

Purchase Order Terms and Conditions

1. DEFINITIONS

Construction Services means all installation, testing and commissioning works and any such works necessary in support of such works which may be required of the Supplier; **Delivery** means the transfer of Goods into the physical custody of Varner at the delivery points nominated on the PO; **Goods** means all goods, equipment, material, articles, drawings, data or any other property or parts to be provided to Varner by the Supplier under the PO and includes (but is not limited to) software and data in electronic format; **Varner** means the relevant Varner entity specified on the PO Front Document; **PO Front Document** means the document which sets out the Services to be performed along with the relevant price associated with the Services amongst other things; **Purchase Order ('PO')** means the PO Front Document, this document and the Special Conditions along with any other documents referenced therein, which together constitute the contract between Varner and the Supplier; **Professional Services** means services such as design, engineering, consultancy, agency or other such services requiring specialist expertise in a given field; **Services** means Goods, Professional Services or Construction Services; **Special Conditions** means any noted conditions (including those contained in any referenced documents) contained in the PO Front Document; **Supplier** means the party to which the PO Front Document is addressed.

2. GENERAL

The PO constitutes the entire agreement between the parties, and it supersedes any prior agreements, negotiations, or representations by the parties. In the event of inconsistency between PO terms and conditions and Special Conditions, the Special Conditions will prevail. No variation to this agreement will be binding on the parties unless agreed in writing.

3. AGREEMENT TO SUPPLY GOOD AND SERVICES

The Supplier will supply the Services in consideration of Varner making payment in accordance with the terms of the PO; The relationship of Varner and the Supplier is that of principal and independent contractor. Nothing in this agreement will create a relationship of employment, agency, or partnership.

4. STANDARDS

All Services are to be provided in accordance with relevant Australian Standards (or recognised industry standards where no relevant Australian Standards exists).

5. WARRANTIES

The Supplier warrants the Services for 12 months or for the Supplier/Manufacturer's standard published warranty period whichever is greater and commences on the date of completion of the Services. The Supplier will replace or make-good any defective Services in the manner and within the time required by Varner. Varner, at its option, may accept a reasonable replacement cost in lieu of the Supplier's obligations to replace or make- good.

6. PRICE BASIS

The PO price is fixed and not subject to variation for any rise or fall whatsoever. The PO price includes all taxes and duties (including customs duty, packaging, marking, handling, freight and delivery, insurance and any and all amounts payable for patents, copyright, or royalties) except GST unless agreed otherwise.

7. INVOICING

All invoices must reference the Varner entity to which it is contracted and must be sent electronically to admin@varner.com.au. Invoices must be valid Tax Invoices and include the Supplier ABN and quote a valid PO number in all cases. Invoices without valid PO numbers will be rejected and the supplier notified accordingly.

8. PAYMENT OF ACCOUNTS

Terms of payment are 30 business days from end of month of a correctly rendered Tax Invoice unless agreed otherwise in writing.

9. INDEMNITY

The Supplier indemnifies Varner on a full indemnity basis against all claims whatsoever in relation to the Suppliers performance and delivery of the Services including (but not limited to) personal injury, death, loss of or damage to property, any infringement of intellectual property rights, and any legal costs arising from the Supplier's performance of its obligations under this PO.

10. CONFIDENTIALITY

The Supplier will ensure that its employees, subcontractors, and agents keep all information provided or available to the Supplier as a consequence of entering this agreement, confidential. The Supplier shall not use Varner name or any of the information contained in this PO for publicity purposes without Varner prior written consent.

11. TERMINATION

Varner may terminate all or part of the PO at its convenience with 7 days' notice to the Supplier. Upon receipt of the notice the Supplier must stop all work and mitigate all costs and expenses. Varner will pay the Supplier for work performed under the PO up to the time of the notice. Varner may terminate the PO immediately upon any breach of the terms of this PO by the Supplier and seek recovery of all loss and damage incurred. If the agreement is terminated due to breach by the Supplier, Varner will be entitled to complete the Services, at its discretion, and seek recovery of the costs from the Supplier. Until such time as either the damages or the costs incurred have been finalised, Varner shall have no obligation to pay the Supplier. Any such payments due to the Supplier shall be limited to any balance remaining of the PO Price once the relevant costs, losses and damages have been set- off.

12. ASSIGNMENT / SUBCONTRACTING

The Supplier shall not assign, nor subcontract, any part of this PO without the prior written consent of Varner. Assignment or subcontracting will not relieve the Supplier from any of its obligations under this PO nor impose any liability upon Varner to an assignee or subcontractor.

