



Purchase Order Conditions

Version 2 (August 2013)

**Aurizon Operations
Limited
ACN 124 649 967
and its Related
Companies**



PURCHASE ORDER CONDITIONS

1. FORMATION OF PURCHASE ORDER CONTRACT

- 1.1 If Aurizon issues a Purchase Order to the Supplier, it constitutes an offer by Aurizon to engage the Supplier to supply the Deliverables described in the Purchase Order on the terms of the Purchase Order Contract.
- 1.2 The following documents constitute the Purchase Order Contract in the following order of precedence (from highest to lowest):
- (a) the Purchase Order;
 - (b) clauses 1 - 24 inclusive; and
 - (c) the Sitework Conditions.
- 1.3 A Purchase Order Contract for the supply of the Deliverables is formed between Aurizon and the Supplier when the Supplier:
- (a) communicates (either in writing or verbally) to Aurizon in such a way that confirms or implies acceptance; or
 - (b) the Supplier supplies, or begins to supply, the Deliverables.
- 1.4 Aurizon enters into the Purchase Order Contract on its own behalf and as agent for and on behalf of each Related Company.
- 1.5 Except where the context requires otherwise, references in the Purchase Order Contract to "Aurizon" are references to Aurizon in its own right as recipient of the Deliverables and otherwise as agent of each Related Company.
- 1.6 If there is an existing contract between the parties for the supply of the Deliverables, the parties acknowledge and agree that the terms of that contract prevail to the extent of any inconsistency with the terms of the Purchase Order Contract.

2. ISSUING PURCHASE ORDERS

- 2.1 Aurizon is not liable to the Supplier for any costs, fees, payments or losses whether at law, in equity or otherwise, for which a valid Purchase Order has not been issued by Aurizon. To avoid doubt, a Purchase Order will only be valid if it is completed in all material respects, contains a Purchase Order number and is branded with Aurizon's logo and is issued by Aurizon.
- 2.2 The Supplier acknowledges and agrees that the Purchase Order Contract does not confer any exclusive rights to the Supplier to provide the Deliverables to Aurizon during the Term.
- 2.3 Aurizon may cancel or suspend the Purchase Order Contract without liability, at any time before delivery of the Deliverables by notice in writing to the Supplier.

3. TERM

The Purchase Order Contract commences at the time and date when clause 1.3 (Formation of Purchase Order Contract) is satisfied

and continues until the date specified in the Purchase Order or, if no end date is specified, until termination of the Purchase Order Contract in accordance with clause 16 (Termination).

4. WARRANTIES

- 4.1 The Supplier represents, warrants and agrees that:
- (a) it has the right to sell the Deliverables to Aurizon;
 - (b) it and its Personnel will supply the Deliverables in a good, proper and workmanlike manner and will exercise the standard of care, skill, judgment and diligence reasonably expected of a contractor experienced in the supply of the same or similar Deliverables;
 - (c) it will implement measures to mitigate the effects of any delay to the supply of the Deliverables, at its own cost;
 - (d) it will comply with all laws and standards and Aurizon's standards, policies, procedures and directions (including the Sitework Conditions) that apply to the Purchase Order Contract;
 - (e) no conflict of interest exists or is likely to arise;
 - (f) all Aurizon and third party materials and facilities used by the Supplier are and will be maintained and return in good condition, apart from reasonable wear and tear; and
 - (g) it will obtain for the benefit of Aurizon all usual manufacturers', suppliers' and any other applicable third party warranties in respect of the Deliverables, together with any other warranties required by Aurizon.
- 4.2 The Supplier represents, warrants and agrees that the Deliverables will:
- (a) be free of encumbrances, liens and reservation of title;
 - (b) comply with Aurizon's requirements, standards and specifications;
 - (c) not infringe the Intellectual Property Rights of any person;
 - (d) be designed, fabricated, tested, packaged, loaded on transport, delivered (and, if required by the Purchase Order Contract, installed and commissioned) in accordance with all laws and all requirements of any government agency;
 - (e) correspond to their description and conform in every way with the requirements of the Purchase Order Contract;
 - (f) be of merchantable quality, new (unless otherwise specified) and free from any defect, fault or omission; and
 - (g) be fit for Aurizon's purposes as made known (expressly or impliedly) to the Supplier.

