



Mainteck Services Pty Ltd

A.C.N 098 052 647

Standard Conditions of Contract

1 PRECEDENCE

- 1.1. These Standard Conditions of Contract take precedence over any and all other terms or conditions or agreements (implied, express or otherwise) between the parties including any terms or conditions in any documentation provided by the Purchaser and shall not be amended unless agreed in writing and authorised by Mainteck Services Pty Ltd ("Mainteck"). These Standard Conditions of Contract shall have priority over any other document (including any Contract document such as a Purchase Order or Quotation) and shall govern the transaction between Mainteck and the Purchaser.
- 1.2. These Standard Conditions of Contract apply to all goods sold to, and/or services performed for, the Purchaser by Mainteck Services Pty Ltd. Mainteck may issue a Quotation to the Purchaser at any time. The Quotation shall identify the Scope of Work and shall provide a price for selling or performing the Scope of Work. These Standard Conditions of Contract apply to each and every Quotation issued by Mainteck and may be incorporated by reference.
- 1.3. The Purchaser may submit to Mainteck a Purchase Order in relation to a Quotation. Mainteck may, in writing, accept or reject a Purchase Order and may amend any Quotation at any time before its acceptance of a Purchase Order. No contract exists between Mainteck and the Purchaser if Mainteck rejects a Purchase Order. If Mainteck does not expressly accept a Purchase Order but commences selling or performing the relevant Scope of Work, it shall be taken to have accepted the Purchase Order.
- 1.4. Any acceptance by Mainteck is expressly limited to these Standard Conditions of Contract and the terms and conditions expressly referred to in the Quotation (if any). Notwithstanding any contrary provision in the Purchaser's Purchase Order or other acceptance document, delivery of the Products or commencement of production by Mainteck shall not constitute acceptance of Purchaser's terms and conditions to the extent any such terms or conditions are inconsistent with or in addition to the Standard Conditions of Contract contained in the Quotation.
- 1.5. Once a Purchase Order is accepted by Mainteck it shall form the "Contract" together with these Standard Conditions of Contract and the relevant Quotation.

2. Definitions and Interpretation

2.1. DEFINITIONS

- 2.1.1. "Claim" means:
 - any claim, demand, proceeding, appeal, or action of any nature whatsoever (whether actual, commenced, anticipated, prior, threatened or potential) whether in contract, statute, tort, equity, restitution, or under any other principle of law in New South Wales, the Commonwealth of Australia, or any other jurisdiction, that a party may have now or in the future against the other party arising out of or in connection with this Contract.
- 2.1.2. "Contract" has the meaning given to it in clause 1.4.
- 2.1.3. "Deduction" means exemption, reduction, allowance, credit, rebate, adjustment.
- 2.1.4. "Force Majeure" any event or circumstance including but not limited to any act of war (whether declared or not), revolution, acts of public enemies, terrorism, riot or civil disturbance, strike or other industrial action, government restrictions, epidemic, or acts of God or natural disaster including but not limited to flood, fire or storm.
- 2.1.5. "GST" has the same meaning as in the GST Legislation.
- 2.1.6. "GST Legislation" means *A New Tax System (Goods and Services Tax Act 1999* (Cth), any associated regulations.
- 2.1.7. "Mainteck" means Mainteck Services Pty Ltd (ABN 71 098 052 647).
- 2.1.8. "INCOTERMS" 2010 means the International Chamber of Commerce Incoterms rules 2010;
- 2.1.9. "Intellectual Property Right" includes any trademark or name, registered design, copyright, patent, moral right, or other protected right.
- 2.1.10. "Price" means the total of any fees, costs and expenses for the Scope of Work as set out in the Quotation.

- 2.1.11. "Purchaser" means the purchasing entity named in the Quotation and/or Purchase Order.
- 2.1.12. "Quotation" means any written quotation from Mainteck to the Purchaser in relation to the Scope of Work attaching or referring to these Standard Conditions of Contract.
- 2.1.13. "Scope of Work" means the goods and/or the services described in the Quotation.
- 2.1.14. "Tax Invoice" has the same meaning as in the GST Legislation.
- 2.1.15. "Taxes" means all taxes, fees, levies, duties, and charges imposed or assessed in respect of the Scope of Work by all local, state, or national governmental authorities including income tax (including withholding for prescribed payments or group tax), payroll tax, statutory superannuation contributions, workers' compensation payments and contributions, sales tax, customs duty, excise tax and stamp duty.
- 2.1.16. "Written Communication" means a letter, facsimile, or email.

