

PURCHASE ORDER TERMS & CONDITION

IT IS AGREED BETWEEN BRENA GROUP PTY LTD AND THE SUPPLIER:

1. DEFINITIONS

Purchase Contract	is as defined in Clause 2
Purchase Order	means the Purchase Order for issued by Brena Group and provided as page 1 of the Purchase Contract incorporating the Special Conditions, if any.
Brena Group	means Brena Group Pty Ltd (ABN 28 634 293 093)
Supplier	means the supplier named on the Purchase Order
Goods & Services	means the goods and/or services specified on the Purchase Order

2. PURCHASE CONTRACT:

- (a) The Purchase Contract is
- the Purchase Order;
 - these Purchase Order Terms and Conditions;
 - all conditions implied by law (except where inconsistent with the express terms of this Order);
 - all representations made by the Supplier for the benefit of Brena Group in relation to the Goods and Services (except where expressly excluded in the Purchase Order);
 - any documents incorporated by reference within the Purchase Order or the Terms and Conditions, to the extent that they or any part of them is not inconsistent with the express terms of the Purchase Order or these Terms and Conditions; and excludes
 - any and all terms and conditions provided or issued by the Supplier in relation to the supply of the Goods and Services.
- (b) Without limiting the foregoing:
- (i) any purported terms and conditions of sale seeking to limit the liability of the Supplier in relation to the Goods and Services and which may be contained in sales literature, tenders, quotations, information, notices, delivery dockets, acceptance letters, invoices or other material provided by the Supplier but which are not expressly contained in this Purchase Contract, or incorporated by express reference herein are deemed to be excluded;
 - (ii) modification of these terms and conditions expressed in any document of the Supplier shall not apply to this Purchase Contract unless expressly accepted in writing by Brena Group;
 - (iii) no amendment or alteration to this Purchase Contract shall be made without the written agreement of Brena Group.
- (c) Notwithstanding the completion of the supply of the Goods and Services under this Purchase Contract, any condition which is capable of taking effect after completion shall remain in full force and effect.

3. QUALITY, SAFETY, QUANTITY, DELIVERY & WARRANTIES:

- (a) The Goods and Services provided by the Supplier shall conform precisely in quality, quantity, specification and description with this Purchase Contract, and any plans or specification or other description provided or nominated by Brena Group and any samples of the Goods and Services inspected and approved by Brena Group.
- (b) If the Supplier delivers an incorrect quantity of Goods and Services, Brena Group may without prejudice to its other rights accept or reject in part or whole the Goods and Services so delivered and where Goods and Services are to be returned to the Supplier it will be at the Supplier's expense.
- (c) Time of delivery of the Goods and Services if stated in the Purchase Order shall be of the essence.
- (d) The Goods and Services shall be new and not second hand unless expressly stated to the contrary in the Purchase Order and shall be free from all liens, charges and encumbrances of any kind and shall be the property of the Supplier.
- (e) The Goods and Services shall comply with the Standards laid down by any standards association (e.g. Standards Australia), authority, supply board and/or any other body or association establishing conditions of quality or merchantability in relation to the Goods and Services. Where more than one standard applies to the Goods and Services, the higher standard will apply.
- (f) All Goods and Services must comply with all applicable laws relating to health, safety and the environment, including all relevant Acts, Regulations, Codes of Practice applying to such Goods and Services.
- (g) The Goods and Services shall be fit for the purpose for which goods of the same kind are commonly supplied and any other purpose made known to the Supplier, be of merchantable quality and be free from defects in materials and workmanship.
- (h) All warranties implied at law shall apply to the Goods and Services in addition to any warranty expressly contained herein or to any manufacturer's warranty, service guarantee or guarantee of performance. In the event of any inconsistency between any implied warranty or express warranty or guarantee the most favourable to Brena Group shall prevail.