5. DELIVERY REQUIREMENTS

- 5.1 The Supplier must:
- (a) clearly mark all delivery documents with the Purchase Order number and must ensure those documents accompany the Deliverables;
 - (b) supply the Deliverables to the Delivery Point on the Date for Delivery in accordance with the Purchase Order Contract or as Aurizon may otherwise authorise or direct; and
 - (c) if requested by Aurizon, provide an acknowledgement of the Purchase Order Contract to Aurizon prior to the Date for Delivery.
- 5.2 Where the Deliverables are goods, the Supplier must also:
- (a) unload the Deliverables at the Delivery Point in accordance with Aurizon's directions; and
 - (b) notify Aurizon of any unloading requirements for the Deliverables prior to the Date for Delivery.
- 5.3 The Supplier will not subcontract its obligations under the Purchase Order Contract without Aurizon's prior written consent.
- 5.4 The Supplier must not despatch a quantity of Deliverables greater than the quantity specified in the Purchase Order. Aurizon may return any excess quantity to the Supplier at the Supplier's cost.
- 5.5 Time is of the essence for the completion and delivery of the Deliverables by the Supplier.
- 5.6 If the Supplier foresees any delay in performance of the Purchase Order Contract, it must advise Aurizon in writing immediately.

6. ACCEPTANCE

- 6.1 On the date which is 10 Business Days after the Date of Delivery, Aurizon will be deemed to have accepted the Deliverables unless it issues a written notice of rejection, in which case the Deliverables are rejected by Aurizon.
- 6.2 If Aurizon rejects Deliverables that are goods, the Supplier must, at its cost, promptly collect and remove the rejected Deliverables or Aurizon may return the Deliverables to the Supplier at the Supplier's expense.

7. OWNERSHIP AND RISK

- 7.1 Ownership of the Deliverables will pass to Aurizon upon the earlier of payment by Aurizon or delivery of the Deliverables. The passing of ownership or the delivery of the Deliverables to Aurizon does not constitute acceptance and does not affect Aurizon's rights to reject the Deliverables under clause 6.1.
- 7.2 The Deliverables will be at the risk of the Supplier until the Deliverables are accepted by Aurizon under clause 6.

8. DEFECTIVE DELIVERABLES

- 8.1 During the Term, if Aurizon becomes aware that any

Deliverables do not comply with the Purchase Order Contract, Aurizon may direct the Supplier to, at the Supplier's cost, rectify, replace or re-supply the Deliverables so that they comply with the Purchase Order Contract.

- 8.2 If the Supplier fails to comply with a direction given under clause 8.1, Aurizon may have the Deliverables rectified, replaced or re-supplied by another supplier so that they comply with the Purchase Order Contract and the cost of doing so will be a debt due and payable from the Supplier to Aurizon.

9. PAYMENT AND INVOICING

- 9.1 The Charges include all costs and expenses (other than the Reimbursable Expenses) the Supplier may incur in providing the Deliverables and its other obligations under the Purchase Order Contract.
- 9.2 The Supplier may only submit a tax invoice to Aurizon once the Deliverables are accepted by Aurizon under clause 6.
- 9.3 Payment will not be due until receipt of an invoice by Aurizon from the Supplier that:
- (a) is a valid tax invoice in accordance with the GST Law;
 - (b) specifies a correctly calculated amount;
 - (c) specifies the Date of Delivery;
 - (d) states the Supplier's vendor number and the Purchase Order number;
 - (e) is set out in a way that allows Aurizon to ascertain the Deliverables and the amount payable in relation to those Deliverables;
 - (f) is accompanied by verifying documentation, if required by Aurizon; and
 - (g) is addressed and delivered to Aurizon's address: Accounts Payable Department, PO Box 456 BRISBANE QLD 4001.

- 9.4 If Aurizon, acting reasonably, disputes the whole or any part of any invoice issued by the Supplier, Aurizon may withhold the disputed portion of the invoice.

- 9.5 Subject to clauses 9.3 and 9.4, Aurizon must pay the Charges or the relevant component of the Charges within 45 days from the first day of the next month after the receipt of the correctly rendered tax invoice.

- 9.6 The Charges are exclusive of GST unless stated to the contrary in the Purchase Order.

10. VARIATIONS

- 10.1 At any time before supply of the Deliverables, Aurizon may direct the Supplier, in writing or by issuing an amended Purchase Order, to perform a Variation and the Supplier must, subject to clause 10.2, perform that Variation.

- 10.2 The Supplier must immediately give notice in writing to Aurizon if a Variation may or will affect any warranties

given by the Supplier under the Purchase Order Contract and the Supplier must not perform that Variation unless and until Aurizon gives a further direction to perform that Variation.