2.2. INTERPRETATION

A reference herein to:

- 2.2.1. words importing the singular include the plural and vice versa;
- 2.2.2. an expression importing a natural person includes any company, partnership, joint venture, association, corporation, other body corporate, or governmental agency;
- 2.2.3. a reference to a document (including this Contract) includes all amendments or supplements to, or replacements or notations of, that document;
- 2.2.4. a reference to a party includes:
 - if that party is a person, that party's personal representatives, executors, administrators, successors, and permitted assigns; and
 - if that party is a corporation, that party's successors and permitted assigns;
- 2.2.5. a reference to any person if that person ceases to exist, is reconstituted, renamed or replaced, or its powers or functions are transferred to any other person, refers respectively to the person established or constituted in its place or succeeding to its powers or functions
- 2.2.6. any reference to a statute or statutory provision shall be deemed to include any statutory provision which supplements, amends, extends, consolidates, or replaces the same, or which has been supplemented, amended, extended, consolidated, or replaced by the same, and any orders, regulations, instruments, or other subordinate legislation made thereunder;
- 2.2.7. an obligation, representation or warranty on the part of two or more persons binds them jointly and severally;
- 2.2.8. an obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally; and
- 2.2.9. "document", "goods", "information" and "services" shall each be read in the widest possible context.

3. PRICE

- 3.1. The Price stated in the Quotation excludes any Taxes. All Taxes applicable shall be payable by the Purchaser unless otherwise stated in the Quotation.
- 3.2. Quotations are valid for a period of thirty (30) days from the date of the Quotation unless Mainteck withdraws, revokes or varies the Quotation at any time before a Purchase Order is accepted in respect of a Quotation.

4. DELIVERY

- 4.1. Unless otherwise stated in the Quotation, delivery shall be Ex Works (EXW in accordance with INCOTERMS 2010) meaning that Mainteck delivers when it places the Scope of Work at the disposal of the Purchaser at Mainteck's premises or at another named place. Mainteck does not need to load the Scope of Work onto any collecting vehicle, nor does it need to clear the Scope of Work for export, where such clearance is applicable. A Quotation may provide for collection of the Scope of Work by the Purchaser in which case Mainteck is not obliged to deliver the Scope of Work.
- 4.2. Delivery dates as stated in the Quotation are approximate only and are:
 - a) based on shop-loading at the time of Quotation; and

