

# Terms and Conditions

Systemax Pty Ltd

Revision 1.1 October 2016



## Standard Terms & Conditions

### Definitions:

- Purchaser shall mean Systemax Pty. Ltd.
- Seller shall mean the company, firm or person whom the order is addressed.
- Subcontract agreement shall mean the Systemax standard subcontract agreement relevant to this project.
- EOM means end of month.

## Terms & Conditions of Purchase

### Terms and Conditions:

A purchase order when accepted by the seller shall constitute a valid and binding contract, subject to the conditions hereof.

1. No change, modification, revision or alteration to this purchase order or the terms and conditions hereof shall be binding upon the purchaser unless agreed to in writing.
2. No liability shall attach to the purchaser to make payment to the seller for material and equipment until same have been physically received, inspected and approved by the purchaser.
3. The purchase order number must be quoted on all invoices, correspondence, bills of lading, packing slips, packages and crates.
4. Time for delivery is of the essence of this order. Without prejudice to any of its other rights, the purchaser shall have the right to refuse to accept delivery of all or any part of this order not delivered within the time specified.
5. The seller shall not be entitled to date its invoices any earlier than the date upon which delivery is actually made to the designated place of delivery.
6. All material and equipment supplied pursuant to this order shall be as specified and will be of merchantable quality and free from any defect of any kind whatsoever. Without prejudice to its other rights, the purchaser may at its option return the same to the seller if in its opinion the material and/or equipment does not comply with the terms of this condition.
7. All material and equipment supplied pursuant to this order shall be suitable for use in Australia and comply to all relevant Australian Standards and regulations.
8. Notwithstanding the terms of any documents issued by or on behalf of the seller, the terms and conditions hereof shall apply and the seller shall be deemed for all purposes to have agreed to accept these terms and conditions upon acceptance of the order or by making delivery to the purchaser.

9. Any warranty or guarantee issued by or on behalf of the seller shall not be binding upon the purchaser insofar as it would have the effect of limiting the terms and conditions hereof.

10. Should cost escalation apply, such sums will be calculated only to the requested delivery date on this purchase order.

11. The company will acknowledge no qualifying conditions contrary to any of the above conditions or those detailed on this purchase order.

12. Terms of payment will be 45 days from the end of the month in which an invoice for the goods is received at our office. Invoices relating to this Purchase Order must be received and date stamped by us the 18th working day of the month following the end of the month of delivery or claim. Failure to comply with the above may prolong processing and subsequently delay settlement. Payments may exclude retention applicable to certain contracts.

## Terms & Conditions of Sale

### Terms and Conditions:

1. Quotation
  - 1.1 Any quotation given by Systemax shall not constitute an offer and is valid for a period of 30 days from date of issue unless otherwise stated.
  - 1.2 Prices given in any quotation are applicable to that quotation only and will not apply in any other instance.
  - 1.3 Prices are based upon Goods and/or Services to be supplied during regular working days and hours and labour rates do not include any site allowances, special conditions; or after hours or weekend labour, unless otherwise specifically stated.
  - 1.4 The Buyer agrees to pay Systemax the price specified in the quotation.
2. Goods and Services Tax
  - 2.1 If any supply made is subject to GST, the Buyer must pay to Systemax an additional amount equal to the GST payable.
  - 2.2 The Buyer must pay the GST amount at the same time as the Buyer must pay the price, or if partial payment invoices are issued, at the same time as the Buyer must make the partial payment.
3. Delivery date
  - 3.1 Any quoted delivery dates are estimates only. Systemax is not obliged to meet such dates and will not be liable to the Buyer by reason of delays caused by any reason whatsoever.
  - 3.2 Systemax shall be under no liability for direct or



consequential loss or damage to the Buyer arising from delay or postponement in delivery.

## 4. Order

4.1 A written order is to be submitted by the Buyer to Systemax quoting at least an order number, a reference to our proposal or offer and a price.

## 5. Order Acceptance

5.1 Any order from the Buyer to Systemax for the supply of Goods and/or Services shall not be binding upon Systemax until either accepted or fulfilled by Systemax.

