

Leidos Proprietary

Purchase Order Terms and Conditions

This agreement is between Leidos Australia Pty Ltd (ABN 79 612 590 155) of Level 2, 42 Lakeview Drive, Scoresby Vic 3179 (**Leidos**) and the Supplier named in the Purchase Order (**Supplier**)

BACKGROUND

- A. Leidos wishes to buy the Goods described in the Purchase Order from the Supplier.
- B. The Supplier has agreed to sell the Goods to Leidos on the terms and conditions set out in this Agreement.

OPERATIVE PROVISIONS**1. Agreement to buy and sell**

In return for payment of the Net Unit Cost specified in relation to each of the Goods in the Purchase Order (**Price**), the Supplier sells and Leidos buys the Goods on the terms of this Agreement.

2. Supplier Obligations

The Supplier shall ensure that the Goods supplied under this Agreement are:

- (a) of merchantable quality;
- (b) conform with any specifications provided by Leidos or if not specifications have been provided shall conform with accepted industry codes and standards
- (c) fit for the purpose for which they are intended to be used by Leidos;
- (d) free from any defects in material and workmanship.

3. Acceptance of orders

The Supplier may decline any order received from Leidos by written notice to Leidos within 3 days of receipt of the order by the Supplier. Any order not declined under this clause binds the Supplier.

4. Delivery of orders

The Supplier must deliver the Goods to the Shipping Address between the hours of *9 am and 5 pm* on any day Business Day and no later than the Delivery Date.

The Supplier must ensure that Leidos is provided a Material Data Sheet as required by WHS laws, user guides or manuals pertaining to the Goods and any other documentation relating to the Goods (other than a Tax Invoice) required under this Agreement on or before the Delivery Date.

Time is of the essence in delivery of the Goods.

If the Suppliers is aware of any delay or possible delay in the supply and delivery of the Goods in accordance with this Agreement the Supplier must advise Leidos immediately upon becoming aware of the delay or potential delay and provide details of:

- (a) the circumstances giving rise to such delay, including the cause of the delay or potential delay;
- (b) the likely length of the delay or potential delay;
- (c) the steps the Supplier intends to overcome or minimise the delay or potential delay; and
- (d) such other information as Leidos may reasonably request.
- (e)

Leidos' Representative may agree (acting reasonably) to extend the Delivery Date if the circumstances giving rise to the delay or potential delay are legitimate and warrant an extension. Leidos' Representative will promptly advise the Supplier of any revised Delivery Date.

Late delivery of the Goods by the Delivery Date (as amended in accordance with this clause) will constitute a material breach of this Agreement and shall entitle Leidos to terminate this Agreement.

5. Packing of orders

The Supplier must ensure each order is safely and securely packed for transportation to Leidos having regard to:

- (a) the fragility of the Goods;

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- (b) the susceptibility of the Goods to rust and corrosion;
- (c) the distance the Goods are likely to travel; and
- (d) the method of transportation used to transport the Goods.

6. Delivery of the Goods

Acceptance of the Goods by Leidos will not be taken to have occurred under the Goods have been delivered and are accepted in accordance with clause 7 (a) or deemed to be accepted in accordance with clause 7 (b).

Before accepting the Goods, Leidos may test or examine the Goods to determine that they meet the requirements of this Agreement, including any standards detailed in the Specifications.

7. Acceptance of the Goods

(a) If the Goods meet or exceed the standards required under this Agreement (including the Specifications) Leidos must promptly accept the Goods by giving written notice of acceptance to the Supplier. Acceptance of the Goods occurs on the date the notice is issued by Leidos.

(b) If Leidos does not give written notice of acceptance or rejection of the Goods within 20 Business Days of delivery, acceptance of the Goods will be deemed to have occurred on the date of Delivery.