13. NOTICES AND DOCUMENTATION

Any notice, request or other communication served under this PO, must be in writing, and delivered promptly at the addresses on the face of the PO; All documentation relating to the Services must be in the English language with the PO number.

14. DISPUTE RESOLUTION

The parties agree that before commencing any legal proceedings relating to this PO that they will meet within 60 days (or such other period as is agreed between the parties) of one party issuing a dispute notice to the other party. The parties agree to meet and negotiate in good faith to resolve the matter in dispute.

15. WAIVER

Any waiver by a party, in respect of any breach of a condition or provision of this PO, will not be deemed to be a waiver in respect of any other condition or provision, or of any subsequent breach.

16. APPLICABLE LAW

Unless otherwise stated in the PO all matters arising out of or in connection with the PO shall be governed by the laws of the State of Western Australia. Both Varner and the Supplier agree to submit to the non-exclusive jurisdiction of the courts of Western Australia and the courts of appeal from them.

17. NOTIFICATION

The Supplier must as soon as it becomes aware of any circumstances that would prevent it from being able to fulfil its obligations under the PO, immediately notify Varner in writing providing details of those circumstances providing and the impact on the PO. Upon receipt of the notice Varner may at its sole discretion:

- cancel all or any part of the PO; pr
- vary the PO, at no cost to Varner in order to allow the Supplier to fulfil its obligations under the PO.



18. OWNERSHIP OF TECHNICAL DOCUMENTATION

Drawings and other technical documentation supplied by Varner, as well as drawings prepared from such documentation and all intellectual property therein are the exclusive property of Varner and must not be used for any other purpose, copied or disclosed to a third party without Varner prior written consent.

19. SUPPLIER SUPPLIED DOCUMENTS

The Supplier shall supply to Varner any document which is noted in the PO as to be supplied by the Supplier or otherwise all documents necessary for Varner to understand the whole of the Services including but not limited to: the design; any lifting, transport and storage details; ITP's (to be approved prior to the commencement of any manufacturing) any required methods of installation, testing or commissioning; training manuals; software including any licenses; any operations and maintenance manuals which sufficiently detail correct method of operation and maintenance of the Services.

All such documentation shall be supplied to Varner in a format approved by Varner.

The Purchaser will not be required to check such documents supplied by the Supplier for any errors' omissions, inconsistencies, ambiguities, discrepancies, or compliance with the PO.

Any Purchaser approval of such documents shall not prejudice the Supplier's obligations under the PO.

The Supplier shall provide to Varner an irrevocable, transferable, perpetual, royalty free and unconditional license to use the intellectual property rights associated with the services and any documentation provided by the Supplier for the installation, use, support, repair, maintenance or alteration of the Services by Varner or any party to which Varner transfer such rights under the license.

The Supplier warrants that unless otherwise provided in the PO any other design, materials, documents, and methods of working each provided by the Supplier shall not infringe any intellectual property right.

20. TITLE, ACCEPTANCE, AND RISK

Where the Services include the supply of Goods, the Supplier warrants that the Services are free and clear of all liens and encumbrances and/or security interests and that the Supplier has and will give Varner a good and marketable title.

Title to the Goods will vest in Varner upon payment for the Goods.

The Supplier warrants that upon receipt of payment the Goods will be clearly marked property of Varner.

The risk of any loss or damage to the Goods or any part thereof will remain with the Supplier until delivery to Varner.

21. DELIVERY TERMS

Delivery shall be made in accordance with Varner specified requirements (as referenced in PO Front Document). The Supplier shall insure the Good(s) for replacement while risk is with the Supplier.

Time is of the essence in the delivery of the Goods.

22. PACKAGING AND TRANSPORTING GOODS

Goods must be packed and transported in accordance with relevant transportation and safety requirements and comply with any relevant packaging specifications notified by Varner.

Goods, delivery notes and other documentation must reference the relevant PO.

The Supplier warrants that all Goods covered by the PO must be supplied to the delivery point by the delivery date specified in the PO Front Document.

23. ACCEPTANCE AND QUALITY ASSURANCE

Varner may reject the Goods or any part thereof that does not comply with the PO. Signed delivery documents only confirm the quantity of Goods delivered and do not constitute acceptance by Varner;

The Supplier warrants that it will permit Varner access to its premises or the premises of the Supplier's vendors, agents, or distributors for the purpose of quality assurance surveillance, inspection and expediting of the Goods. Any such quality assurance surveillance and expediting by Varner will not relieve the Supplier in any way from its obligations under the PO or otherwise its own quality control and inspection of the Goods; Where Varner requires any aspect of the Goods to be designed, manufactured,

tested, installed, or delivered to a specific standard the Supplier must provide such information to Varner as is required by it to verify compliance with that specific standard, otherwise the Supplier will be expected to supply Goods which are new, of merchantable quality and to a standard which would be reasonably expected of an experienced supplier providing the same or similar goods as that to be provided by the Supplier.