5.2 These terms of sale apply to the Buyer and to Systemax in respect of Goods and/or Services ordered by the Buyer and any terms of sale set out in the Buyer's order deviating from or inconsistent with these terms of sale will not bind Systemax despite any statement by the Buyer in its order that its terms and conditions shall prevail over these terms of sale.

## 6. Order Variation

6.1 If Systemax is asked to carry out additions or modifications to the Goods and/or perform additional or more frequent Services than those set out in our quotation, they will be deemed a variation and the price will be adjusted accordingly. Any variation will take into consideration the nature and extent of such additions or modifications and the cost Systemax incurs in performing them, but all other conditions of the quotation and these terms of sale will continue to apply.

## 7. Progress claims, Off-site claims

7.1 Systemax reserves the right to issue progress payment invoices as Goods are either stored and protected off-site or supplied and certain Services are completed and will issue a final invoice on delivery of the Goods and/or completion of the Services (less progress claims). Such progress claims will show Goods made available and/or Services provided. Payment is to be made by the Buyer in accordance with the terms of these terms of sale.

## 8. Payment Terms and Credit Policy

8.1 The buyer undertakes to pay Systemax the agreed price for goods and/or services supplied by Systemax within the terms agreed, or if no time for payment is specified, not later than 30 days from the date of invoice.

8.2 Sales will be made subject to Systemax' Standard Conditions of Sale.

8.3 In consideration of Systemax' supplying credit facilities, it is irrevocably agreed as follows:

- Notwithstanding that the risk in the goods sold shall pass to the Applicant immediately upon deliver, title and property in the goods sold shall remain with Systemax' until such time as full payment is made to Systemax for all amounts owing by the Applicant so that the Applicant's total indebtedness to Systemax under the terms and conditions of sale is discharged.
- In the event that the Applicant fails to make payment for the goods in accordance with the terms of this contract then Systemax shall have the right to recover from the Applicant the goods for that purpose the servants or agents

of Systemax may enter upon the applicant's premises in order to effect recovery and use any reasonable means of force in order to effect recovery.

- Systemax shall have the right to resell or otherwise dispose of the goods so recovered. Without reference to the Applicant.

- If any of the goods are incorporated into or used by the Applicant as parts components or materials in respect of any other product of the Applicant before payment in full has been made for the goods then the property in the whole of the product into which the parts or components have been incorporated shall be and become that of Systemax and remain the property of Systemax until such time as payment in full has been made by the Applicant.

8.4 Notwithstanding the provisions of the terms of payment shall become due immediately upon the Applicant (being a natural person) committing any act of bankruptcy or if the Applicant (being a company) commits any act which entitles any person to apply to wind up the Applicant or if a liquidator, receiver or receiver and manager, mortgagee in possession, administrator or other like officer is appointed to the Applicant.

8.5 The Applicant acknowledges that until his total indebtedness to Systemax is discharged he holds to the Applicant's customers before payment in full for the goods has been made then the Applicant in a position of fiduciary shall:

- Assign to Systemax the benefit of any claim against such customers, and
- Account fully to Systemax for the proceeds of the sale of the goods sold or any part thereof until the Applicant's total indebtedness to Systemax is discharged.

## 9. Retention of monies

9.1 Retention of monies owing to Systemax is not acceptable unless otherwise specifically stated. If retentions are agreed Systemax shall have the option to provide a bank guarantee in lieu of the retention. Such guarantee shall be held for a period not in any event to exceed a maximum of the period of warranty provided in respect of the Goods and/or Services.

## 10. Payment and Title

10.1 Property and ownership in the Goods will not pass to the Buyer but will remain in Systemax until payment in full of the price of Goods and/or Services and all other amounts owing to Systemax by the Buyer. The Goods are to be clearly identified by the Buyer as remaining the property of Systemax until they are paid for in full. The Buyer must so long as Systemax is entitled to the property in the Goods, store the Goods so that they are clearly identifiable as the property of Systemax.

