

### 1. General

- 1.1. Every purchase order ("**Order**") we issue is an offer to acquire Products which will be listed in the Order from you subject to these terms and conditions and any written special conditions that we include with our Order.
- 1.2. Where you accept our Order by written or oral confirmation to us, there is a contract on this basis, that is on the terms of the Order.
- 1.3. Any terms and conditions in your quote, offer or any other document you supply are excluded from this Contract (which comprise the Order and these terms).

### 2. Delivery

- 2.1. You must supply Products as, where and when specified in our Order or otherwise directed by us (at any time) in writing.
- 2.2. You must keep us informed of any delays or other matter which may affect the delivery of Products on time or in any way which means the Products are not in accordance with the Order.

### 3. Cancellation

We may cancel an Order by written notice to you after delivery and supply if the Products are not in accordance with our Order (including where wrong quantities are delivered) or if you otherwise breach this Contract.

### 4. Quality

- 4.1. You must, and all Products you supply must, strictly comply with all applicable laws, regulations, codes and Australian Standards and with our Order (including any performance criteria).
- 4.2. Products must be new, fit for the purpose for which they are acquired, free from damage and defects in workmanship and materials and of merchantable quality.
- 4.3. Services performed by you must be to a high standard of professional care and skill by appropriately trained and qualified personnel.
- 4.4. Without limiting clause 4.3, you must assign to us the benefit of any warranty or guarantee given by the manufacturer of the Products.
- 4.5. We may reject Products which do not comply with our Order or these terms, even if we have previously inspected and/or accepted the Products.
- 4.6. Where Products are rejected, you must, at our option within five (5) days of us notifying you:
  - (a) Replace, repair or re-supply the Products at your expense; or
  - (b) Refund to us any amount we paid for the rejected Products.

### 5. Price and Payment

- 5.1. The price for Products is the price stated in our Order.
- 5.2. Unless the Order expressly states otherwise, it includes any applicable GST and all packing, insurance and delivery charges and all taxes and duties.
- 5.3. You may only invoice us upon each performance milestone specified in the Order for all Products delivered or completed to our satisfaction.
- 5.4. Your invoice must:
  - (a) Be correctly addressed;
  - (b) Identify our Order number;
  - (c) Be a valid tax invoice for GST purposes; and
  - (d) Where we request it, be accompanied by documentation substantiating the amount claimed.
- 5.5. We will pay all correctly rendered and undisputed invoices for Products by electronic funds transfer thirty (30) days end of the month or as stated on the payment milestone schedule in the Order.
- 5.6. If we dispute an invoice for the Products:
  - (a) Payment is suspected until the dispute is resolved; and
  - (b) You must give us any information or documents we request in relation to the invoice or the dispute.
- 5.7. As well as any of our other rights, we may deduct from you invoice any amount you owe us (including under any indemnity).

### 6. Title and Risk

- 6.1. Title to and risk in the Products passes to us on delivery of the Products.
- 6.2. You warrant that:
  - (a) You have complete ownership of the Products free of any encumbrances;
  - (b) We will receive clear and complete title to the Products on delivery free from any encumbrances; and
  - (c) No claim of infringement of moral rights or intellectual property rights will be brought by you or any third party against us by you, your employees or agents or any third party.
- 6.3. Any intellectual property rights created from your performance of this Contract vest in and are assigned to us on delivery of the Product.

### 7. Materials

- 7.1. Any tools, patterns, designs, drawings, dies or other material used in supplying or manufacturing Products and that is paid for or supplied by us ("**Our Materials**") is our property.
- 7.2. While Our Materials are in your possession, you:
  - (a) Hold them solely as our bailee;
  - (b) Must store them securely and maintain them in good repair;
  - (c) Must use them only for the purpose of performing this Contract; and
  - (d) Must return them to us on demand.

### 8. Confidentiality

- 8.1. You must keep our confidential information (which includes information about our employees and clients) confidential and not directly or indirectly disclose, use, record, memorise, reverse engineer or copy it for any purpose other than to perform this Contract, without our prior written approval.
- 8.2. All and any references to our clients must remain private by you, your employer, and any of your agents, employees and subcontractors.

### 9. Privacy

You must:

- (a) Comply, and must ensure that your employees comply, with all requirements set out in Privacy Laws; and

- (b) Handle the collection, disclosure, storage and use of personal information in a manner consistent with the national privacy principles in the Privacy Laws.