10.3 The Supplier must not commence work on a Variation and will not be entitled to payment for a Variation unless and until:

- (a) it has notified Aurizon in writing if the Variation will result in a change to the Charges;
- (b) Aurizon has agreed to the revised Charges, if any; and
- (c) it has received a direction in writing or in the form of an amended Purchase Order from Aurizon to perform a Variation.

11. E-PROCUREMENT

11.1 The Supplier must provide Aurizon with all information required by Aurizon from time to time to enable Aurizon to use its e-Procurement program. The Supplier must accept and issue documents identified by Aurizon in a format suitable to Aurizon.

11.2 All costs of transacting electronically with Aurizon must be borne by the Supplier.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 All Intellectual Property Rights in any material produced by a party under the Purchase Order Contract will vest in Aurizon upon creation. The Supplier immediately assigns or transfers all Intellectual Property Rights and ownership of such material to Aurizon.

12.2 Aurizon grants to the Supplier a royalty free and non-transferable licence to use the material in clause 12.1 for the purpose of performing the Purchase Order Contract during the Term.

12.3 Aurizon acknowledges that clause 12.1 does not affect the Intellectual Property Rights in any pre-existing material proprietary to the Supplier which is incorporated into the Deliverables or any supporting materials. In such circumstances, the Supplier will grant or procure for Aurizon a royalty free, perpetual and irrevocable licence to use such pre-existing Intellectual Property Rights to receive the benefit of the Deliverables.

13. CONFIDENTIALITY

13.1 A party and its Personnel must not disclose Confidential Information of the other party without the first party's prior written consent, unless such disclosure is required by law or a stock exchange.

13.2 The Supplier and its Personnel that are engaged in the performance of the Purchase Order Contract must, on Aurizon's request, execute suitable confidentiality undertakings, agreements or deeds.

14. PRIVACY

14.1 The Supplier must not:

- (a) use any Personal Information for a purpose other than a Permitted Purpose without the prior written approval of Aurizon; or
- (b) disclose any Personal Information for a purpose other than a Permitted Purpose without the prior written approval of Aurizon, unless the disclosure is required by law.

14.2 The Supplier must comply with the Privacy Laws at all times when performing its obligations under the Purchase Order Contract.

15. INSURANCE

15.1 The Supplier must effect and maintain (or be insured under) such of the following insurances:

- (a) public and products liability insurance for the Term, with a limit of indemnity not less than:
 - (i) \$20,000,000 for each and every public liability occurrence; and
 - (ii) \$20,000,000 for each and every products liability occurrence,

covering the Supplier for its liabilities for third party bodily injury, disease, illness or death, or loss of or damage to tangible property, caused by, arising out of, or in connection with the negligent performance of any obligation or the exercise of any right under the Purchase Order Contract, including in respect of the manufacture, processing, alteration, repair, installation, supply, distribution or sale of any product by the Supplier;

- (b) property insurance for the Term, insuring the Supplier's and Aurizon's interest in the Deliverables, any associated materials and any property in the care, custody or control of the Supplier in connection with the provision of the Deliverables, against the risks of physical loss, damage or destruction caused by all commercially insurable perils for their market value;
- (c) transit insurance for the duration of each transit, insuring the property referred to in clause 15.1(b) against the risks of physical loss of, damage or destruction caused by all commercially insurable perils during the course of transit by land, sea or air (and including cover for loading and unloading, and for storage during transits) for the full reinstatement or replacement value of such property, plus freight and insurance on an indemnity basis;
- (d) compulsory third party liability motor vehicle insurance as required by law in respect of all registered plant and vehicles used by the Supplier and its Personnel in connection with

the Purchase Order Contract; and

- (e) workers' compensation insurance or registrations as required by law (or, where the Supplier is an individual not required by law to maintain workers' compensation insurance or registrations, personal accident and sickness insurance for the Term).

15.2 The Supplier must produce evidence, on demand and to the satisfaction of Aurizon, that such insurances have been effected and maintained.

16. TERMINATION

16.1 Aurizon may terminate the Purchase Order Contract in whole or in part by notice in writing:

- (a) for convenience, by giving the Supplier not less than 14 days' written notice;
- (b) immediately, if the Supplier commits a breach of the Purchase Order Contract which is capable of remedy and such breach is not remedied within 5 Business Days of written notice by Aurizon;
- (c) immediately, if the Supplier commits a breach of the Purchase Order Contract which is not capable of remedy and fails to implement measures to prevent the recurrence of the breach acceptable to Aurizon within 5 Business Days of written notice by Aurizon;
- (d) immediately, if the Supplier or any person supplying the Deliverables does not comply with all applicable laws and standards, directions of Aurizon and Aurizon's standards, policies and procedures relating to health, safety and the environment; or
- (e) immediately if the Supplier becomes, threatens to become or is in jeopardy of becoming insolvent.