4. PRICE:

- (a) All prices stated in the Purchase Order are firm and not subject to escalation unless specified in the Purchase Order.
- (b) The prices stated in the Purchase Order are deemed to include all incidental costs of providing the Goods and Services in accordance with the Purchase Contract, including mobilisation, demobilisation, delivery to, and off loading at the destination specified by Brena Group unless expressly stated to the contrary.
- (c) The works must not be varied without the written approval of Brena Group. In the event that the works are varied, including increases or decreases to quantities, or changes in scope or similar, the Supplier must gain written approval from Brena Group prior to having any entitlement to claim for any associated costs. Approval for additional costs will be provided at the absolute discretion of Brena Group. Any variations will be valued by Brena Group, and added to, or deducted from the price.
- (d) If delivery of the Goods and Services is not in accordance with the Purchase Contract, Brena Group may refuse or reject the Goods and Services and may procure similar Goods and Services elsewhere and the Supplier shall be liable for any additional costs of Brena Group in consequence thereof.
- (e) Payment shall be made by the date specified in the Purchase Order, or if not specified, within 45 days of the last day of the month in which delivery of the Goods and Services occurs, or earlier if required by law. The Reference Date in this Purchase Contract is the last day of the month in which the Goods and Services were supplied.
- (f) Notwithstanding anything to the contrary in this clause, no payment will be due to the Supplier unless the Supplier has first furnished to Brena Group:
- an Invoice for the Goods and Services, which includes the calculation of any applicable Sales Tax, Customs Duty, Excise or other Government Tax, charge or levy applicable to the Goods and Services; and
 - Any information required by Brena Group to verify the amount of the invoice, including measurements of quantities, dockets, receipts, and breakdowns.

5. INSPECTION:

- (a) Brena Group or its designated agent shall have the right of inspection of all work related to the manufacture and/or supply of the Goods and Services. Any such inspection shall not affect the obligations of the Supplier with respect to the Goods and Services.
- (b) In relation to goods only, acceptance of goods provided by the Supplier to Brena Group is subject to inspection, review and/or testing after delivery (or at the Brena Group's discretion, before delivery) and if the goods are to be installed or incorporated into plant or premises, subject to inspection and testing following such installation or incorporation. Signature by or on behalf of the Brena Group shall not be or be construed as acceptance by the Brena Group of the Goods and Services but only the number of packages or items of the Goods and Services delivered by the Supplier.

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- (c) In every case, inspection and testing must be carried out to the satisfaction of Brena Group. If in the opinion of Brena Group the Goods and Services do not comply in any respect, however minor, with the Purchase Contract, Brena Group may in its discretion either:
- (i) reject and return the Goods and Services at the Supplier's expense, and such expense will be deducted from any monies owing by Brena Group to the Supplier or recovered from the Supplier as a debt due and owing; or
 - (ii) convert the Goods and Services into a condition acceptable to Brena Group, the cost of such conversion to be deducted from any monies owing by Brena Group to the Supplier or recovered from the Supplier as a debt due and owing.

6. PROPERTY:

Subject always to Brena Group's right of rejection of the Goods and Services, property in and title to the Goods and Services, including any documents, shall pass to Brena Group upon delivery but risk of loss shall not pass to Brena Group until acceptance of the Goods and Services. Where the Goods and Services are destroyed or damaged prior to delivery and acceptance, Brena Group will be entitled to terminate this Purchase Contract, and where any payment for the Goods and Services has been made, Brena Group will be entitled to recover in full the monies paid by it.

7. INTELLECTUAL PROPERTY, PATENT AND COPYRIGHT:

- (a) The Supplier warrants to Brena Group or its successors that the manufacture, sale or use of the Goods and Services will not infringe any intellectual property right, patent, trademark, design, copyright or confidentiality agreement in Australia or elsewhere, and the Supplier agrees to indemnify Brena Group and its successors against any loss (whether direct or indirect), liability or damage arising from breach of this warranty or prevention or hindrance of use of the Goods and Services.
- (b) If the Supplier represents that the Goods and Services are protected by one or more patents and any such patent is found to be invalid Brena Group may forthwith terminate this Purchase Contract and recover any money paid to the Supplier thereunder.

8. APPROVALS AND STANDARDS:

- (a) The Supplier at its cost shall obtain all necessary licenses, consents, permits or authority approvals required for the performance of its obligations under the Purchase Contract and shall comply with all applicable laws and regulations in relation to the Goods and Services.
- (b) The Supplier must at all times comply with the Building Code 2013. Copies of the Building Code 2013 can be provided to the Supplier upon request.