8. Rejection of Non-conforming goods

- (a) Without limiting any other clause of this Agreement or any other remedy that Leidos may have, if the Goods:
 - (i) do not meet or exceed the standards required or warranties given under this Agreement;
 - (ii) do not conform with any applicable Specifications or industry standards; or
 - (iii) are damaged, unfit for purpose or not of merchantable quality, (Non-conforming Goods),

Leidos may reject the Goods by given written notice (including any reasons for rejection) to the Supplier within 20 Business Days of Delivery. Leidos is not obliged to pay for any rejected Non-conforming Goods.

- (b) If, at any time during the ninety (90) days from the date of Acceptance (Warranty Period), Leidos becomes aware that some or all of the Goods are Non-conforming Goods, other than as a result of usual wear-and-tear or due to Leidos' actions, Leidos may reject those Goods (even if they were previously accepted by Leidos) by giving written notice to the Supplier.
- (c) The Supplier must, at the Supplier's cost, promptly collect and remove any Non-conforming goods as soon as practicable following notification under clause 8 (a) or clause 8 (b) and, at the election of Leidos either:
 - (i) replace the Non-conforming Goods with Goods that do meet the relevant standards and Specifications; or
 - (ii) refund Leidos all money paid in respect of the Non-conforming Goods.
- (d) If the Supplier fails to collect and remove the rejected Goods within a reasonable time, Leidos may return the Goods to the Supplier at the Supplier's expense or, following further notification, destroy the Goods or otherwise dispose of the Goods in its discretion.

9. Manufacturer's warranty

The Supplier must take all necessary action to obtain for Leidos the benefit of any manufacturer's warranties applicable to the Goods.

10. Payment

- (a) Unless stated otherwise, the Price is exclusive of GST.
- (b) The Supplier must submit a valid Tax Invoice to Leidos at the Invoicing Address in respect of the Price for the Goods as soon as practical after Acceptance.
- (c) Subject to the remainder of this clause 10 Leidos will pay each undisputed invoice which meets the requirements of clause 10(b), within 45 days of receipt of the invoice.
- (d) An invoice will not be paid until such time as the invoice is certified for payment by Leidos' Representative. An invoice will not be certified for payment unless Leidos' Representative is satisfied that it is correctly calculated with respect to the Goods that are subject of the relevant invoice.
- (e) If Leidos' Representative disputes the invoiced amount (whether in whole or in part) for any reason, Leidos must pay the undisputed amount of such invoice (if any) and notify the Supplier of the amount Leidos believes is due. If requested the Supplier will withdraw the disputed Tax Invoice and issue a replacement Tax Invoice for the undisputed amount.
- (f) Payment of an invoice is to be taken as payment on account only and any such payment is not to be taken as evidence against or an admission by Leidos that the goods have been supplied in accordance with this Agreement, as evidence of the value of the Goods supplied or as an admission that the Goods were satisfactorily supplied.

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Title to the Goods constituting an order free of encumbrances and all other adverse interests will pass to Leidos upon delivery of the Goods to Leidos. Risk in each order passes to Leidos upon Acceptance in accordance with clause 7.

The Supplier shall not without the prior written approval of Leidos and except on such terms and conditions as are approved by Leidos in writing, assign, mortgage, charge or encumber any Goods provided under this Agreement.

12. Intellectual Property

The Supplier warrants that the Goods do not, and will not infringe any intellectual property rights of any person.

The Supplier irrevocably and unconditionally grants to Leidos a non-exclusive, perpetual, royalty-free, transferrable licence (including the right to sub-licence) to use any Intellectual Property Rights in relation to any Goods supplied to the extent necessary to allow Leidos the full use and enjoyment of those Goods and the Supplier must, upon request by Leidos, do all things as may be necessary (including executing any documents) to give full effect to this clause 12.

Data will remain (and, if necessary will become) the property of Leidos. The Supplier will assign to Leidos from the date of creation all Intellectual Property Rights in any Data created by or on behalf of the Supplier. The Supplier must only use the Data to the extent necessary to perform its obligations under this Agreement.