16.2 Upon termination or expiry, the Supplier must provide all reasonable assistance necessary to enable the transfer of Aurizon's property and all related data, documentation and records to Aurizon or a third party nominated by Aurizon at no cost to Aurizon.

17. INDEMNITY

17.1 The Supplier indemnifies Aurizon and its Personnel against any claims, damages, expenses (including legal costs on a full indemnity basis), losses or liabilities suffered or incurred in respect of:

- (a) loss of, or damage to, any real or personal property arising out of the Supplier's performance of the Purchase Order Contract;
- (b) personal injury, disease or illness to, or death of, any person arising out of the Supplier's performance of the Purchase Order Contract;
- (c) any infringement or alleged infringement of any Intellectual Property Rights in connection with

the Purchase Order Contract or any thing used or supplied by the Supplier in connection with the Purchase Order Contract;

- (d) any wilful, unlawful or negligent act, error or omission (including misconduct) of the Supplier or its Personnel; or

- (e) any breach of the Purchase Order Contract by the Supplier or its Personnel.

17.2 The Supplier's liability under clause 17.1 will be reduced proportionately to the extent that an act or omission of Aurizon or any third party for whom the Supplier is not responsible, caused the damage, expense, loss or liability.

17.3 The indemnities under this clause 17 survive termination or expiry of the Purchase Order Contract.

18. LIMITATION OF LIABILITY

18.1 Aurizon's maximum aggregate liability to the Supplier in connection with the Purchase Order Contract is limited to the amount of the Charges payable under the Purchase Order Contract.

18.2 Neither party will be liable to the other party in relation to the Purchase Order Contract for any loss of profits, loss of revenue, loss of any contract, loss of anticipated profit or damages for lost opportunity, cost of finance or loss of use.

18.3 Clause 18.2 does not apply to the Supplier's liability under the indemnities in clause 17.1.

18.4 Any terms (including conditions of sale that purport to limit the Supplier's liability in relation to the Deliverables) which may be contained in sales literature, tenders, quotations, information, notices, delivery dockets, acceptance letters, invoices or any other material provided by the Supplier but which are not expressly contained in the Purchase Order Contract are excluded from the Purchase Order Contract.

19. DOCUMENTATION

19.1 The Supplier must ensure that any documentation supplied with the Deliverables is suitable, accurate, comprehensive, complete and compliant with all laws, relevant standards, and quality assurance requirements in the Purchase Order Contract.

19.2 If there is an error, ambiguity or inadequacy in the documentation supplied with the Deliverables, the Supplier must rectify that documentation. No additional amount will be paid to the Supplier for any change to the documentation which is necessary as a consequence of that error, ambiguity or inadequacy.

20. DISPUTES

20.1 Notwithstanding the existence of a dispute, each party must continue to perform its obligations under the Purchase Order Contract. The existence of a dispute will not prejudice either party's right to terminate the Purchase Order Contract for any reason.

- 20.2 Within 10 Business Days of a dispute arising, the parties must:
- (a) convene a without prejudice meeting between the parties;
 - (b) appoint a person not involved in the supply of the Deliverables to chair the meeting; and
 - (c) ensure that each party's representative who attends the meeting has the authority to settle the dispute and attempts to do so.

21. HEALTH, SAFETY, THE ENVIRONMENT AND HERITAGE PROTECTION

- 21.1 In performing its obligations under the Purchase Order Contract, the Supplier must comply with all applicable laws and standards relating to health, safety, the environment and heritage protection.
- 21.2 The Supplier acknowledges and agrees that, when the Supplier is on an Aurizon site, Aurizon may at any time:
- (a) conduct random tests for alcohol and drugs on the Supplier's Personnel who enter Aurizon sites; and
 - (b) exclude from any Aurizon sites, or direct the Supplier to remove, any of the Supplier's Personnel who test positive for drugs or whose alcohol reading exceeds 0.00%.

