

CONTENTS

1.	INTERPRETATIONS AND GENERAL MATTERS	1
2.	INSURANCE	3
3.	INDEMNIFICATION, LIABILITY	4
4.	PERFORMANCE AND QUALITY	4
5.	DELIVERY/DELAY	6
6.	VARIATIONS	7
7.	SUSPENSION/TERMINATION	7
8.	PRICE AND PAYMENT	8
9.	RELATIONSHIP	8
10.	INTELLECTUAL PROPERTY	9
11.	DISPUTES	9
12.	APPLICABLE LAW	9
13.	FORCE MAJEURE	9

1. INTERPRETATIONS AND GENERAL MATTERS

1.1 Definitions

“Customer” means Mackay Sugar Limited (ACN 057 463 671).

"day" means a calendar day.

"FOT" means, in relation to delivery of the Goods, free on truck (or other transport) and includes the responsibility (and associated costs) for packing, loading, transportation and insurance (for the full replacement value of the Goods) to the nominated delivery point for the Goods.

"Goods" means all goods, equipment, materials, articles, or any other property or parts to be provided to the Customer by the Supplier under the Purchase Order 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.

“Materials/Equipment” means all materials, labour, equipment, documentation, services and all other obligations, duties and responsibilities required to be furnished or performed by Supplier under the Purchase order.

"Purchase Order" means the purchase order issued by the Customer to the Supplier as evidenced by the documents listed in the Purchase Order Form.

"Purchase Order Form" means the section of the Purchase Order to be completed by the Customer, which identifies the Supplier and includes but is not limited to a brief description of the Services and/or Goods and a list of the documents comprising the Purchase Order.

"Supplier" means the person performing the Services and/or providing the Goods, as identified in the Purchase Order Form.

"Services" means the services as set out and further detailed in the Purchase Order Form.

"Warranty Period" means:

- i in relation to Services, the period commencing on the date of completion of the Services and lasting for a period of one (1) year thereof;
- ii in relation to Goods, the date of the final supply of the Goods to the nominated delivery point and lasting for a period of one (1) year thereof.

1.2 Interpretations

Words importing the singular are deemed to include the plural and vice versa. Headings and subheadings are inserted for convenience only and must not be used to interpret the text. Words denoting a natural person shall include a corporation and vice versa.

1.3 Supplier to Inform Itself

The Supplier shall be deemed to have carefully examined all documents furnished by the Customer and fully satisfied itself regarding all the conditions, risks, contingencies and other circumstances which might affect the performance of the Services and/or the supply of the Goods. No increase in the Purchase Order price will be allowed for the Supplier's failure to ensure that it is fully informed regarding all the circumstances relating to the Purchase Order.

1.4 Order of Precedence

Unless otherwise stated, the order of precedence of any of the following documents listed in the Purchase Order Form, will be as follows:

- i) The Purchase Order Form
- ii) Special Terms and Conditions
- iii) General Terms and Conditions
- iv) Specification(s)
- v) Drawing(s)

1.5 Ambiguities

If the Supplier discovers any ambiguity in the Purchase Order it shall immediately notify the Customer in writing. The Customer will then determine the correct interpretation of the Purchase Order. The determination of the Customer will be final and binding on the Supplier and have no effect on the Purchase Order price.

1.6 Use of Documentation

Documents prepared in relation to, or ancillary to the Purchase Order, must not be copied or used for any other purpose than the performance of the Services and/or supply of the Goods by the Supplier to the Customer, without the prior written approval of the Customer.

1.7 Confidentiality

Any information provided by the Customer to the Supplier, 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 the Customer. The obligations under this Clause shall be continuing obligations

and shall survive the completion or termination of the Purchase Order for a period of 2 years from the completion or termination of the Purchase Order.

The Supplier must not issue any information which includes details about the Services and/or the Goods and/or the Purchase Order, for publication in any news or communication media, without the prior written approval of the Customer.

1.8 Waiver

No failure or delay on the part of the Customer in exercising any of its rights under the Purchase Order shall be construed as constituting a waiver of any such rights.

1.9 Subcontracting and Assignment

The Supplier must not subcontract nor assign all or any part of the Purchase Order without the prior written approval of the Customer. The Supplier must provide for the approval of the Customer full particulars of any work to be subcontracted together with details of the proposed subcontractor prior to entering into any subcontract.

Approval of the Customer to any subcontract will in no way relieve the Supplier of any of its obligations under the Purchase Order.

1.10 Entire Agreement

The Purchase Order constitutes the entire agreement between the Customer and the Supplier. The parties shall not be bound by or liable for any statement, representation, promise or understanding not set forth herein. Nothing contained in proposals, correspondence, discussions or negotiations prior to the date of the Purchase Order has any effect on the Purchase Order unless specifically incorporated herein.

