

AUSTEK - Purchasing Terms and Conditions

These Purchasing Terms and Conditions apply to the supply of Goods and/or Services to Austek Pty Ltd (Buyer) unless otherwise agreed in writing.

1. Definitions and interpretation

- 1.1 In these Purchasing Terms and Conditions (Conditions), unless the context otherwise requires:

Term	Meaning
Applicable Law	all applicable laws, statutes, regulations, codes of practice, standards and requirements of any Authority, including the <i>Electrical Safety Act 2002 (Qld)</i> , WHS legislation and all applicable Australian Standards.
Authority	any government, statutory, regulatory or administrative body, authority or agency.
Buyer	Austek Pty Ltd ACN 620 121 879.
Conditions	these Purchasing Terms and Conditions, as amended in accordance with clause 2.5.
Goods	the goods and other items to be supplied by the Supplier under an Order.
Order	a purchase order, request for quotation, work order or other order issued by the Buyer for the supply of Goods and/or Services, including any specifications and requirements stated or incorporated by reference.
Services	the services (including labour) to be performed by the Supplier under an Order.
Subcontractor	any person or entity engaged by the Supplier (at any tier) to supply or perform any part of the Goods and/or Services.
Supplier	the supplier, contractor or service provider to whom an Order is addressed (including its employees, agents and permitted subcontractors).

1.2 Interpretation:

- (a) headings are for convenience only and do not affect interpretation;
- (b) a reference to "including" is not limiting;
- (c) singular includes plural and vice versa.

2. Application, precedence and acceptance

- 2.1 These Conditions apply to and are incorporated into every Order issued by the Buyer.
- 2.2 These Conditions prevail over any terms and conditions of the Supplier (including any terms contained in quotations, acknowledgements, invoices, delivery dockets, catalogues, online portals or other Supplier documentation), except to the extent the Buyer expressly agrees otherwise in writing.
- 2.3 The Supplier must not commence supply or performance under an Order unless it accepts these Conditions.

- 2.4 The Supplier is taken to have accepted these Conditions by any of the following:

- (a) providing a quotation or confirmation in relation to an Order;
- (b) supplying any Goods;
- (c) performing any Services; or
- (d) otherwise acting in a manner consistent with acceptance of an Order.

- 2.5 Any variation to an Order or these Conditions has no effect unless it is expressly agreed in writing by the Buyer.

3. Scope of supply

- 3.1 The Supplier must supply the Goods and perform the Services strictly in accordance with the Order, these Conditions, and any specifications, drawings, standards and instructions notified by the Buyer from time to time.
- 3.2 Unless otherwise agreed in writing, all Goods must be:
- (a) new and of merchantable quality;
 - (b) fit for their intended purpose and any purpose made known to the Supplier (expressly or by implication);
 - (c) suitable for use in Queensland electrical installations and environments; and
 - (d) free from defects in design, materials and workmanship.
- 3.3 The Services must be performed:
- (a) with due care, skill and diligence;
 - (b) in a timely manner; and
 - (c) by suitably qualified, licensed and experienced personnel.
- 3.4 The Supplier is vicariously liable for the acts and omissions of its Subcontractors as if they were the Supplier's own acts and omissions.

4. Pricing and GST

- 4.1 Unless otherwise stated in the Order, all prices are fixed and include all costs and charges associated with the supply of the Goods and/or performance of the Services, including (without limitation) packaging, transport, delivery, labour, materials, licences, permits, insurances and duties.
- 4.2 Prices are exclusive of GST unless expressly stated otherwise. Where GST is payable, the Supplier must provide a valid tax invoice.

5. Orders, changes and cancellations

- 5.1 The Buyer may vary an Order (including scope, quantities, delivery requirements and timing) by written notice to the Supplier.
- 5.2 The Buyer may cancel an Order (in whole or in part) at any time prior to delivery of the Goods or completion of the Services by written notice to the Supplier.
- 5.3 The Supplier must not:
- (a) vary the scope, price or delivery requirements of an Order;
 - (b) substitute any Goods;
 - (c) change any manufacturing or performance method that may affect compliance, quality, safety or suitability; or

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- (d) engage any Subcontractor, without the Buyer's prior written approval.
- 5.4 Any approval under clause 5.3 does not relieve the Supplier of any obligation or liability under the Order or these Conditions.