**10. Indemnity and Insurance**

- 10.1. You indemnify us, our officers, employees, agents and customers against all loss, damage, claim, expense or liability incurred in connection with:
  - (a) Your performance or breach of this Contract;
  - (b) Any Products you supply to us;
  - (c) A claim by a third party that the Products infringe their intellectual property rights; and
  - (d) Any negligent or wilfully wrong act or omission by you, your employees, agents and contractors.
 This indemnity is continuing and irrevocable, survives termination of this Contract and is in addition to any other of our rights against you to recover damages.
- 10.2. You agree to accept full responsibility for all claims in respect of any injury to persons, loss of productivity or of damage to property, arising out of making and delivery of the Products (even if we have paid you) which in any way is referable to your breach of Contract or negligence or the negligence of your employees, agents and subcontractors.
- 10.3. You must effect and maintain appropriate insurance policies, taking into account the Products you supply. You must provide us with proof of your insurances upon request by us.

**11. Subcontracting**

- 11.1. You must not subcontract the whole or any part of your obligations under this Contract without our prior written approval, which we may grant or withhold at our sole discretion.
- 11.2. You will remain principally liable for the performance of this Contract and the acts and omissions of any subcontractor.

**12. Termination**

- 12.1. As well as our other rights, we may terminate this Contract where:
  - (a) You fail to supply Products by the date required in our Order;
  - (b) You breach this Contract; or
  - (c) You become or threaten to become insolvent or bankrupt or enter into a compromise or arrangement with creditors or any form of external administration.

**13. GST**

- 13.1. For the purposes of this clause:
  - (a) "GST Act" means the A New Tax System (Goods and Services Tax) Act 1999.
  - (b) "GST Rate" means the prevailing rate of GST specified as a percentage.
  - (c) Terms as defined in the GST Act including enterprise, GST, input tax, credit, registered supply of a going concern, tax invoice and taxable supply have the same meaning in this Agreement.
- 13.2. You must, if requested by us, give us a tax invoice for any taxable supply by you.
- 13.3. You warrant that you are registered for GST.
- 13.4. If for any reason GST is payable in respect of any supply under this Contract:
  - (a) The recipient of the supply must pay, in addition to the other consideration payable or to be provided for the Supply, an additional amount equal to the GST; and
  - (b) The recipient must pay the additional amount to the supplier at the same time as the other consideration.
 However, the recipient need not pay the additional amount until the supplier gives the recipient a tax invoice.
- 13.5. Despite any other provision of this Contract, this clause 13 will survive the termination or rescission of this Contract.

**14. General**

- 14.1. This Contract may only be varied with our written agreement.
- 14.2. You may not assign this Contract without our prior written consent which we may grant or withhold at our sole discretion.
- 14.3. These terms plus our Order constitute the entire agreement between us and you in relation to its subject matter, the supply and purchase of the Products.
- 14.4. You and us are independent contractors. No relationship of employment, agency, partnership or joint venture between us is created by this Contract.
- 14.5. Our delay or failure to exercise a right under this Contract is not a waiver of that right or any other rights. Our consent to a breach of this Contract is not a consent to any subsequent breach.
- 14.6. If a provision of these terms is unenforceable for any reason, it shall be read down to the point of severance. These terms must not be construed to our disadvantage merely because we prepared them.
- 14.7. This Contract is governed by the law of Western Australia. You submit to the jurisdiction of the courts of Western Australia and waive any right to claim that those courts are inconvenient forums.

**15. Definitions and Interpretation**

- 15.1. In these terms:
  - (a) The singular includes the plural and vice versa;
  - (b) A person includes a firm, body corporate, unincorporated association or authority and reference to a person includes their executors, administrators, successors, substitutes and assigns.
  - (c) A reference to '\$' is a reference to Australian currency.
  - (d) '**Including**' and similar expressions are not words of limitation.
  - (e) Headings are for convenience only.
  - (f) '**Privacy Laws**' means the **Privacy Act 1988 (Cth)**, as amended, and all associated legislation and regulations.
  - (g) '**Products**' means goods and/or services and includes any deliverable resulting from a Service as set out in the Order.
  - (h) '**Service(s)**' means service(s) as set out in our Order.
  - (i) '**Us**', '**we**' or '**our**' means AIS Auto Industry Services Pty Ltd trading as OLEOLOGY ABN 77 101 443 663.
  - (j) '**You**' or '**your**' means the supplier of Products set out in our Order.
- 15.2. This Contract comprises the Order and these terms.