- b) contingent upon all of the Purchaser's information required for design and manufacture being received by Mainteck in a timely manner.
- 4.3. Mainteck shall use reasonable efforts to deliver Scope of Work by the estimated delivery date. Any failure by Mainteck to deliver the Scope of Work by any particular date will not entitle the Purchaser to cancel the Purchase Order, void any term of this Contract or entitle the Purchaser to claim any compensation whatsoever (including liquidated or unliquidated damages) from Mainteck for late delivery.
- 4.4. Where Mainteck agrees in writing to guarantee a delivery date, Mainteck will not be liable for late delivery or failure to deliver if Mainteck is delayed or hindered by a force majeure event, any act, omission or direction of the Purchaser (or its employees, agents, consultants or contractors), or any other cause beyond Mainteck's reasonable control.
- 4.5. All delivery dates are dependent upon the timely receipt of a Purchase Order, any relevant delivery information from the Purchaser and any payment by the Purchaser in accordance with these Standard Conditions of Contract.
5. PAYMENT
- 5.1. Where a Purchaser has an approved credit account with Mainteck, and subject to Mainteck's right to withdraw credit, the Purchaser must make payment within thirty (30) days from the end of the month of invoicing. Mainteck may serve an invoice in relation to a Purchase Order at any time.
- 5.2. Where a Purchaser does not have an approved credit account the Purchaser must make payment prior to delivery or collection of the Scope of Work.
- 5.3. If the Purchaser fails to fulfil the obligations under clause 5.1 or 5.2 then apart from other rights, Mainteck have the right:
- suspend any or all of the Scope of Work until payment in full is received; and/or
 - terminate this Contract under clause 13.3.
- 5.3.1. Mainteck reserves the right to charge interest on any amount overdue from the date it becomes due until payment is received at the rate of 10% per annum compounded daily.
- 5.3.2. the Purchaser is obliged to pay to Mainteck all costs (including legal fees on a solicitor and own client basis), expenses, loss or damages incurred or suffered by Mainteck in collecting any unpaid amount from the Purchaser
- 5.4. Unless both parties otherwise agree in writing, the Purchaser cannot set off (whether in law or otherwise) any amount that is or may be owing from Mainteck to the Purchaser against any money that the Purchaser must pay Mainteck under Clause 5.1 or Clause 5.2.
6. Title and Risk
- 6.1. Ownership, property and title in any part of the Scope of Work shall remain with Mainteck and shall not pass to the Purchaser, irrespective of the Purchaser taking possession of any part of the Scope of Work, until the Purchaser has paid and Mainteck has received the Price in full.
- 6.2. In the event that any parts of the Scope of Work are delivered prior to receipt of full payment of the Contract Price, the Purchaser has the obligation to keep the parts separately and properly stored until Mainteck has received full payment for the Scope of Work.
- 6.3. Risk for any parts of the Scope of Work passes to the Purchaser at the earlier of:
- delivery as defined under clause 4.1; or
 - upon title of the Scope of Work passing to the Purchaser.
7. Quality and Inspection
- 7.1. The Scope of Work is subject to Mainteck's accredited quality system.
- 7.2. The Purchaser shall have the right at its own cost to inspect the progress of the Scope of Work. Such inspection including scope, notice, date and time require Mainteck's agreement in writing.
8. Documentation and Data
- 8.1. In the event that the Purchaser furnishes Mainteck with information including but not limited to instruction, drawings or any other data required for the performance of the Scope of Work, Mainteck:
- a) assumes no responsibility for the adequacy of such information;
 - b) is entitled to rely on the accuracy of such information;
 - c) is not required to review or confirm the accuracy of such information; and
 - d) to the extent permitted by law, is not liable to the Purchaser for any Claims arising out of or in connection with any inaccuracy of such information.
9. Intellectual Property
- 9.1. Ownership of Intellectual Property Rights associated with Mainteck's Scope of Work including design, documents and manufacturing techniques (including software) owned or developed by Mainteck are at all times vested in Mainteck.
- 9.2. Upon receipt of full payment for the Scope of Work, Mainteck grants the Purchaser a royalty free, non-exclusive and non-transferrable licence to use such Intellectual Property Rights under clause 9.1. The licence is only for use by the Purchaser and for use of the Scope of Work and shall not be used for or in relation to any other goods or services.
- 9.3. The Purchaser warrants to Mainteck that any designs, materials, documents, methods of working or other information it provides to Mainteck other party shall not infringe any Intellectual Property Rights.
- 9.4. The Purchaser shall indemnify Mainteck against any claims, costs (including legal costs), expenses, losses, or damages in connection with or arising out of any infringement of any Intellectual Property Right.
10. Confidentiality
- 10.1. Subject to clauses 10.2 and 10.3, each party agrees to keep the terms and conditions of this Contract and any information supplied by one party to the other under this Contract confidential. A party may only disclose confidential information of the other party to another person provided that:
- the disclosing party obtains the other party's consent; and
 - the person receiving the confidential information also agrees in writing to be bound by this clause 10.
- 10.2. Confidential information does not include information which:
- was at or after the time of disclosure part of the public domain through no act or omission of either party; and/or
 - became available to Mainteck or the Purchaser from a third party who did not acquire such confidential information under an obligation of confidentiality either directly or indirectly from either Mainteck or the Purchaser.
- 10.3. Each party may disclose:
- information as is required by law to be disclosed; and
 - confidential information in confidence to that party's financiers, insurers or professional advisers.
11. Defects Liability
- 11.1. Mechanical Warranty
- Mainteck warrants that the Scope of Work under the Contract shall be free from defects arising from faulty materials (supplied by Mainteck), workmanship, and design (where Mainteck designs the Scope of Work) during the warranty period ("Warranty Period"). Mainteck will not be held responsible for any loss or damage arising from incorrect installation, or improper maintenance, operation or use of the Scope of Work by the Purchaser or any party other than Mainteck.
- In no circumstance does the warranty extend to or apply in respect of defects arising from effects including but not limited to normal wear, corrosion, excessive heat, chemical degradation, abrasive erosion, or improper or extended storage.
- It is a condition of the warranty that, prior to the Scope of Work being placed into operation pre-commissioning is carried out using best practice by the Purchaser
- The Warranty Period is twelve (12) months from Delivery unless otherwise specified in a Quotation and authorised by Mainteck.
- The warranty shall be void if any repairs or replacements are made without Mainteck's prior approval.
- The warranties set forth in these Standard Conditions of Contract shall be exclusive, in lieu of, and exclude any and all other warranties, implied or express, to the fullest extent permitted by law. There are no implied warranties of merchantability, fitness for purpose, performance or otherwise, except as required by law.
- 11.2. Remedies under Mechanical Warranty
- Subject to clause 11.1, where the Scope of Work contains defective material or workmanship, provided that Purchaser has informed Mainteck by way of Written Communication (with sufficient description of the defect) within seven (7) days of becoming aware of the defect and during the Warranty Period, Mainteck shall at its cost rectify the defect within a reasonable time. The manner in which Mainteck rectifies the defect, whether by replacement or by repair of any defect or by obtaining equivalent goods or otherwise shall be at Mainteck's sole and absolute discretion. If Mainteck is to replace Scope of Work, or any part of the Scope of Work, then Mainteck shall only be obliged to pick up the Scope of Work from the original delivery point and to deliver the replacement to the original delivery point. Mainteck shall not be liable for removal or reinstallation costs or other costs of similar nature. Mainteck shall at all times have a right at its sole discretion to repair any defects in situ at the site where the Scope of Work is located and the Purchaser shall provide Mainteck with sufficient access to allow such repairs.
- To the fullest extent permitted by law, Mainteck's liability for defects under the Contract shall be limited to the remedies in clause 11.2. A Claim by the Purchaser of any alleged defect shall give no right to the Purchaser, implied or otherwise, to withhold or make any Deduction from payments due to Mainteck.
- 11.3. No Liability for Process Design
- Mainteck shall not be liable for design of any process for which the Scope of Work will be used and Mainteck accepts no responsibility and shall not be liable to the Purchaser in connection with the Contract, in tort (for