6. Delivery, risk and title

- 6.1 The Supplier must deliver the Goods and perform the Services at the location, on the date(s), and in the manner specified in the Order.
- 6.2 Time is of the essence in respect of all delivery and performance obligations.
- 6.3 The Supplier must promptly notify the Buyer in writing of any anticipated or actual delay and provide a proposed recovery plan. Any notice does not waive the Buyer's rights.
- 6.4 Risk in the Goods passes to the Buyer only upon delivery and acceptance at the delivery location specified in the Order.
- 6.5 Title to the Goods passes to the Buyer upon delivery, unless otherwise agreed in writing.

7. Inspection, testing and rejection

- 7.1 The Buyer may inspect and test the Goods and/or Services (including any Subcontractor work) at any time, including prior to delivery.
- 7.2 Inspection, testing, acceptance, payment or use of the Goods and/or Services does not:
- (a) constitute acceptance of non-conforming Goods or Services; or
 - (b) waive any rights or remedies of the Buyer.
- 7.3 If any Goods or Services do not comply with the Order or these Conditions (including where defective, incomplete, unsafe, non-conforming or not fit for purpose), the Buyer may, without limiting any other rights:
- (a) reject the Goods and require replacement;
 - (b) require re-performance or rectification of the Services;
 - (c) return Goods at the Supplier's risk and cost;
 - (d) require the Supplier to reimburse the Buyer for any costs incurred in connection with rejection, return, replacement or rectification; and/or
 - (e) procure substitute goods or services and recover all associated costs from the Supplier.

8. Compliance, quality and standards

- 8.1 The Supplier must ensure that the Goods and Services comply with:
- (a) Applicable Law;
 - (b) all applicable Australian Standards and industry standards;
 - (c) the Buyer's site rules, policies and procedures (as notified);
 - (d) all directions and reasonable requirements of the Buyer; and
 - (e) any specifications and requirements in the Order.
- 8.2 The Supplier must ensure that all Subcontractors comply with the obligations in these Conditions as if they were the Supplier.

9. Warranties

- 9.1 The Supplier warrants that:
- (a) it has the right, power and authority to enter into and perform the Order;
 - (b) the Goods and Services will comply with the Order and these Conditions;
 - (c) the Goods will be new (unless otherwise agreed), of acceptable quality, fit for purpose, and free from defects;
 - (d) the Services will be performed with due care, skill and diligence by appropriately qualified and licensed personnel;
 - (e) all Goods and Services will comply with Applicable Law; and
 - (f) the supply of the Goods and/or Services, and any Subcontractor activities, do not infringe any intellectual property rights of any third party.

10. Defects and rectification

- 10.1 The Supplier must promptly, at its own cost, rectify any defects or non-conformances in the Goods or Services (including any Subcontractor work) identified by the Buyer.
- 10.2 If the Supplier fails to promptly rectify defects or non-conformances, the Buyer may arrange rectification itself (or through a third party) and recover all costs from the Supplier.

11. WHS, electrical safety and environment

- 11.1 The Supplier must comply with all WHS, electrical safety and environmental obligations under Applicable Law and all applicable site requirements.
- 11.2 The Supplier must ensure that its personnel and Subcontractors:
- (a) are appropriately trained, licensed and competent for the work performed; and
 - (b) comply with all safety directions given by the Buyer.
- 11.3 The Supplier must promptly notify the Buyer of any incident, hazard, near miss or non-compliance relating to the Goods or Services.

12. Insurance

- 12.1 The Supplier must maintain, with reputable insurers, insurance policies appropriate for the Goods and Services, including as a minimum:
- (a) public and products liability insurance for not less than AUD \$20,000,000 per occurrence;
 - (b) workers' compensation insurance as required by law; and
 - (c) professional indemnity insurance where the Supplier provides design, professional or advisory services (or where reasonably required by the Buyer).
- 12.2 The Supplier must ensure that insurance coverage extends to Subcontractors and their activities, or ensure that Subcontractors maintain equivalent insurance.
- 12.3 The Supplier must provide evidence of insurances upon the Buyer's request.