1.11 Communications

Any notice or other communication required under the Purchase Order shall be delivered in writing and shall be in a form which can be read, copied and recorded conveniently. Verbal instructions or directions from the Customer shall be confirmed in writing to the Supplier within a reasonable time. The notice shall take effect from the time when it is delivered to or received at the nominated address of the parties.

1.12 Licences and Laws

The Supplier shall comply with all applicable laws, in particular the Queensland *Work Health and Safety Act 2011* (WHS Act) and people with duties under the WHS Act should also refer to the Work Health and Safety Regulation 2011 (WHS Regulation) and Codes of Practice. Any related by-laws, ordinances, regulations, proclamations, orders and rules and with the lawful requirements of public authorities and other authorities in any way related to the supply of the Goods and/or the performance of Services, including without limitation all environmental and occupational health and safety laws.

2. INSURANCE

2.1 In relation to the Services, the Supplier shall effect and maintain:

- (i) public liability insurance to the value of \$10 million;
- (ii) workers compensation insurance as required by law;
- (iii) motor vehicle third party damage insurance;

- (iv) motor vehicle insurance including death or injury cover as required by State and Federal legislation; and
 - (v) such other insurances required by the Customer or required by law, upon terms acceptable to the Customer.
- 2.2 In relation to the Goods, the Supplier shall effect and maintain any policies of insurance specified in the Purchase Order Form or required by law.

3. INDEMNIFICATION, LIABILITY

- 3.1 The Supplier must indemnify and keep indemnified the Customer and its officers, employees and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses suffered by the Customer and its officers, employees and agents arising as a result of any act, neglect or default of the Supplier, its employees or agents related to its obligations under the Purchase Order.
- 3.2 The Customer will not be liable to the Supplier for any indirect or consequential loss under the Purchase Order, in tort, in equity or otherwise at law.
- 3.3 The maximum sum for which the Customer may be liable to the Supplier under the Purchase Order, in tort, in equity or otherwise at law, is limited to the price.

4. PERFORMANCE AND QUALITY

4.1 Materials and Workmanship

All Services and/or Goods shall be suitable for the purpose for which they are required. The Supplier must use new and undamaged materials, unless otherwise specified in the Purchase Order and the workmanship must be of a high quality and standard. The work must be carried out in accordance with good engineering practice and comply with all applicable Australian standards and/or other referenced codes, the requirements of the relevant statutory authorities and all applicable laws, including without limitation all statutory obligations in relation to occupational health and safety. Goods supplied must meet all applicable Australian standards and/or other referenced codes, the requirements of the relevant statutory authorities and all applicable laws, including without limitation all statutory obligations in relation to occupational health and safety.

4.2 Supplier Qualifications

The Supplier represents and warrants to the Customer that it has the necessary skills, resources and experience to successfully perform the Services and/or supply the Goods in accordance with the requirements of the Purchase Order.

4.3 Testing and Inspection

The Goods and/or Services must be tested in accordance with the requirements of the Purchase Order, including any Specification. Unless otherwise stated in the Purchase Order, any tests and the costs thereof will be the responsibility of the Supplier. The results of tests shall be promptly supplied to the Customer in writing.

The Customer will have the right to inspect, expedite and monitor performance of the Services and/or the delivery of the Goods and the Supplier must give the Customer access to the Supplier's premises for such purpose during its normal working hours. The Services

and/or Goods will not be accepted by the Customer until inspected and approved by the Customer. Any inspection by the Customer will not relieve the Supplier from its obligations to comply with the requirements of the Purchase Order and will in no way impair the Customer's right to require subsequent correction or re-performance of non-conforming Services and/or Goods.

4.4 Quality Standards

The Supplier must comply with the standards of quality specified in the Purchase Order. If no standards are specified the Supplier must comply with the best practice industry standards applicable to the Services and/or Goods concerned.

4.5 Defects and Warranty

4.5.1 The Supplier warrants that the Goods shall:

- i) Be free from liens, charges, encumbrances, mortgages or other defects in title.
- ii) Be new and made to the specified quality.

4.5.2 The Supplier warrants that the Services & Goods shall

- iii) Be free from defects in design, materials and workmanship.
- iv) Conform to the conditions and specifications of the Purchase Order.
- v) Conform to all applicable laws and regulations to which the Services or Goods are subject.
- vi) Be performed in accordance with any performance standard specified in the Purchase Order.

4.5.3 The Supplier warrants that it will comply with any of the Customers policies notified by the Customer to the Supplier from time to time, including without limitation any of the Customer's privacy policies.

4.5.4 The warranties noted in clause 4.5.1 above are in addition to any statutory warranties applicable to the Services and/or Goods.

