

1. Definitions

Conditions means these general terms and conditions of Contract.

Contract means any purchase order, work authorisation or other form that QSW provides to the Client for the provision of Services. **Client** means a firm or corporation (or any person acting on behalf of and with the authority of the client) seeking to acquire, or who acquires, Services from QSW, and if there is more than one, these Conditions bind them jointly and severally and includes all persons or entities described as "the Client" in a QSW Contract.

QSW means Quality Site Welding Pty Ltd.

Purchase Order means this purchase order form overleaf, together with these Conditions, setting out the key items of the Contract.

Services means the supply of welding fabrication services, advice, recommendations and where the context so requires, includes provision of goods as part of the Services.

A word or term defined in *A New Tax System (Services and Services Tax) Act 1999* (Cth) has the same meaning in these Conditions where used in connection with the GST imposed under that Act.

2. Basis of Contract

These Conditions are binding on the Client with respect to all Services the Client orders, Services supplied or agreed to be supplied by QSW, for the provision of the Services by QSW in relation to and for each Contract with a Client.

These Conditions and each Contract applies to the exclusion of all documents conflicting with or purporting to modify them, whether issued before or after the date of these Conditions or any Contract (including, without limitation, the Client's terms and conditions of trade, contracts, invoices and order confirmation forms).

A Client's acceptance of a Purchase Order for the supply of Services must be in writing and made in the form approved by QSW from time to time and are subject to these Conditions.

QSW will only deliver the Services after:

- issuing the Purchase Order to the Client;
- notifying the Client when the Services will commence; or
- carrying out the Services for the Client.

Any written quotation or order form provided by QSW to the Client in respect of the proposed supply of Services is deemed to be an invitation only to the Client to place an order based upon that quotation. Quotations issued by QSW are valid for 14 days from the quotation date.

3. Site & Access

If the Agreement requires QSW to perform Work on Site:

The Client must give QSW access for inspecting the Site and surrounding areas where the Services will be performed and for ensuring that it is familiar with all site conditions, including access, asbestos and all other site conditions relevant to the performance of the Services (including all applicable Laws) and for making all reasonable enquiries and investigations that may affect the cost and expense of executing the Services;

QSW must be given access to the site at agreed times;

QSW's personnel will attend all required site induction sessions before commencement of the Services on any site and QSW will comply with and will ensure that when on site, QSW's personnel comply with all policies/laws applicable to the site;

unless otherwise agreed in writing the Client will provide at its expense all facilities, constructional plant and other amenities as may be required for the performance of the Services at the site; and

QSW acknowledges that there may be other contractors on or around the site and agrees that the Purchase Order includes all of QSW's costs and expenses associated with managing QSW's interface and co-ordination of the Services with the works of such other contractors.

4. Payment

Unless otherwise specified by QSW, the Client must pay for the Services within 14 days of the end of month after QSW issues a progress certificate for the stage of works that the Services apply to, without set off or deduction.

The Client must pay QSW by depositing funds into the bank account nominated by QSW, or in such other method as is agreed by QSW.

QSW may at any time set-off amounts owed by QSW to the Client from the amounts owed by the Client to QSW.

The Client must notify QSW in writing if any of the Client's contractors, subcontractors, consultants or suppliers (**Contractors**) are or may be entitled to exercise a right to suspend work under a relevant agreement or subcontract pursuant to any security of payment legislation in force in Australia.

If clause 4.4 applies, QSW is entitled to seek security from the Client or to suspend the Services until such time as sufficient security is provided and the Client will indemnify QSW for any loss or damage (direct or indirect) that QSW suffers as a result of having to suspend the Services.

5. Pricing

Prices for the supply of Services exclude GST and any other taxes, duties or imposts imposed on or in relation to the Services. The price for the Services will be increased by the amount of any GST and any other taxes, duties or imposts which may be applicable.

The Client will arrange and pay for all costs associated with the carriage and insurance of any plant and materials required to perform the Services from QSW's nominated collection address unless otherwise specified by QSW.

The prices payable by the Client for Services may be adjusted by QSW at any time before the delivery date, whether or not a price has previously been specified.

6. Default by Client

If any of the following occur, it will be an Event of Default:

- the Client defaults in payment by the due date of any amount payable to QSW;
- the Client breaches these Conditions;
- if the Client is a company, a receiver or manager or both is appointed over some or all of the assets of the Client, an application to wind up the Client is made, the Client proposes to or enters into a compromise, or scheme of arrangement with any of its creditors or it proposes or effects the appointment of an administrator.