22. QUALITY ASSURANCE

- 22.1 The Supplier must implement and maintain a quality system that is:
- (a) compliant with the quality requirements set out in the Purchase Order Contract and ISO9001:2008; and
 - (b) structured in a way that provides Aurizon with objective evidence that an acceptable level of quality has been maintained during all stages of the supply of the Deliverables.
- 22.2 The Supplier must allow Aurizon access to the Supplier's premises during normal working hours that is reasonably necessary for Aurizon to conduct a quality audit of the Deliverables and the Supplier's quality certification documentation.
- 22.3 The Supplier must maintain any quality certifications that it may have relating to the Deliverables and immediately notify Aurizon if any such quality certification is revoked, suspended or amended in any way.

23. GENERAL

- 23.1 The Purchase Order Contract can only be varied by agreement in writing signed by both parties.
- 23.2 The Purchase Order Contract is governed by the law in force in Queensland, Australia and each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland, Australia.

- 23.3 Notices, approvals, consents or other communications in connection with the Purchase Order Contract must be in writing and sent by prepaid post or fax to a party's address set out in the Purchase Order.
- 23.4 A right may only be waived in writing, signed by the party giving the waiver and a waiver of a right on one occasion does not operate as a waiver of that right if it arises again.
- 23.5 The Supplier's rights and obligations under the Purchase Order Contract may not be assigned or novated without Aurizon's prior written consent.
- 23.6 The Supplier is an independent contractor. Nothing in the Purchase Order Contract gives rise to a relationship of employment, agency, partnership or joint venture between the parties.
- 23.7 The Supplier has sole responsibility for paying superannuation, workers' compensation, taxes, employment benefits and all other costs incidental to the employment of the Supplier's Personnel.
- 23.8 The Purchase Order Contract contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by the Purchase Order Contract and has no further effect.

24. DEFINITIONS

Aurizon means Aurizon Operations Limited ACN 124 649 967 or such other Related Company as specified in the Purchase Order.

Business Day means a day that is not a Saturday, Sunday or public holiday in Brisbane, Queensland, Australia.

Charges means the amount specified in the Purchase Order that is payable by Aurizon for the Deliverables.

Confidential Information means information that is, by its nature, confidential or the receiving party knows, or ought to know, is confidential, including the terms of the Purchase Order Contract.

Date for Delivery means the date or dates specified in the Purchase Order.

Date of Delivery means the date on which the Deliverables are actually supplied to Aurizon in accordance with the Purchase Order Contract.

Deliverable means any goods to be supplied or services to be performed by the Supplier as set out in the Purchase Order and includes the documentation supplied with those goods or services, Variations and incidental work that can be reasonably inferred as necessary to satisfy the Purchase Order Contract.

Delivery Point means the place identified in the Purchase Order.

GST and GST Law means the same as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all existing and future rights throughout the world, whether conferred by statute, common law or equity, in relation to any copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions, trade secrets and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields.

Permitted Purpose means a purpose for which it is necessary for

the Supplier to collect, use, disclose, store or handle Personal Information to comply with its obligations under the Purchase Order Contract.

Personal Information has the meaning given in the *Privacy Act 1988* (Cth) where such information is collected, used, disclosed, stored or handled by the Supplier for the purposes of the Purchase Order Contract.

Personnel means the officers, employees, agents, contractors and consultants of each party and in the case of the Supplier, its subcontractors and any employees of those subcontractors.

Privacy Law means the *Privacy Act 1988* (Cth) and any other applicable legislation affecting privacy, Personal Information or the collection, handling, storage, use or disclosure of data (including Personal Information).

Purchase Order means a purchase order issued by Aurizon in a form suitable to Aurizon in its absolute discretion. A Purchase Order includes an amended Purchase Order.

Purchase Order Contract has the meaning given in clause 1.2 (Formation Of Purchase Order Contract).

Reimbursable Expenses means those expenses set out in the Purchase Order and incurred by the Supplier to third parties in supplying the Deliverables in respect of which the Supplier can claim reimbursement provided that Aurizon has given its prior written consent to the Supplier incurring those expenses.

Related Company means each company which is a subsidiary, holding company or related body corporate of Aurizon Operations Limited ACN 124 649 967.

Sitework Conditions means Aurizon's sitework conditions, policies and procedures for an Aurizon site, as amended from time to time, copies of which are available from Aurizon on request.

Supplier means the entity specified in the Purchase Order.

Term has the meaning given in clause 3 (Term).

Variation means an increase or decrease of any part of a specific Deliverable, a change in character or quality of any part of a Deliverable, an omission of any part of a Deliverable or a change to the Delivery Point, delivery mode or Date for Delivery.