INSURANCE

24. GOODS

In respect of any Goods the Supplier shall insure the Goods for their replacement value against loss or damage, including (where applicable) loss or damage in transit to the delivery point or in offloading the Goods at the delivery point and shall cover the parties respective rights, interest and liabilities. Evidence of such insurance must be provided prior to commencement of the performance of the Services.

25. PROFESSIONAL INDEMNITY INSURANCE

If the performance of the PO includes, directly or indirectly, the provision of Professional Services, the Supplier must effect and maintain (whether by renewal or otherwise) throughout the term of the PO and for a period of not less than 6 years after the completion of the Services, professional indemnity insurance to a minimum value of A\$5,000,000 for any one occurrence or in the aggregate in respect of liability arising by reason of any act, error, or omission of the Supplier or the Supplier's Personnel in performance of the Professional Services.

26. PUBLIC AND PRODUCT LIABILITY INSURANCE

Before commencing the performance of the Services the Supplier shall effect and maintain public and product liability insurance for an amount not less than AUD 20,000,000.00 in the one occurrence or in the aggregate for a period which is not to expire until the completion of the whole performance of the Services including any applicable warranty period and shall cover the parties respective rights, interest and liabilities to each other and to third parties for loss and damage of property of any kind, death of or injury to any person. Evidence of such insurance must be provided prior to commencement of the performance of the Services.

27. INSURANCE OF EMPLOYEES

Before commencing the performance of the Services the Supplier shall insure against statutory and common law liability for death of or injury to persons employed by the Supplier which shall be maintained for the duration of the PO and shall extend to cover Varner's statutory liability to the Supplier's employees. The Supplier shall ensure that all of its subcontractors have similarly insured their employees.

28. PROOF OF INSURANCE

Upon request by Varner the Supplier shall provide evidence of its compliance with the insurance requirements specified in the PO. Such evidence shall be in accordance with the direction of Varner acting reasonably.

29. PROGRAMMING

Where applicable, the Supplier shall provide Varner with reasonable advance notice of when the Supplier needs information, materials, documents, or instructions from Varner.

On request from Varner the Supplier shall prepare (or update as the case may be) a program (in a form acceptable to Varner) for the Services which sets out the order, sequence, times for commencement and completion, critical path and manning information (where applicable) in respect to the delivery of the Services.

30. SUSPENSION

Varner may direct the Supplier to suspend the supply of the Services in whole or in part for such time as Varner determines appropriate if:

- a. the Supplier has breached the PO in any way;
- b. Varner has been requested to suspend performance of its own works (to which the Services are related) by its own client;
- c. Varner is of the opinion that it is necessary because of an act, default, or omission of either of the parties;
- d. Varner, in its opinion considers it necessary for the protection or safety of any person or property; or
- e. It is necessary to comply with a court order.



If Varner directs the Supplier to recommence performance of the Services, the Supplier shall immediately recommence such performance.

31. TESTING

The Supplier shall perform any such testing requested of it in the PO or otherwise shall supply all testing necessary and reasonably requested by Varner in order to prove the Services are in compliance with the requirements of the PO.

32. URGENT PROTECTION

If urgent action is necessary to protect the Services (including the timely completion of the Services), other property or people and the Supplier fails to take the action, in addition to any other remedies, Varner may take such action and any cost incurred shall be a debt due from the Supplier to Varner.

33. CARE OF WORK AND REINSTATEMENT OF DAMAGE

The Supplier shall be responsible for the whole of the Services until such time as the whole of the Services are completed and delivered or otherwise handed over to Varner regardless of whether any title in Goods has passed to Varner.

34. SITE

Where the Services include Construction Services, the Supplier shall perform the Services in full compliance with all policies and procedures in place at the Site where the Construction Services are to be carried out including but not limited to Health and Safety, working hours, industrial agreements etc.

Except as otherwise provided in the PO the PO Price is deemed to include appropriate allowance for all things necessary for the completion of the Services including (but not limited to) all labour, plant and equipment, materials, tools, consumables, risks, liabilities etc.

Except as otherwise provided the Supplier has allowed in the PO Price for all risks associated with site conditions and the environment in, under and surrounding the site including (but not limited to) any traffic routes for delivery of materials, any requirement for accommodation and/or transport for its labour and employees due to the location of the site etc.