13. Confidentiality

The Supplier must keep the Confidential Information confidential and secure and must (and must ensure that its personnel will):

- (i) Use and reproduce Confidential Information only to the extent necessary to perform its obligations under this Agreement; and
- (ii) Not disclose or otherwise make available Confidential Information, other than to its personnel who have a need to know the information to enable the Supplier to perform its obligations under this Agreement, without Leidos permission or as required by law.

The Supplier must immediately notify Leidos in writing of any actual, threatened or suspected non-authorised disclosure of any Confidential Information, and must include in the notification the nature of the Confidential Information and the person to whom the Confidential information has been (or may be) disclosed or is being used by.

All Confidential Information will remain the property of Leidos and all copies or other records containing Confidential Information (or any part of it) must, except to the extent necessary to comply with any requirements of Law or clause 14 upon request be returned to Leidos or destroyed. Notwithstanding the foregoing, the Supplier may retain copies of information (including Confidential Information) that it is required to retain for its legitimate internal audit or quality assurance purposes, but any information so retained will be retained and held subject in all respects to the terms of this Agreement.

14. Audit

The Supplier must, during the Term and for a period of seven years after the delivery of all Goods under this Agreement keep true and particular accounts and records of all Goods supplied under this Agreement and all associated records, including all supporting materials used to generate and substantiate tax invoices submitted in respect of the Goods supplied under this Agreement.

The Supplier must promptly provide to Leidos all records reasonably requested relating to the Goods supplied under this Agreement.

15. Work Health and Safety Obligations

Without limiting the application of WHS legislation, the Supplier shall:

- (a) comply with, and ensure that all subcontractors comply with, all WHS Legislation;
- (b) ensure, so far as is reasonably practicable, that the Goods are without risk to the health and safety of persons who:
 - (i) use the Goods for a purpose for which they have been designed and manufactured;
 - (ii) handle or store the Goods;
 - (iii) carry out any reasonably foreseeable activity in relation to the assembly or use of the Goods for a purpose for which they were designed or manufactured, or the proper storage, decommissioning, dismantling or disposal of the Goods; or
 - (iv) whose health or safety may be affected by the use or activity referred to in sub-paragraphs (i) to (iii).
- (c) Provide to Leidos on delivery of the Goods or at such time as requested by Leidos, any information or documentation necessary to enable Leidos to comply with its obligations under the WHS Legislation;

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(d) Provide to Leidos within 10 business days of receipt or submission or any notice or written communications issued by a regulator under or compliance with the applicable WHSE Legislation to the Supplier or its subcontractor(s) relating to HSE matters and any undertakings or written communications given by the Supplier or its subcontractors to the regulator.

16. Export Controls

The Supplier shall comply with all applicable domestic and foreign import and export control laws and regulations and shall provide all information, about the Goods, and any constituent parts, that may be necessary for Leidos' compliance with all applicable domestic and foreign import and export control laws and regulations and shall keep Leidos informed in writing as to any change in the export controls status or jurisdiction classification of any Goods supplied and their constituent parts.

The Supplier shall obtain a jurisdiction classification of the Goods and if required, obtain export authorisation which is necessary to ensure delivery of the Goods to Leidos by the Delivery Date.

The Supplier shall provide to Leidos complete copies of any relevant export authorisations (including any exemptions) prior to the Delivery Date.

Leidos and Supplier shall provide reasonable assistance to assist each other in ensuring that the information submitted to obtain any export or import authorization is accurate and complete.

17. Modern Slavery

The Supplier warrants that in supplying the Goods required under this Agreement that it will not use any materials, goods or labour which are, or which it ought to know through making reasonably enquiries may be the product of Modern Slavery.

The Supplier must take reasonable steps to identify, assess and address risks of Modern Slavery Practices in its operations and supply chains used to supply the Goods.

If at any time the Supplier becomes aware of Modern Slavery practices in its operations and supply chains used to supply the Goods, the Supplier must as soon as reasonably practicable take all reasonable actions to address or remove these practices, including where relevant my addressing any practices of other entities in its supply chains.