negligence or otherwise), equity, restitution, under statute or on any other basis for any claims, demands, liabilities, losses, costs, expenses or damages arising from or in connection with any design of any process for which the Scope of Work will be used (including with any other equipment).

12. LIMITATIONS OF LIABILITY and INDEMNITIES

12.1. Limitation on liability

Notwithstanding anything else in the Contract and to the fullest extent permitted by law, Mainteck's total aggregate liability to the Purchaser, whether arising out of or in connection with the Contract (including the performance or non-performance of the Scope of Work or any of its obligations under the Contract), under statute, in tort (for negligence or otherwise), equity, restitution, or on any other basis shall be the lesser of:

- the total aggregate Price of the Contract; or
- if applicable, the amount recovered by Mainteck under any of Mainteck's insurance policies which are in effect at the time the Scope of Work is performed.

12.2. Exclusion of consequential loss

Notwithstanding anything else in the Contract, to the fullest extent permitted by law, Mainteck shall not be liable to the Purchaser for any special, indirect, or consequential loss or damages including but not limited to pecuniary loss or damage not consequential upon injury or damage, loss of use of plant, equipment, services or existing property, loss of profit or revenue, or loss of anticipated or future profit or revenue, loss of opportunity or opportunity cost, loss of production, raw materials or end product, loss due to business interruption, loss of benefit of contract, loss connected to or arising out of the Purchaser's performance of its obligations under this Contract, loss which does not arise directly or naturally from a breach of contract by the Customer, whether or not foreseen or foreseeable at the date of the Contract and whether arising out of or in connection with the Contract, under statute, in tort (for negligence or otherwise), equity, restitution, or on any other basis.

12.3. Indemnities by the Purchaser

The Purchaser indemnifies and holds harmless Mainteck against any Claims, liability, loss, or damage arising out of or in connection with death, personal injury, or breaches of Intellectual Property Rights caused by or arising out of the negligence, breach of contract, or wilful misconduct of the Purchaser (or its agents, employees, consultants or subcontractors).

13. SUSPENSION and TERMINATION

13.1. Suspension

Mainteck may suspend the Contract:

- (a) pursuant to clause 5.3;
- (b) pursuant to clause 15.3; and
- (c)

The Purchaser is not entitled to suspend the Contract. In the event that the Purchaser does purport to suspend the Contract, Mainteck shall be entitled to payment for all its costs and works completed or in production. Costs associated with any purported suspension by the Purchaser will be payable on the basis of actual costs plus ten percent (+10%). Such costs may include, without limitation, costs associated with project management, engineering, design work, suspension of subcontractor orders, hedging costs, storage costs, handling, insurance costs, and transportation costs.