If an Event of Default occurs, then all money which would become payable by the Client to QSW at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Client and QSW may, without prejudice to any other remedy available to it:

- exercise its right to repossess Services in accordance with clause 6;

charge the Client interest on any sum due to QSW at the prevailing rate pursuant to the Penalty Interest Rates Act 1983 (Vic) plus 6% cent for the period from the due date until the date of payment in full;

engage a debt collection agency or legal representative to commence debt recovery proceedings and charge and debit to the Client's account all legal costs and disbursements incurred in so doing on a full indemnity basis;

revoke, suspend or vary any credit account and require any further transactions with the Client to be on a cash before delivery basis;

recover from the Client any or all losses, damages, costs, interest, fees, charges (including handling charges payable to QSW and its suppliers) and all expenses incurred by QSW as a result of the Client's default; and

cease or suspend, for such period as QSW thinks fit, supply of Services to the Client without liability to the Client or any third party for any loss or damage whether of a direct or consequential nature, even if QSW has already accepted an order from the Client.

7. Extensions of Time

QSW may claim an extension of time under this Purchase Order in accordance with this clause, if QSW has been or will be delayed in executing the Services due to:

- a breach of contract by the Client;
- variations directed in writing by the Client under clause 8 (unless such variation has been requested due to any act, default, negligence or omission by QSW or the QSW's personnel);
- suspension under clause 9 (unless the suspension was due to any act, default, negligence or omission of QSW or QSW's personnel).

As a condition precedent to being granted an extension of time, QSW must:

- notify the Client in writing of the likelihood of the delay, as soon as becoming aware of the likelihood of the delay;
- take all reasonable steps possible to prevent the cause of the delay and to mitigate the extent and consequences of the delay;
- within 7 days after the occurrence of the cause of any delay, notify the Client in writing of QSW's intention to apply for an extension of time, specifying the cause of the delay, an estimated duration of the delay and the steps that QSW will take to mitigate the delay;
- within 14 days after the occurrence of the cause of any delay, give the Client a written claim for an extension of time. The claim must state all the facts upon which the claim is based, the extension period claimed and must show and justify any effect the extension of time shall have on the Services (if any) and the date for completion.

The Client must direct an extension of time.

8. Variations

The Client may direct QSW to vary the Services including by increasing, decreasing, or omitting any part of the Work.

QSW are not obligated to carry out a variation until such time as it prices the variation for the client, including any extensions of time that the variation may cause. If QSW considers that the variation will have an effect on the value of the Services or the date for completion, QSW must:

- within 3 business days after a variation is directed, submit to the Client a variation costing advising of the approximate value of the variation;
- within 10 business days after a variation is directed, submit to the Client a detailed statement of the cost of any variation which statement must set out all adjustments to the Purchase Order; and
- is not required to carry out the variation until such time as the Client accepts the variation costing

9. Suspension

QSW may at any time request that the progress of the whole or part of the Services under the Purchase Order is suspended for such period as QSW deems necessary. In such case, the Client must, in consultation with QSW, agree to cease performance of the applicable Services.

Any suspension, wholly for the benefit of QSW and not as a result of the breach of the Client will result in an extension of time for the delivery of the Services.

10. Retention of Title and PPSPA

For the purposes of clause 10 the terms PMSI and Proceeds have the meaning given to those terms by the *Personal Property Securities Act 2009* (Cth) (**PPSA**).

All Services supplied by QSW to the Client is at the risk of the Client upon the Services being dispatched to the Client by QSW.

Despite the risk having passed to the Client, property and title in the Services remains with QSW until all amounts owing by the Client to QSW have been paid in full, notwithstanding that payments may be made for the settlement of specific claims and Contracts.

The Client agrees that these Conditions and, in particular, clause 10.3, create a security interest (including, where applicable, a PMSI) in Services (and their Proceeds) supplied by QSW to the Client from time to time.

The Client irrevocably consents to QSW registering its security interest on the personal property securities register to register its interest.

The Client agrees to do all things necessary and execute all documents reasonably required by QSW to register the PMSI and each other security interest granted by the Client under these Conditions and ensure that QSW acquires a perfected security interest in the Services under the PPSA.