## 11. Limitation of liability

11.1 The Buyer acknowledges and agrees that Systemax has no liability in contract, tort (including negligence or breach of



statutory duty), by statute or otherwise for loss or damage (whether direct or indirect) of profits, opportunity, revenue, goodwill, bargain, production, contracts, business or anticipated savings, corruption or destruction of data or for any liquidated, indirect, special or consequential loss or damage whatsoever.

11.2 Despite any other provision to the contrary, Systemax will not be responsible or liable for any claim where such claim arises as a result of:

11.2.1 damage after delivery, incorrect installation or incorrect operational procedures caused or contributed by the Buyer or a third Party;

11.2.2 mechanical or electrical overload, abrasion, erosion, corrosion, chemicals, energy supply, foreign materials, deterioration due to extremes of environment, normal wear and tear or any other event or cause beyond the control of Systemax.

11.3 To the maximum extent permitted by law, Systemax excludes all conditions and warranties implied into these terms of sale and limit its liability for breach of any non-excludable condition and warranty, at Systemax's option, to:

11.3.1 in respect of Goods:

- repairing the relevant Goods;
- paying the cost of having the relevant Goods repaired;
- request the return of the Goods and tender to the Buyer the purchase price paid by the Buyer; or
- resupplying the relevant Goods or equivalent Goods;

11.3.2 in respect of Services, resupplying the relevant Services.

11.4 Systemax's total liability under any contract and these terms of sale shall not exceed the total dollar amount of the Goods and/or Services purchased by the Buyer under the contract.

## 12. Intellectual property

12.1 The Parties agree that:

12.1.1 the Intellectual Property of Party existing prior to the date of these terms of sale remains the sole and exclusive property of that Party; and

12.1.2 the right, title and interest in any Intellectual Property created by that provision of the Goods or the Services by Systemax is vested in Systemax.

12.2 The Buyer must provide to Systemax all reasonable assistance requested by Systemax to protect that Intellectual Property.

## 13. Governing law

The laws of the state or territory of Australia where Systemax's written acceptance of the order is issued shall govern this contract.

## 14. Entire agreement

14.1 The agreement between Systemax and the Buyer shall be constituted in its entirety by these terms of sale together with Systemax's quotation and any credit approval and/or guarantee required to be provided by the Buyer to Systemax.

14.2 No variation, waiver or cancellation of the agreement will be effective unless such variation, waiver or cancellation is expressly accepted and is in writing.

## 15. Assignment

This Agreement cannot be transferred or assigned by either Party without the prior written consent of the other Party.

## 16. Confidentiality

16.1 The Buyer undertakes that it will not (except in the proper course of its duties under this agreement or as required by law or by Systemax) disclose to any person any confidential information relating to Systemax or this agreement of which it has become possessed as a result of this agreement or in the negotiations preceding this agreement including the terms of this agreement.

16.2 The obligations under this clause survive termination of this agreement.

## Terms & Conditions of Subcontract

Unless agreed to in the subcontract agreement specific to the project, all terms and conditions of subcontract will be as follows:

### Terms and Conditions:

#### 1. Works

1.1 The Subcontractor agrees to perform the works as described on the project as defined in the purchase order and associated documentation, which are to commence and be completed on or before the dates specified. The Subcontractor warrants that all his staff involved in the works have the necessary qualifications to carry out said works.

1.2 All works necessary for the completion of this Agreement shall be executed by the Subcontractor without extra charge.

#### 2. Payment

2.1 Valid progress claims will be paid 45 days from EOM in which the invoice is received. The subcontractor is to advise Systemax in writing of the amount to be claimed on or before the 18th of the month.

All claims must be a complying 'Tax Invoice' containing as a minimum the subcontractor's company name, ABN and Systemax purchase order reference, GST inclusive amount, along with a claim break-up for payment justification.

2.2 Claims will be paid in accordance with this agreement, excluding amounts subject to any rights Systemax has to withhold or make deductions.