13.2. Termination for convenience

- (a) Mainteck may terminate the Contract upon 30 days' written notice to the Purchaser. Upon termination by Mainteck pursuant to this clause 13.2(a), the Purchaser shall immediately pay any amounts due and payable to Mainteck.
- (b) If the Contract is terminated pursuant to this clause 13.2(a) for a breach of Contract by Mainteck and the Purchaser has properly paid amounts to Mainteck for Scope of Work which has not been provided or performed by Mainteck, Mainteck shall refund to the Purchaser the relevant amount/s.
- (c) In the event that the Purchaser terminates this Contract for convenience, Mainteck shall be entitled to payment for all Mainteck's costs and works completed or in production under the Contract. Costs associated with cancellation of subcontractor's orders will be payable on the basis of actual costs plus ten percent (+10%). Such costs include without limitation costs associated with project management, engineering, design work, suspension of subcontractor orders, storage costs, handling, insurance costs and rearrangement of transportation. In addition, any costs, losses or gains which result from the cancellation of currency hedges associated with the Contract shall be to the Purchaser's account. Such hedges may be for either contract payments to Mainteck by the Purchaser or from Mainteck to subcontractors and shall be established by Mainteck at its own discretion whenever transactions are not in Australian dollars. The Purchaser expressly agrees that such hedges are put in place specifically for the supply under the Contract, including also subcontractor order, and are not of a general financing nature.

13.3. Termination for breach of Contract

Either party may terminate the Contract in the event of a material breach of the Contract by the other party provided that:

- the terminating party has served on the other party a Written Communication specifying the breach and requiring the breach to be remedied within the time stated in the Written Communication (which shall not be less than 14 days); and
- the breach has not been remedied within the period given in that Written Communication or the breach is not capable of remedy.

If Mainteck terminates the Contract pursuant to clause 13.3, without limiting any of Mainteck's other rights, Mainteck has the right to repossess any part/s of the Scope of Work provided to the Purchaser under the Contract even if the part/s have become a permanent fixture.

Upon termination for breach of Contract by the Purchaser, the Purchaser shall immediately pay any amounts due and payable to Mainteck.

If the Contract is terminated pursuant to this clause 13.3 for a breach of Contract by Mainteck and the Purchaser has properly paid amounts to Mainteck for Scope of Work which has not been provided or performed by Mainteck, Mainteck shall refund to the Purchaser the relevant amount.

14. VARIATIONS

The Purchaser may request changes to the scope and delivery under the Contract (Variation). Such request must be made in writing. In response to a Variation request, Mainteck may prepare, for the Purchaser's approval, an offer including the effect of the implementation of the changes on the Price and delivery time. Mainteck shall have no obligation to proceed with any change until the Parties agree in writing to any change in the Price, delivery schedule and other possible terms and conditions requiring an amendment.

Nothing in this clause imposes a requirement on Mainteck to accept a request from the Purchaser for a Variation. Mainteck has the discretion to reject any request for a Variation.

15. FORCE MAJEURE

15.1. A failure to perform any of Mainteck's obligations including any delay in the delivery or provision of any or all of the Scope of Work under the Contract shall not be deemed a breach by Mainteck and Mainteck shall not be liable, if such failure to perform is caused by a Force Majeure.

15.2. In the event of a Force Majeure event, Mainteck will be entitled to an extension of time for delivery under the Contract. Mainteck shall not be liable to pay any Liquidated Damages for any delay resulting from a Force Majeure.

15.3. If a Force Majeure event lasts longer than 30 days Mainteck may elect to suspend or terminate the Contract.

16. DISPUTE RESOLUTION

16.1. Notice of dispute

In the event of a dispute arising from or in connection with the Contract then:

- either party may give Written Communication to the other party giving full particulars of the dispute; and
- if that Written Communication is given, the dispute must be determined under the procedure in this clause 16.

16.2. Executive negotiation

Every dispute must, if not resolved within fourteen (14) days after a Written Communication is given under clause 16.1 or within such longer period of time as the parties may agree in writing, be referred to an authorised representative of each party who must meet and undertake genuine and good faith negotiations with a view to resolving the dispute.

16.3. Litigation

If all efforts at resolving the Dispute under clause 16.2 fail within twenty-one (21) days after the giving of the Written Communication under clause 16.1 or within such longer period of time as the parties may agree in writing, either party may commence proceedings in a court of jurisdiction in relation to the dispute.

16.4. Nothing in this clause 16 prevents a party from commencing interlocutory proceedings in relation to the Contract at any stage and without notice to the other party except as required by law.