

## Parties

**Envisage WA Pty Ltd** ABN 83 614 626 (**Seller**)

As set out in the quotation or order (**Purchaser**)

## Operative provisions

### 1 Application of conditions

#### Conditions upon quotation

1.1 The attached quotation is made based on the conditions set out in this document. They may only be varied with the written approval of the seller. They override any inconsistent conditions in any document or other communication used by the purchaser in relation to the contract of sale or any goods supplied.

### 2 Delivery and installation

#### When goods are to be delivered

- 2.1 The seller will do its best to deliver the goods to the purchaser's premises or other premises which the purchaser nominates within expected lead times. If a delay is caused by something beyond the seller's control, the delivery is extended accordingly. The seller is not liable for any damage or loss to the purchaser resulting from any delay in delivery.
- 2.2 Failure to take delivery of the goods within an agreed period between the seller and purchaser will result in the seller determining storage fees to be charged to the purchaser and the fees being added to the price.

#### Manufacture and installation by seller

- 2.3 The purchaser is liable for ensuring that the specifications and installation requirements unambiguous. Any ambiguity in the drawings is the responsibility of the purchaser. Purchases approval is acceptance of all architectural and engineering requirements
- 2.4 The purchaser will be liable for all dimensions and information relating to the manufacture and installation of the goods supplied to the seller. The seller will use reasonable endeavours to alert the purchaser of any obvious errors in information however the purchaser shall remain liable and shall indemnify the seller against any claim in any way related to such information.
- 2.5 Any installation specified in the quotation will only be done during normal business hours. The purchaser must obtain any permit, licence, or approval necessary for the installation.
- 2.6 The purchaser must ensure that the seller has access to the site, water, power and any access equipment including scaffolding or elevated work platforms that may be required for the goods' installation. Failure to provide these may incur additional charges including time spent by the seller personnel on site awaiting provision of such items.
- 2.7 The seller will use reasonable care in installation of the goods however in no case will the seller be liable for any damage or claim in any way related to the installation of the goods, including any damage related to welding, unless such damage or claim is due to the gross negligence or wilful misconduct of the seller. The purchaser is liable for and will ensure that it is fully insured at all times against any damage or claim related in any way to installation of the goods.
- 2.8 The purchaser is liable for all pre-existing work, structures and areas upon which the goods may be installed and will indemnify the seller against any failure of any work, structure or area to adequately support the goods.
- 2.9 The purchaser must provide the seller with all information regarding the location at site of all services, wires and pipes prior to any installation.

### 3 Payment

#### Payment

- 3.1 The purchaser must pay the price in accordance with the payment terms – 7 days - or upon delivery of the goods, or otherwise agreed with the seller. The seller may require a deposit for goods and pre-payment of materials which may be non-refundable once work has begun or materials have been ordered.
- 3.2 The seller may suspend work on the goods if a payment is delayed. The purchaser will be liable for all reasonable costs associated with any suspension of work.
- 3.3 Unless otherwise specified, the price in any quotation does not include:
  - 3.3.1 Additional time or requirements of compliance with site specific safety or security requirements;
  - 3.3.2 Inductions or any third-party training or briefing requirements;
  - 3.3.3 Any unforeseen or subsurface obstructions or latent issues;
  - 3.3.4 Scaffolding or any elevated work requirements;
  - 3.3.5 Provision of water or power sources if not available at site;
  - 3.3.6 Repair of cables or pipes damaged during goods installation unless such damage was the result of the gross negligence of the seller,
 The seller may charge the purchaser for any such items together with their reasonable time taken in facilitating the items in addition to the quotation price at the seller's then usual hourly rates according to the personnel required or the external cost and reasonable administration fees.
- 3.4 The seller will use reasonable effort to provide the purchaser with an estimate of any additional price amounts however the failure to provide an estimate will not reduce the purchaser's liability to pay such amounts.
- 3.5 The purchaser may not withhold any payment on the basis that they are unsatisfied with the quality or finish of any goods unless the defect is objectively outside of the specifications in the quotation.