18. Compliance with Laws and Codes of Conduct

The Supplier, in performing its obligations under this Agreement comply with

- (a) all Laws affecting or applicable to the Supply of the Goods by the Supplier under this Agreement;
- (b) Leidos Code of Conduct which is available at <https://www.leidos.com/sites/leidos/files/2021-11/Supplier-Code-of-Conduct.pdf>;
- (c) Anti- Bribery and Anti-Corruption legislation.

19. No unlawful inducements

The Supplier will not, and will ensure that its Personnel will not, directly or indirectly offer, promise, agree to pay, give, accept or solicit anything of value (including to or from any third party) in order to secure any reward or improper benefit.

Leidos may terminate this Agreement immediately on notice to the Supplier if the Supplier or any of its Personnel is found to have engaged in any conduct under this clause [I] and recover the amount of any loss resulting from such termination as a debt due from the Supplier.

20. Insurance

The Supplier must obtain and maintain:

- (a) Public Liability insurance in the sum of AUD\$10million for the period up to seven years after the supply of the Goods;
- (b) Product liability insurance in the sum of AUD \$10 million for the longer of any Warranty Period and three years from the acceptance of the Goods under this Agreement.
- (c) Insurance covering any the Goods against the risk of loss, damage or destruction cause by all commercially insurable risk for an amount not less than their full replacement value plus freight and insurance on an indemnity basis during transit of such property by land, sea or air and during loading or unloading and storage during transit where such transits are at the risk of the Supplier. The insurance shall insure the respective interests of the Supplier and Leidos.

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- (d) Workers compensation and employer's liability insurance covering all liabilities whether arising under statute, common law or civil law in relation to the death or injury to any employee of the Contractor or any person deemed to be an employee of the Contractor.

21. Indemnity

The Supplier indemnifies Leidos against any liabilities, losses, damages, costs and expenses (including all reasonable legal costs) (Losses) or compensation arising out of, or connected with, any:

- (a) Personal injury including sickness or death;
- (b) Property damage;
- (c) Breach of confidentiality
- (d) Any wilful or unlawful act or omission
- (e) Any third party claim arising out of any breach of this Agreement by the Supplier or its personnel or any negligent act or omission of the Supplier or its Personnel;

which was caused, or contributed to by any act or omission of the Supplier or its Personnel.

The Supplier's liability to indemnify Leidos is reduced to the extent that any wilful, unlawful or negligent act or omission by Leidos or its personnel contributed to their liability, loss, damages, cost, expense or compensation.

22. Term

This agreement commences on the date it is made and ends when terminated in accordance with any express right of termination set out in this agreement.

23. Termination

- (a) In the absence of any breach of this agreement, either party may terminate this agreement by providing at least 60 days' written notice to the other party.
- (b) This agreement will automatically terminate if a party enters into any composition or arrangement with its creditors or has a receiver appointed over any of its assets or is the subject of any resolution or petition for winding up or judicial management (other than for the purpose of amalgamation or reconstruction).
- (c) Either party may terminate this agreement if:
 - (i) the other party is in material breach of any of its obligations under this agreement; and
 - (ii) the breach is capable of remedy and fails to remedy the breach for a period of [number, eg 30] days after receipt of a written notice by the other party requiring rectification of the breach.
- (d) Exercise of the right of termination afforded to either party under this clause will not prejudice the legal rights or remedies which either party may have against the other in respect of a breach of any term, condition or warranty of this agreement.
- (e) The obligations of the parties that by their nature could reasonably be construed as being intended to continue to apply beyond the termination of this agreement will continue to apply.

24. Amendment

This agreement is not to be amended except in writing signed by each of the parties.

25. Waiver and exercise of Rights

A waiver of any right, power or remedy under this Agreement must be in writing. The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement does not amount to a waiver. A single or partial waiver by a party of a right under this Agreement does not prevent any other exercise of that right or any other right. A party is not liable for any loss, cost or expense of any other party caused or contributed to by a waiver, exercise, attempted exercise failure to exercise or delay in the exercise of a right.

