conditions, risks, contingencies and other circumstances that might affect the performance of the Services and/or the supply of the Goods.
13.5. The Client acknowledges that LWA will manufacture the Goods to the specifications provided by the Client and LWA will rely on the Client's specifications in the manufacturing process.
13.6. LWA will to correct any legitimate defects and failures, of which it has been notified by the Client within a reasonable time.

14. **INDEMNITY AND LIMITATION OF LIABILITY**
14.1. This clause does not exclude or limit the application of any statutory provision where to do so would contravene that statute or cause any part of this clause to be void.
14.2. The Client must indemnify LWA for any unforeseen costs incurred by LWA during installation of the Goods.
14.3. To the extent permitted by law, the total liability of LWA, its employees, servants and agents is limited to one or more of the following at the option of LWA:
14.3.1. replacement of the Goods supplied or supply of equivalent Goods;
14.3.2. payment of the cost of replacing the Goods or of acquiring equivalent Goods;
14.3.3. payment of the cost of having the Goods repaired; and does not extend to consequential loss or damage.
14.4. Notwithstanding any other provision of this agreement LWA is in no circumstances (whatsoever the cause) liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Client for any:
14.4.1. costs or expenses;
14.4.2. loss of profit, revenue, business, contracts or anticipated savings;
14.4.3. loss or expense resulting from a claim by a third party; or
14.4.4. special, indirect or consequential loss or damage of any nature whatsoever

caused by LWA's failure to complete or delay in completing the Purchase Order or to deliver the Goods.

14.5. LWA will not be liable for any defects caused by:
14.5.1. use of the Goods for other than their intended purposes;
14.5.2. foreign object damage and Acts of God (force majeure); and
14.5.3. modifications to the Goods by the Client or a third party.

14.6. If any of the Goods are, or any component of the Goods is, installed at the site by the Client or a third party, except for any implied condition or warranty the exclusion of which would contravene any statute or cause any part of this clause to be void, LWA excludes all other conditions and warranties implied by custom, the general law or statute.

14.7. The Client must indemnify and keep indemnified LWA and its officers, employees and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses suffered by LWA and its officers, employees and agents arising as a result of any act neglect or default of the Client, its employees or agents related to its obligations under the Purchase Order.

15. **INSOLVENCY**
15.1. If the Client becomes, or resolves to become, subject to any form of insolvency administration, then:
15.1.1. the Client must notify LWA immediately;
15.1.2. all monies outstanding by the Client to LWA become immediately due and payable; and
15.1.3. the Client's right to possession of any Goods supplied by LWA which have not been paid for in full by the Client ceases, and LWA will be entitled to recover possession of those Goods.

16. **INDEPENDENT CONTRACTOR**
The relationship between LWA and the Client nor anything in the Purchase Order will be construed so as to constitute LWA as an employee of the Client or constitute a partnership between the parties or so as to constitute either party as the agent or legal representative of the other party.

17. **INTELLECTUAL PROPERTY**
Any intellectual property in any sketches, plans, drawings, designs, reports or documents prepared by LWA in the provision of the Services or the supply of Goods will upon its creation belong to LWA. This clause will continue to survive after termination of the Contract.

18. **BREACH OF CONTRACT**
18.1. If the Client defaults under these Terms and Conditions, LWA may cancel, suspend or vary the terms and conditions of any incomplete order that has been accepted by LWA without notice to the Client and without being liable to the Client.
18.2. Under no circumstances is LWA liable for any consequential loss or damage resulting from any breach of the Contract or warranty, including breach of an essential term, and LWA's liability is limited to the order price of the Goods and/or Services.

19. **DISPUTES**
19.1. Any claim by the Client for incorrect performance or breach of the Contract must be made to LWA in writing within seven (7) days of the incorrect performance of the action or the occurrence of the breach as the case may be, for which time is of the essence.
19.2. The Client and LWA will attempt to settle disputes arising between them by negotiation.

19.3. In the event of any unresolved dispute between the Client and LWA, LWA may, in its absolute discretion cease any work provided that it gives the Client five (5) days notice of its intention to do so. If work is stopped, then the completion date shall be extended for the period that work is stopped.
19.4. The preferred method of determination of unresolved disputes will be by amicable agreement at the senior management level of the Client and LWA.

19.5. If the parties cannot resolve a dispute within twenty-one (21) days the dispute is first raised in writing between the parties, the parties agree that the dispute must then be referred to the Australian Commercial Disputes Centre (ACDC) for mediation. The parties will use their best endeavours to have the dispute heard within 30 days after it is referred to the ACDC.
19.6. Neither party will litigate until the procedures in clauses 19.2 to 19.5 have first been complied with.

20. **MISCELLANEOUS Further Acts**
20.1. Each party agrees to do all things that may be necessary or desirable to give full effect to every part of these Terms and Conditions if asked in writing by another party to do so.

Assignment
20.2. Neither the rights nor the obligations of the Client under these Terms and Conditions may be assigned, transferred, subcontracted or otherwise disposed of, in whole or in part, without the prior written consent of LWA.

Waiver
20.3. LWA does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. Any waiver by LWA of a right, power or remedy will not be valid unless in writing and signed by LWA.

Notice
20.4. Any notice, demand or other communication to be given or required to be made pursuant to the Contract is to be in writing and is to be given by post, facsimile or by hand to a party at the party's address or at such other address or facsimile number as is notified in writing by one party to the other party.

Provisions severable
20.5. Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

Governing Law
20.6. These Terms and Conditions are governed by and construed in accordance with the laws of South Australia and the parties irrevocably submit to the jurisdiction of the courts of that State.

Variation
20.7. No part of these Terms and Conditions or the Purchase Order may be amended or modified unless reduced to writing and signed by the parties or their authorised representative.



LWA Engineering
Piping & Mechanical Specialists
ABN 59 097 684 001
18-20 Francis Road
WINGFIELD SA 5013

P: 8268 7670 • F: 8268 7478
www.lwaengineering.com.au