4.5.5 During the Warranty Period, the Customer may give written notice to the Supplier of any failure or defect in the Services and/or Goods. The Supplier must without delay and at no cost to the Customer:

- (i) correct any defect in the Services covered by the warranty, by way of re-performance of the Services in a manner acceptable to the Customer; or
- (ii) correct any defect or failure in the Goods covered by the warranty, by way of repair, replacement, modification or other means acceptable to the Customer.

4.5.6 If the Supplier fails to correct any defects and failures, of which it has been notified by the Customer, within the time specified in the notice (which must not be unreasonable), the Customer will have the right to rectify the Services and/or Goods itself or have the rectification undertaken by a third party. All costs so incurred will be a debt due and payable by the Supplier to the Customer which may be deducted from moneys otherwise owing to the Supplier by the Customer.

4.5.7 Any Services re-performed or rectified and/or any Goods repaired under warranty may be subject to a further full Warranty Period, if required by the Customer, commencing on the date of completion of any such re-performance, rectification or repair.

4.6 Patents, trademarks and Copyright

The Supplier represents that it has fully investigated all specifications, including any furnished by the Customer in connection with the Materials/Equipment, and based on its past experience and superior knowledge warrants that production of the materials/Equipment will not infringe any patent, trademark, trade secret or copyright.

The supplier shall defend, indemnify and hold the Customer and its successors harmless from and against any and all claims, demands, costs and liabilities including legal expenses, arising out of any such infringement.

5. DELIVERY/DELAY

5.1 Unless otherwise specified in the Purchase Order, Goods must be delivered FOT, adequately packaged and protected to ensure safe delivery, to the delivery point and by the delivery date(s) specified in the Purchase Order Form.

5.2 The Goods will become the property of the Customer upon delivery of the Goods to the Customer, as evidenced by the signature on the delivery docket of a duly authorised representative of the Customer. Such signature is not, and will not be deemed to be, an acknowledgement of the acceptability of the Goods. Notwithstanding that the Customer has taken delivery of the Goods, the Supplier will remain responsible for any loss or damage to the Goods, which may have occurred prior to delivery, and for any non-compliance of the Goods with the requirements of the Purchase Order.

5.3 The Supplier must take all reasonable steps to minimise or prevent any delay in the performance of the Services or the delivery of the Goods. The Customer may grant an extension of time to the nominated delivery date provided or in the performance of the Services provided:

- i) the delay is caused by any reason completely beyond the control of the Supplier, including any Statewide or National industrial disputes, acts of God, war, riot, fire, storm or flood.
- ii) the Supplier has notified the Customer in writing within seven (7) days of the delay occurring (or such other time as may be specified in the Purchase Order) of its claim for an extension of time. The Customer shall not be liable for any extension of time claim that is not lodged in writing with the Customer within seven (7) days of the delay occurring.

5.4 If the Supplier fails to perform the Services in a timely fashion or fails to deliver the Goods by the specified delivery date(s), the Customer may terminate the Purchase Order either in whole or in part for default, in accordance with the provisions of Clause 7.2 and/or deduct from monies due to the Supplier as liquidated damages, representing a genuine pre-estimate of the Customer's damages and not as a penalty, the amount specified in the Purchase Order Form, for each week or part thereof in which the non-performance continues or delivery exceeds the specified delivery date.

6. VARIATIONS

- 6.1 The Customer may vary the work under the Purchase Order or any condition thereof and the Supplier must carry out any such variation as directed by the Customer. The Supplier's price (addition or reduction) for any variation and any effect on the delivery date(s) of the Services and/or Goods will preferably be agreed between the Customer and Supplier prior to the Supplier carrying out any such variation. However, if agreement cannot be reached, the Customer will determine the price for the variation and its effect on the date of performance of the Services and/or the delivery date(s) of the Goods.
- 6.2 The Supplier must not vary the work under the Purchase Order or any condition thereof, except as directed and approved by the Customer in writing. No variation will invalidate the Purchase Order.

7. SUSPENSION/TERMINATION

7.1 Suspension

The Customer may, at any time by written notice, suspend all or part of the Purchase Order for any reason whatsoever. Upon receipt of a notice of suspension, the Supplier will cease work in accordance with the directions of the notice. The Supplier must recommence the work under the Purchase Order within forty eight (48) hours of being directed to do so by the Customer.

7.2 Termination by Default

In the event of a substantial breach by the Supplier of any of the terms and conditions of the Purchase Order, which in the opinion of the Customer may significantly delay the completion of the Purchase Order and which is not remedied within seven (7) days of the Customer notifying the Supplier in writing of any such breach, the Customer may terminate the Purchase Order in whole or part.

7.3 Termination for Insolvency

If, in the opinion of the Customer, the Supplier is unable to effectively perform its obligations under the Purchase Order due to insolvency, bankruptcy or related reasons, the Customer will be entitled to terminate the Purchase Order.