2.3 Should Systemax's claim to its client be rejected or reduced, then the subcontractors claim may be varied as a percentage in relation to the amount of Systemax's claim which is paid.

#### 3. Security

Security monies may be withheld from progress claims in accordance with the subcontract agreement.



## 4. Pricing

All pricing and schedule of rates are those set out in the Purchase Order and shall be firm and fixed for the duration of the scope of works.

## 5. Health and Safety

5.1 The Subcontractor is solely responsible for its obligations under all applicable occupation health and safety rules, regulations and legislation. The subcontractor is required to have the highest regard for the health and safety of all personnel and the environment, whilst at the work place. A copy of your current Safety Plan including associated documentation is required to be submitted to Systemax prior to any works commencing.

5.2 The Subcontractor shall provide all documentation required by Systemax with each invoice.

5.3 The Subcontractor shall provide copies of current PI & PL, Broadform and Work Cover Insurance policies to Systemax prior to any works commencing.

## 6. Default by Subcontractor

Should the Subcontractor, at any time:

- Fail to carry out the works with due diligence to the reasonable satisfaction of Systemax; or
- Makes default in the performance or observance of any obligation contained in this agreement or in the purchase order/contract; or
- Refuses or neglect to carry out any instruction or goes bankrupt or into liquidation or enters into an arrangement with its creditors then;

The Subcontractor shall be deemed to be in Default.

## 7. Rectification of Defaults

If within 10 business days after receiving notice to rectify any default, the Subcontractor fails to do so, then Systemax, at the cost of the Subcontractor, may without prejudice to any other rights that it may have under the agreement exercise all or any of the following:

- Suspend all payments.
- Engage another subcontractor to perform the works.
- Terminate this Agreement. Upon termination the Subcontractor shall not be entitled to any damages or further payments whatsoever.

## 8. Variations

Systemax reserves the right to direct the subcontractor to carry out variation works to the contract, which may result in an increase or decrease of contract value. No variation shall be valid, nor paid, unless the works were directed to be carried out by Systemax in writing and the value is approved in writing by Systemax.

## 9. Notices

All notices may be given and served by delivering the same in writing by fax, mail or by e-mail.

## 10. Governing Law

This agreement shall be deemed to have been made in the relevant State (or Territory) of Australia and shall be subject to the laws of that State (or Territory).

## 11. Assignment of works under this agreement

The Subcontractor shall not subcontract or assign any part of the services and/or works without prior written consent of Systemax.

## 12. Subcontractor's Insurance

12.1 The Subcontractor shall indemnify Systemax for the duration of any works, against any loss or damage and against all claims and costs whatsoever, arising out of any negligent act or omission of the subcontractor or out of any default of the subcontractor under this agreement and the purchase order/contract. The subcontractor will take out and maintain such insurances as Systemax directs but in any event shall take out and maintain all statutory insurances for work related injuries and public liability in the amount specified by Systemax.

12.2 The Subcontractor shall provide to Systemax prior to commencement of services and/or works, certificates of currency for all relevant insurances.

## 13. Compliance with Statutory Requirements

The Subcontractor shall comply with all statutory requirements both State (or Territory) and Federal as relates to the services and/or works.

## 14. Standards and codes

All installation works carried out under this agreement are to be in accordance with the following:

- Installation checklists.
- AS3000:2007.
- Australian Communications Authority Cabling Provider Rules.
- Scope of Work.
- Project Specification and Drawings.
- Works program as issued by Systemax.
- Statutory regulations.
- Site and head contract specific requirements.

## 15. Damages

In the event of a delay or damages of any kind caused by the subcontractor, the Subcontractor will be liable for such damages.

## 16. Entire Agreement

This agreement and associated purchase order is the entire agreement between the parties and no oral representation shall have any effect or relevance.

## 17. Documentation Conflicts

In the event that Systemax has a head contract, or other instrument of agreement containing conditions, with its client, the subcontractor agrees to be bound by the provisions of the Head Contract, and any conflict between this Agreement and the Head Contract shall be resolved first by reference to the head contract and then to this Agreement.