9. TECHNICAL DATA:

- (a) The Supplier shall supply with the Goods and Services all technical engineering and other data required for the satisfactory use, maintenance, repair, installation or operation of the Goods and Services.
- (b) Goods and Services made or undertaken according to Brena Group's design or specification, or developed for Brena Group at Brena Group's direction, and any designs or specifications supplied by Brena Group and all copies thereof shall be held by the Supplier on Brena Group's behalf and at Brena Group's disposal and shall not be disclosed or furnished to any third party without the prior written consent of Brena Group. The Supplier shall take or cause to be taken all reasonable precautions to prevent disclosure of any of the said designs or specifications to any third party.

10. RIGHTS OF Brena Group:

- (a) All rights and remedies of the Brena Group contained in this Purchase Contract are cumulative and in addition to and without prejudice to the rights and remedies of Brena Group at law, in equity or by statute.
- (b) In the event of any breach by the Supplier of any term or condition of the Purchase Contract, and whether or not such breach is of a material or of a minor nature Brena Group may at any time thereafter terminate the Purchase Contract and reject and/or return the Goods and Services or any part of them and recover from the Supplier its costs and damages including consequential damages, if any, sustained by Brena Group.
- (c) If the Supplier commits an act of bankruptcy or becomes bankrupt or assigns his estate for the benefit of his creditors or being a corporation is insolvent or goes into liquidation or has a receiver, Official Manager or Provisional Liquidator appointed of its affairs or enters into a Deed of Arrangement of Composition with its creditors then this Purchase Contract may at the option of Brena Group be cancelled by Brena Group at its sole discretion, and the Supplier will not be entitled to any further payment for the Goods and Services or otherwise.
- (d) As a separate and independent right, Brena Group may at any time in its sole discretion cancel the Purchase Contract for its convenience and shall pay to the Supplier actual costs incurred by the Supplier in respect to the Goods and Services to the date of cancellation and upon such payment title to and ownership of any material or completed Goods and Services shall pass to the Brena Group.

11. WAIVER:

Failure by Brena Group to insist upon strict performance of any term or condition of Purchase Contract shall not be deemed a waiver thereof or of any rights Brena Group may have, and shall not be deemed waiver of any subsequent breach of any such term or condition.

12. TAX INVOICE:

A Tax Invoice has the same meaning as in the GST Act as applicable for tax invoices that relate to supplies of \$1000 or more, including the requirements of Regulation 29-70(2).

13. SUPPLIER WARRANTIES:

The Supplier warrants that:

1. the Supplier is and will remain registered under the GST Act;
2. each supply made by the Supplier under this order is a taxable supply.

14. INDEMNITY:

The Supplier hereby indemnifies Brena Group from and against any loss, liability, expense, claims, costs and demands arising out of, or in connection with, a breach of the Purchase Contract or negligence by the Supplier, including, but not limited to:

1. loss of or damage to, or loss of use of, property of Brena Group; and
2. liability to or claims by a third party in respect of any personnel injury or death to any person or loss of or damage to the property of any person.

15. INSURANCE:

The Supplier warrants that it has and will maintain, and will produce upon request by Brena Group, the following insurances:

1. Public Liability insurance of not less than \$10 million for any one occurrence;
2. Workers Compensation insurance and all other insurances required by law;
3. Transit insurance to insure against any loss or damage to any goods or equipment; and
4. Professional Indemnity Insurance of not less than \$5 million, where any design is being undertaken by the Supplier.

16. INTERPRETATION:

- (a) The Purchase Contract is to be interpreted in accordance with the laws of the State in which the Goods and Services are delivered or undertaken.
- (b) If any term or condition of the Purchase Contract or any part thereof is void for any reason then such term or condition shall be struck out and the Purchase Contract shall take effect as though such term or condition had never appeared therein.
- (c) Headings are provided for convenience only, and do not affect the interpretation of the Purchase Contract.
- (d) References to clauses, terms or conditions are references to clauses, terms or conditions contained in this Purchase Contract.
- (e) Words such as includes, including or similar are not words of limitation.
- (f) In the event of a discrepancy between any of the documents forming the Purchase Contract, such discrepancy will be resolved by direction of Brena Group.