7.4 Termination at Customer's Option

Notwithstanding any other provisions of the Purchase Order, the Customer may terminate the Purchase Order by giving fourteen (14) days written notice to the Supplier.

7.5 Supplier's Rights and Obligations on Suspension /Termination

- 7.5.1 In the event of suspension of the Purchase Order, the Supplier will not be entitled to payment by the Customer for any costs it may incur as a result of any such suspension.
- 7.5.2 In the event of insolvency of the Supplier or its default under Clause 7.2, the Customer shall immediately suspend any further payment to the Supplier. Any additional monies required by the Customer to complete the Purchase Order in

excess of what the Customer would have paid under the Purchase Order shall be a debt due and payable by the Supplier to the Customer.

- 7.5.3 In the event of termination by the Customer under Clause 7.4, and provided the Supplier is not in default, the Customer shall pay the Supplier for work carried out prior to termination and all reasonable costs associated with the cancellation of any orders placed by the Customer prior to termination. The Customer shall not otherwise be liable for any other costs of the Supplier in respect of the termination.

8. PRICE AND PAYMENT

- 8.1 Unless otherwise stated in the Purchase Order, prices shall be fixed and not subject to any variation, including but not limited to variations in the cost of labour, material or exchange rates.
- 8.2 The Supplier 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 inclusive of all such taxes, duties and charges.
- 8.3 Unless otherwise specified in the Purchase Order, invoices for payment must be submitted to the Customer for payment following delivery of the Goods or following performance of the Services, and payment of the approved amount will be made by the Customer no later than thirty-five (35) days after the month end in which the invoice was received.
- 8.4 (a) To the extent that any Taxable Supply occurs under the Purchase Order then:
- (i) the party who is the supplier will, be entitled to increase the consideration for the Taxable Supply identified in the Purchase Order (“net consideration”) by the amount of any applicable GST calculated in accordance with the Act; and
 - (ii) the recipient shall pay such increased consideration.
- (b) The supplier must in any such case issue to the recipient at the time of claiming payment a valid tax invoice (in accordance with Act) for the purpose of obtaining an input tax credit for any GST so paid.
- (c) In clauses 8.4(a) and (b), “**Act**” means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and its associated legislation and regulations, “**GST**” means the goods and services tax imposed by the Act and “**Taxable Supply**” means a taxable supply under the Act.

9. RELATIONSHIP

In relation to the performance of Services, the Supplier will provide the Services as an independent contractor and nothing in the Purchase Order will be construed so as to constitute the Supplier as an employee of the Customer or constitute a partnership between the parties or so as to constitute either party as the agent or legal representative of the other party.

10. INTELLECTUAL PROPERTY

Any intellectual property in any sketches, plans, drawings, designs, reports or documents prepared by the Supplier in the provision of the Services under the Purchase Order, will upon its creation vest in the Customer. Any intellectual property owned by the Supplier prior to the execution of the Services under the Purchase Order will remain the property of the Supplier, although such intellectual property may be used by the Customer pursuant to a royalty-free license whilst the Services are being performed.

11. DISPUTES

- 11.1 Disputes or differences arising between the Customer and the Supplier must be settled quickly and by negotiation.
- 11.2 In the event of any unresolved dispute between the Customer and the Supplier, the Supplier must ensure that the progress of the work under the Purchase Order is continued without any effect on the specified delivery date.
- 11.3 The preferred method of determination of unresolved disputes will be by amicable agreement at the senior management level of the Customer and the Supplier.
- 11.4 If the parties cannot resolve a dispute within 21 days the dispute is first raised between the parties, the parties agree that the dispute must then be referred to the Australian Commercial Disputes Centre ("ACDC") for mediation. The dispute must be heard within 30 days after it is referred to the ACDC.
- 11.5 Neither party may litigate until the procedures in clauses 11.1 to 11.4 above have first been complied with.

12. APPLICABLE LAW

Unless otherwise specified, the Purchase Order will be governed and construed in accordance with the laws in place in the State or Territory in which the Purchase Order is issued. The Customer and the Supplier submit to the non-exclusive jurisdiction of the courts of the said State or Territory.

13. FORCE MAJEURE

In the event of delay to Supplier resulting from acts of omission or default of the Customer or resulting from the act of God, strikes, fire or other causes beyond the supplier's reasonable control then the following provisions shall apply:

- Within five (5) working days of such event the Supplier shall notify the Customer in writing providing the details of the claim and the probable duration of the delay.
- The Customer will consider the claim and, if approved, an appropriate extension of time will be granted which will be notified to the Supplier in writing.
- The Supplier will not be entitled to an increase in compensation as a result of any claim for extension of time.