26. Severability

Any provision of this Agreement which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision will to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.

27. Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that Party.

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Leidos may set off against any sum owed to the Supplier under this Agreement any amount the owing by the Supplier to Leidos.

29. Proper law and Jurisdiction

This agreement is subject to the law of the Australian Capital Territory. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

30. Assignment

The Supplier may not assign any rights under this Agreement without Leidos' prior written consent. Leidos may assign any right under this Agreement to a Related Company without the Supplier's obtaining the Supplier's consent.

31. Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior negotiations, agreements, representations and understandings written or oral except to the extent that they are expressly incorporated into this Agreement.

32. Definitions

In this Agreement, unless the context indicates a contrary intention:

Acceptance has the meaning given in clause 7.

Anti-bribery and Anti-corruptions Laws means Divisions 70, 141 and 142 and Part 10.9 of the *Criminal Code Act 1995 (Cth)*, Part 4A of the *Crimes Act 1990 (NSW)*, section 176 of the *Crimes Act 1958 (Vic)*, Section 150 of the *Criminal Law Consolidation Act 1935 (SA)*, Sections 442B to 442BA of the *Criminal Code Act 1899 (Qld)*, Section 529 to 539 of the *Criminal Code (WA)*, Section 266 of the *Criminal Code Act 1925 (Tas)*; Sections 356 to 357 of the *Criminal Code 2002 (ACT)* and Section 236 of the *Criminal Code Act 1983 (NT)* and any similar legislation applicable to the Supplier in the country in which the Supplier is incorporated.

Business Day means a day which is not a Saturday, Sunday or a Public Holiday at the Shipping Address.

Confidential Information means any information received by one party from the other and which has been designated as being confidential or which by its nature would reasonably be considered to be confidential but excludes information which was already in the possession of the receiving party prior to the date of this Agreement, is in or which subsequently enters the public domain other than as a result of a breach of an obligation of confidentiality or is lawfully obtained on a non-confidential basis from a third party.

Controlled Materials means any physical items and items such as drawings, instructions, photographs, documentation, plans, diagrams, models, manuals, schematics and any other form of technical data or hardware that is subject of export and import restrictions as to their use.

Data means all data, information, drawings or other materials embodied in any form supplied by Leidos in connection with this Agreement or generated by the Supplier on behalf of Leidos in the course of delivering the Goods.

Delivery Date means the date/s on which the Goods are to be delivered as stated in the Purchase Order.

Export Authorisation means all required export licenses, agreements, other Governmental authorisation, or exception or exemption necessary relied upon for lawful export of supplies

Goods means the goods (or any of them) stated in the Purchase Order.

Intellectual Property Rights means all intellectual property rights at any time recognized by Law, including all present and future copyright, all proprietary rights in relation to inventions (including patents), registered and unregistered trade marks, trade secrets and know-how, registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic field.

Invoicing Address means the address stated for submission of invoice in the Purchase Order.

Laws means any applicable law including, without limitation, common or customary law, equity, judgment, Statute or any other legislative or regulatory measures in force from time to time in Australia or, as applicable, overseas (including any amendment, modification or re-enactment of them).

Leidos Representative means the Leidos POC stated in the Purchase Order.

Modern Slavery has the meaning given in section 4 of the *Modern Slavery Act 2018 (Cth)* and includes any form of slavery, servitude or forced labour to exploit children or other persons.

Net Unit Cost means the price per item of the Goods as specified in the Purchase Order.

Price means the sum calculated by multiplying the Net Unit Cost for the applicable units by the number of units delivered.

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Shipping Address means the address stated for deliver in the Purchase Order.

Tax Invoice has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

WHS Legislation means The *Work Health Safety Act 2011* (Cth) and any corresponding work health and safety law that applies to the Supplier (including any applicable State and Territory Laws) and includes any regulations made under the *Work Health and Safety Act 2011* (Cth) and any 'corresponding WHS law' within the meaning of section 4 of the WHS Act and Regulation 6A of the Work Health and Safety Regulations 2011.