Until title to Services passes to the Client under clause 10.3, the Client waives its rights under sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 135, 143, 157(1) and 157(3) of the PPSA, to the extent that it is permitted by law. QSW may also contract out of any other provision of the PPSA not specified in this clause as determined by QSW from time to time, provided that is also permitted under the PPSA.

11. Performance of Contract

Any period or date stated by QSW for the delivery of the Services is intended as an estimate only and is not a contractual commitment. QSW will use commercially reasonable efforts to meet any estimated dates but will in no circumstances whatsoever be liable for any loss or damage suffered by the Client or any third party for failure to meet any

estimated date, even if such loss or damage is caused by the act or omission of QSW.

12. Delivery and Risk in Services

Risk in the Services and all insurance responsibility for theft, damage or loss in respect of the Services will pass to the Client upon the Services being delivered to the Client's site.

QSW may deliver any of the Services in a Contract by part delivery and is entitled to invoice each part delivery and be paid for each part delivery in accordance with these Conditions. The Client must not refuse to accept or pay for a delivery on the basis that the Services are delivered by part deliveries and cannot insist upon a partial delivery or pre-delivery of Services.

13. Specifications

The Client warrants that all specifications for the manufacture, testing, quality, design or performance of the Services provided to QSW are accurate and complete and that, if they are complied with by QSW in the manufacture of Services ordered by the Client, those Services will be:

- fit for the Client's purposes or for any purpose for which Services of that kind are ordinarily acquired; and
- of acceptable quality.

The Client warrants that where it provides parts or materials for use by QSW or provides manufacturing directions or specifications, it is legally entitled to do so.

QSW has no responsibility whatsoever to verify specifications supplied by the Client.

14. Liability

QSW is not responsible or liable to the Client for any or all defects in items comprising a component(s) of Services that have not been manufactured by QSW and that have been supplied to QSW by a third party. These Conditions apply to such items supplied to QSW in the same manner and effect that these Conditions apply to Services.

The Client must inspect all Services delivered by QSW immediately upon completion.

Any claim by the Client relating to any defect in the provision of the Services or any shortage or other non-conformity to a Contract must be made in writing and received by QSW within 7 days after delivery of the Services. Unless such claim is received by QSW within the specified period, the Client is deemed to have accepted the Services. Any such claim made by the Client must be accompanied by the relevant QSW invoice, delivery docket and, where relevant, a specimen of the Services showing the alleged defect.

Subject to any express written warranty otherwise given by QSW, and except in relation to Non-excludable Obligations, all warranties, conditions and representations (including specifications supplied by QSW), whether express or implied or whether in writing or oral, are expressly negated and do not form part of these Conditions.

The maximum liability of QSW to the Client arising under or in connection with Services or these Conditions, whether such liability arises from any claim based on breach or repudiation of contract, breach of warranty, negligence, tort, statutory duty or other, will in no case exceed one or more of the following at the election of QSW:

- replacement of Services or supply of equivalent Services;
- repair of Services;
- payment of the cost of replacing the Services or acquiring equivalent Services; or
- payment of the cost of having the Services repaired.

In no event will QSW be liable to the Client (including in negligence) under or in connection with these Conditions for any loss of revenue, goodwill or profit or any indirect, consequential, punitive special or exemplary loss, damage, cost or expense or indirect damages of any type or kind.

QSW may, from time to time provide general advice, recommendations, information and assistance in relation to the Services supplied by it or their use or application (General Advice and Recommendations) in good faith to a Client. However, the Client and any party to whom the Client supplies Services and/or provides any General Advice and Recommendations provided by QSW, must make its own assessment as to the suitability or application of the General Advice and Recommendations to the Client's or other party's particular circumstances and needs. To the extent permitted by law and subject to the Non-excludable Obligations, QSW is not liable for any loss or damage suffered by the Client or any other person as a result of any reliance on General Advice and Recommendations.

15. Warranty Against Defects

Services supplied and manufactured by QSW are free from defects in materials and workmanship and material for a period of 90 days from the date of delivery of the Services to the Client, or, if the part or component of a part is listed in the Warranty Schedule, the warranty period that applies to that part or component (Warranty Period).

In order to make a claim under this warranty, the Client must:

- notify QSW within the Warranty Period of any Services that the Client believes may contain a defect. Provided the Client has given prior notice to QSW in accordance with this clause, the Client must provide QSW with the invoice, delivery docket and testing report for those Services at the Client's expense;
- provide any information requested by QSW in relation to the Services, maintenance or installation of the Services; and
- allow QSW or its employees or agents to inspect the Services (on request).