#### Goods remain property of seller until payment

- 3.6 The goods remain the seller's property until the price is paid. Until then, the purchaser is bailee of the goods. The purchaser must:
  - 3.6.1 keep them in its possession and control
  - 3.6.2 keep them in good repair and condition, excluding fair wear and tear
  - 3.6.3 keep them stored separately and marked so that the goods are clearly and easily identifiable as the seller's property and inform the seller of the location of the goods, if requested
  - 3.6.4 not sell, assign or let them or any interest in them, or permit any charge, pledge, lien or other encumbrance to be created in relation to them.

#### Disposal of goods

- 3.7 If the purchaser disposes of any of the goods while they remain the property of the seller, or any of those goods become part of another product sold by the purchaser, the purchaser holds the proceeds on trust for the seller up to the amount it owes the seller in respect of those goods and must immediately pay that amount to the seller.

### 4 Risk, insurance and damage

#### Risk passes to purchaser on delivery

- 4.1 The risk in the goods passes to the purchaser when they are delivered or when they are transferred to the purchaser's transport. The passing of risk upon delivery shall apply notwithstanding the seller may be contracted to install the goods.

#### Purchaser must insure goods

- 4.2 The purchaser must keep the goods insured on usual terms against all risks usually insured against for goods of that kind from the time the risk in the goods passes to the purchaser until the time the property in the goods passes to the purchaser. The purchaser holds the proceeds of that insurance on trust for the seller up to the amount it owes the seller in respect of those goods and must immediately pay that amount to the seller.

#### Damage discovered after delivery

- 4.3 The seller will not be liable for damage discovered after delivery unless:
  - 4.3.1 the purchaser gives written notice to the seller and, if applicable, the seller's carrier within 4 days after the date of delivery; and
  - 4.3.2 the purchaser gives the seller reasonable opportunity to inspect the goods in the same condition and place in which they were delivered.

#### Seller's liability for goods

- 4.4 The seller uses reasonable care in drawing and producing goods however it is not an engineering company and as such does not warrant that any goods meet any specific standard, legal or other requirements or that any goods are fit for a particular purpose.
- 4.5 The purchaser acknowledges and agrees that it must seek its own engineering report where it deems it appropriate or where required by law. The purchaser indemnifies the seller against any claim in any way related to non-compliance of any goods with any standard, legal or other requirement. This clause applies notwithstanding that the seller may draft the plans and provide

advice in relation to goods to the purchaser. Any verbal or written advice provided by the seller cannot be relied upon to meet any specific standard, legal or other requirement.

- 4.6 The seller is liable for a defect in goods it manufactures that arises from faulty materials or workmanship, but not from fair wear and tear or minor discrepancies in colour or finish. In the case of goods not manufactured by the seller, the seller will give the purchaser the same benefit of any warranty as given to it by the manufacturer or supplier of goods to the extent that the seller is able to successfully claim under that warranty.

#### Defective goods

- 4.7 The purchaser must deliver defective goods to the seller's premises or other premises nominated by the seller within 7 days after the date when the defect is discovered. Where the goods are installed and unable to be moved, the purchaser must provide clear photographs and measurements of the defect and allow the seller access to inspect the defect promptly.

#### Exclusion or limitation of warranties

- 4.8 All other conditions and warranties of any type in relation to the goods are excluded to the maximum extent allowed by the law. In respect of goods which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability of the seller for a breach of any condition or warranty implied by law is limited to any one or more of the following, at the option of the seller:
  - 4.8.1 in the case of a breach relating to goods
    - (a) the replacement of the goods or the supply of equivalent goods
    - (b) the repair of the goods
    - (c) the payment of the cost of replacing the goods or of acquiring equivalent goods
    - (d) the payment of the cost of having the goods repaired.
  - 4.8.2 in the case of services
    - (a) the resupply of the services
    - (b) the payment of the cost of having the services resupplied.

#### Seller indemnified if goods used improperly

- 4.9 The purchaser will keep the seller indemnified against any loss, damage or liability arising from a use of the goods that is not in accordance with the seller's instructions or in a manner that was likely to damage the goods.