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13. Invoices and payment

- 13.1 The Supplier must submit invoices in accordance with the Order and must provide a valid tax invoice where GST is applicable.
- 13.2 Unless otherwise stated in the Order, payment will be made in accordance with the Buyer's standard payment terms.
- 13.3 The Buyer may withhold payment for any Goods or Services that are defective, incomplete, non-conforming or subject to a genuine dispute, including in respect of Subcontractor work.

14. Security of payment

- 14.1 Nothing in these Conditions excludes, restricts or modifies any rights a party may have under the Building Industry Fairness (Security of Payment) Act 2017 (Qld).

15. Set-off

- 15.1 The Buyer may set off against any amount due to the Supplier any amount owed or payable by the Supplier to the Buyer, including any costs, losses or expenses arising from:
- (a) defects or non-conformance in the Goods or Services;
 - (b) delay;
 - (c) breach of the Order or these Conditions; or
 - (d) Subcontractor non-performance.

16. Intellectual property

- 16.1 All intellectual property rights created, developed or arising from the performance of the Order (including in the Goods and deliverables) vest in the Buyer upon creation.
- 16.2 The Supplier grants to the Buyer a perpetual, irrevocable, royalty-free, worldwide licence (including the right to sublicense) to use, reproduce, modify and adapt any pre-existing intellectual property of the Supplier or its Subcontractors that is incorporated in, or necessary to use, the Goods or the deliverables of the Services.
- 16.3 The Supplier must procure from its Subcontractors all assignments and licences required to give effect to this clause 16.

17. Confidentiality

- 17.1 The Supplier must keep confidential all information of the Buyer disclosed to it or obtained in connection with the Order (Confidential Information), and must not disclose Confidential Information except: (a) to the extent necessary to perform the Order; or (b) as required by Applicable Law.
- 17.2 The Supplier must ensure that its personnel and Subcontractors comply with confidentiality obligations consistent with this clause 17.

18. Indemnity

- 18.1 The Supplier indemnifies and holds harmless the Buyer and its officers, employees and agents from and against all loss, liability, damage, cost and expense (including legal costs on a full indemnity basis) arising out of or in connection with:
- (a) any breach of the Order or these Conditions by the Supplier or any Subcontractor;

- (b) any defect, non-conformance or failure of the Goods or Services (including Subcontractor work);
- (c) any negligent act or omission, wilful misconduct, unlawful act or omission of the Supplier or any Subcontractor; and
- (d) any claim that the supply of the Goods or Services infringes a third party's intellectual property rights.

19. Termination

- 19.1 The Buyer may terminate an Order (in whole or in part) immediately by written notice if:
- (a) the Supplier breaches the Order or these Conditions and fails to remedy the breach within a reasonable period specified by the Buyer (or immediately if the breach is not capable of remedy); or
 - (b) the Supplier is insolvent or subject to an insolvency event.
- 19.2 The Buyer may terminate an Order for convenience by written notice to the Supplier.
- 19.3 Termination does not affect any accrued rights, including the Buyer's rights to damages and the benefit of any indemnities.

20. Force majeure

- 20.1 Neither party is liable for failure to perform its obligations to the extent caused by an event beyond its reasonable control, provided it:
- (a) promptly notifies the other party; and
 - (b) takes reasonable steps to mitigate the effects of the event.
- 20.2 Clause 20.1 does not excuse any obligation to pay money when due.

21. Assignment and subcontracting

- 21.1 The Supplier must not assign, novate or otherwise transfer any rights or obligations under an Order, or subcontract any part of the Goods or Services, without the Buyer's prior written consent.
- 21.2 Any consent given under clause 21.1 does not relieve the Supplier of any obligation or liability under the Order or these Conditions, and the Supplier remains fully responsible for its Subcontractors.

22. Governing law

- 22.1 These Conditions and each Order are governed by the laws of Queensland, Australia. The parties submit to the non-exclusive jurisdiction of the courts of Queensland.

23. Entire agreement

- 23.1 These Conditions and the relevant Order constitute the entire agreement between the parties in respect of the subject matter of that Order, and supersede all prior discussions, representations and arrangements.