The Client must notify QSW of Services it believes contains a defect by sending claims to QSW via email.

QSW will conduct testing to verify whether Services are defective. Services will be considered free from defects if they are manufactured or supplied to and in accordance with any specifications provided by the Client. If QSW determines Services are defective, QSW will, at its option, repair or replace those defective Services and will deliver, at its cost, the repaired or replaced Services to the Client.

This warranty does not apply in circumstances where:

- the Services are not defective;
- the Services were used for a purpose other than for which they were intended;
- the Services were repaired, modified or altered by any person other than QSW;
- the defect has arisen due to misuse, neglect, accident or incorrect installation or use of the Services;
- the Services have not been stored or maintained as recommended by QSW;
- defects result from QSW complying with specifications provided by the Client;
- damage is caused by faulty or inappropriate materials that were required to be used in the Services by specifications provided by the Client, even though such materials may have

- been used in conjunction with components sourced by QSW that are not detailed in such specifications;
- (h) the defect has arisen due to normal wear and tear on the Services;
- (i) the Client is in breach of these Conditions.
- 15.6 QSW's liability under this warranty is limited to repairing or replacing any Services that QSW accepts are defective and covered by this warranty. QSW's liability does not extend to any indirect, special or consequential damages arising out of or in connection with the use or performance of the Services or other damage with respect to any economic loss, loss of property, loss of revenue or profit, loss of enjoyment or use, cost of removal, installation or other consequential damage of any nature.
- 15.7 Any repair or replacement under this warranty does not extend the original warranty for the whole repaired or replaced Services nor does it commence a new warranty period for parts used in the replaced or repaired Services.
- 16. Cancellation and Variation**
- 16.1 If, through circumstances beyond the control of QSW, QSW is unable to supply the Services to the Client, then QSW may cancel the Client's order (even if it has already been accepted) by notice in writing to the Client. QSW will be under no liability to the Client or any third party for any damages or losses, whether direct or indirect, resulting from such cancellation.
- 16.2 No Contract for the supply of Services may be cancelled or varied after the acceptance of the Contract by QSW without the prior written consent of QSW. If the Client purports to cancel or vary any Contract, such attempt may, at QSW's election, be treated as a repudiation of that Contract and the Client must pay to QSW all losses, damages, costs, interest, fees, charges, including handling charges payable to both QSW and its suppliers (if any), and the expenses incurred or suffered by QSW as a result of the repudiation of the Contract.
- 16.3 Contracts may not be varied by the Client unless the variation is in writing and is accepted by QSW in writing.
- 17. Client Warranty**
- The Client warrants and declares that all information supplied by the Client as part of Purchase Order from QSW is true and correct in all respects. Any credit account approved by QSW for the Client is granted by QSW on the basis of information supplied by and representations made on behalf of the Client and in particular, on the information disclosed by the Client in relation to specifications of the Client as set out in the Client's request for tender.
- 18. Building and Construction Industry Security of Payment Act 2002**
- 18.1 At QSW's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.
- 18.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable
- 19. General**
- 19.1 These Conditions are governed by the laws of Victoria and the parties submit to the exclusive jurisdiction of the courts exercising jurisdiction in Victoria.
- 19.2 If required by QSW, the Client will agree to a novation or assignment of these Conditions and any unfulfilled Contracts to the nominee of QSW. The Client will execute all documents whatsoever required in order to give effect to the novation or assignment.
- 19.3 A failure or delay in the exercise, or partial exercise, of:
- (a) a right arising from a breach of these Conditions; or
- (b) a right, power, authority, discretion or remedy created or arising upon default under these Conditions, does not result in a waiver of that right, power, authority, discretion or remedy.
- 19.4 These Conditions embody the entire agreement between the parties and, subject to the express terms contained on any Purchase Order will apply only to that particular Contract, all previous negotiations, representations, warranties, specifications, arrangements or statements whether expressed or implied are excluded.
- 19.5 If any provision of these Conditions is void, voidable, unenforceable, illegal, prohibited or otherwise invalid in a jurisdiction, in that jurisdiction the provision must be read down to the extent it can be to save it but if it cannot be saved by reading it down, words must be severed from the provision to the extent they can be to save it but if that also fails to save it the whole provision must be severed. That will not invalidate the remaining provisions of this deed nor affect the validity or enforceability of that provision in any other jurisdiction where it is not invalid.