### 5 Default

#### Interest if payment not made on time and security

- 5.1 The purchaser must pay the seller interest on any amount not paid on time. The interest will be 2% per month. It will be calculated daily and capitalised monthly. The seller may lodge a priority security interest over the goods and a general security interest over all of the purchaser's present and after acquired property as security for payment and compliance by the purchaser of its obligations under this agreement. The purchaser waives its rights to receive notices under clause 157 of the Personal Property Securities Act (PPSA) and confirms that sections 125, 130, 132(3)(d), 132(4) and 135 of the PPSA are excluded.

#### Seller's right to repossession and suspension of delivery

- 5.2 If the purchaser fails to pay on time, the seller has the right to enter the purchaser's premises and repossess the goods. The seller is not liable for any loss, damage or liability suffered. The seller is entitled to keep or sell the repossessed goods. The seller is also entitled to suspend any other delivery to the purchaser. The purchaser remains bound by its obligations to the seller.

#### Seller's right to end contract

- 5.3 The seller may by written notice to the purchaser end the contract of sale immediately in any of the following circumstances:
  - 5.3.1 the purchaser fails to perform any of its obligations under the contract of sale
  - 5.3.2 the purchaser dies or becomes incapacitated, or ceases, or indicates that it is about to cease, to carry on business
  - 5.3.3 anything happens that reasonably indicates that there is a significant risk that the purchaser is or will become unable to pay debts as they fall due.
  - 5.3.4 a step is taken to have a receiver, receiver and manager, provisional liquidator, liquidator or administrator appointed to that person or any of its assets.

#### Seller's rights if it ends contract

- 5.4 If the contract is ended because of the purchaser's default and the purchaser owes the seller money:
  - 5.4.1 the money becomes payable immediately to the seller and bears interest in accordance with clause 5.1
  - 5.4.2 the seller is entitled to enter the purchaser's premises and repossess any of the goods in the purchaser's possession or control.

#### Seller's rights if unable to perform

- 5.5 If the seller's ability to perform its obligations under the contract of sale is adversely affected by war, strike, trade dispute, damage to plant or machinery, shortage of any material or labour or any cause beyond the seller's control.
- 5.6 The seller may, if it chooses, end the contract of sale or suspend it for up to 3 months by giving the purchaser written notice. The seller will not be liable for any loss, damage or liability which the purchaser incurs.

#### Seller's other rights and remedies

- 5.7 The rights and remedies provided in clauses 5.3, 5.4 and 5.5 will not affect any other rights or remedies available to the seller.

### 6 Miscellaneous

#### General

- 6.1 Neither party may assign any right under the contract of sale without the other party's written consent.
- 6.2 "Including" is not a term of limitation in this agreement.

#### Cancellation

- 6.3 An order for goods may only be cancelled with the seller's written consent which shall not be unreasonably withheld. The seller is entitled to charge up to the full quotation price for the goods as a condition of consent. Such charge shall account for reasonable opportunity costs including lost profits, unavoidable third-party costs, restocking or material costs, storage costs, scrapping or disposal costs and all work and materials used to the date of cancellation. The seller will use reasonable efforts to minimise costs upon cancellation however the purchaser will remain liable for all costs in any way related to the purchaser's cancellation.

#### Description of goods

- 6.4 The description of the goods specified in the quotation is given for identification only and does not create a contract of sale by description.

#### Governing law

- 6.5 The contract of sale is governed by the law of the local jurisdiction.

#### Price increase

- 6.6 The quote is valid for 30 days. A price change may apply after the 30 day period which may include an increase due to market increases.

#### Severability

- 6.7 If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected.

#### Waiver

- 6.8 The fact that either party fails to do, or delays in doing, something it is entitled to do under the contract of sale, does not amount to a waiver of its right to do it. Any waiver must be in writing. A written waiver by [the client] is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach; or as an implied waiver of that obligation or breach in relation to any other occasion.