



Gladstone Ports Corporation

Growth, Prosperity, Community.

PURCHASE ORDER TERMS & CONDITIONS

1. Contract

This form when properly signed and bearing an order number, is the only form which will be recognised by the Gladstone Ports Corporation as authority for charging Merchandise and services to its account and supersedes all previous communications and negotiations. No terms stated by Sellers in making a quotation or accepting or acknowledging this order and which differ from the terms of this order shall be binding on the Gladstone Ports Corporation. Seller may not assign this order without the Gladstone Ports Corporation's prior written consent. No waiver of a breach of any provision of this order shall constitute a waiver of any other breach of any other provision.

2. Quantity and Quality

Neither the quantity nor the quality of Merchandise delivered shall differ from that specified in this order unless the changed quantity or quality is ordered by the Gladstone Ports Corporation by advice in writing specifically referring to this order. The Gladstone Ports Corporation may return excess quantities to Seller at Seller's expense.

3. Inspection and Expediting in Progress

Seller agrees that the Gladstone Ports Corporation or its designated agent shall have the right of inspection and expediting of all work contained in this order while in any stage or engineering, manufacture or installation. Seller shall make this a condition of any sub-contracted work. The Gladstone Ports Corporation or its designated agent may reject any work performed or being performed that does not conform to this order; whereupon the work rejected shall be redone at no additional cost to Gladstone Ports Corporation. Any such inspection and expediting shall not relieve Seller of any obligations contained in this order.

4. Engineering Data

Seller shall furnish all engineering and other data in accordance with this order and within the time stated.

5. Firm Price

All prices stated on this order are firm and not subject to escalation unless otherwise stated.

6. Invoices

Seller's invoice must show the name of the plant or other destination to which the Merchandise was delivered or shipped and must show this order number.

7. Cancellation

The Gladstone Ports Corporation may at its option cancel any unshipped Merchandise. If this order covers any standard stock Merchandise, Gladstone Ports Corporation's only obligation shall be to pay for Merchandise shipped prior to the cancellation. If this order covers Merchandise manufactured or fabricated to Gladstone Ports Corporation's specification or specifications prepared by Seller for Gladstone Ports Corporation, then upon receipt of notice of cancellation, Seller shall cease manufacture, supply or work in accordance with and to the extent of the specified notice, and shall immediately do everything possible to mitigate any cost after such cancellation, then, provided the Seller is not in default, Gladstone Ports Corporation shall pay to Seller:

- (a) the cost incurred by Seller in connection with this order prior to the date of cancellation; and
- (b) six per cent (6%) of the forgoing cost in lieu of profit, provided however, that the total cancellation payment plus previous payments shall not exceed the total price for this order.

8. Termination for Default

In the event of a breach by Seller of any the terms, conditions or warranties contained in this order, or if Seller becomes insolvent, or a receiver of its business or assets is appointed, or makes an assignment or arrangement for the benefit of its creditors then in any one or more of such cases Gladstone Ports Corporation, without prejudice to any other rights it might have, may cancel any undelivered Merchandise, and shall not be obliged to make any payment therefore or in respect of such cancellation.

9. Warranties

Seller warrants that the Merchandise:-

- a. conforms with its description and specifications in this order
- b. is of good merchantable quality and fit for the known purpose for which it is supplied
- c. is new (unless otherwise specified)
- d. is free from all liens and encumbrances and Seller has good marketable title thereto.

These warranties are in addition to any warranty or service guarantee contained in this order implied by law.

10. Patents, Trademarks and Copyrights

Seller warrants to Gladstone Ports Corporation and its successors in interest that the manufacture, sale or use of the Merchandise will not infringe or contribute to the infringement of any patents, trademarks, designs or copyrights in Australia or in any other country. Seller indemnifies Gladstone Ports Corporation and its successors in interest against any loss or damage (including legal fees and costs) arising from breach of this warranty or prevention or hindrance of use of the Merchandise.

11. Property in Merchandise

Where any part payment for Merchandise in course of manufacture or assembly is made by Gladstone Ports Corporation the title to and property in the partly completed or completed Merchandise and any materials and parts to be used in its manufacture and then on hand shall pass to Gladstone Ports Corporation and shall be appropriately marked. The risk therein shall remain in Seller.

12. Transportation

Immediately Seller despatches the Merchandise Seller shall notify Gladstone Ports Corporation and method by which the Merchandise will be transported. All Merchandise shall be packed, marked and transported as specified in the order, but if not specified then in a proper and suitable manner and in all cases in accordance with the proper requirements of the carriers. Seller shall be liable for any difference in freight charges arising from its failure to follow any transport instructions in this order or properly describe the Merchandise transported. Gladstone Ports Corporation and Seller shall assist each other in obtaining documents and other information desirable for the prosecution of claims against carriers.

13. Inspection of Merchandise

Notwithstanding any prior payment therefore all Merchandise is subject to inspection and testing by Gladstone Ports Corporation after

arrival and unpacking at the ultimate destination, and if the Merchandise is to be installed or incorporated into a plant or premises such inspection and testing may be carried out after installation or incorporation and under operating conditions. If upon or after any such inspection or test any Merchandise is found to be unsatisfactory, incorporated into a plant or premises after any such inspection and testing may be carried out after installation or incorporation and under operating conditions. If upon or after any such inspection or test any Merchandise is found to be unsatisfactory, defective or of inferior quality or workmanship or fails to meet the specifications or any other requirements of this order, Gladstone Ports Corporation, without prejudice to any other rights or remedies it might have, may return the Merchandise to Seller at Seller's expense. Upon return of unsatisfactory or defective Merchandise, Seller shall reimburse Gladstone Ports Corporation for any amounts paid by Gladstone Ports Corporation on account of the purchase price of returned Merchandise, and any cost incurred by Gladstone Ports Corporation in connection with the delivery or return of the Merchandise.

14. Information

Any engineering and other data furnished to Seller by Gladstone Ports Corporation is confidential and shall not be disclosed by Seller to any third person without prior written consent of Gladstone Ports Corporation. Unless otherwise provided in this order all plans, drawings and specifications prepared or supplied by or on behalf of Gladstone Ports Corporation and any patterns made therefrom shall be and remain the property of Gladstone Ports Corporation shall be used by Seller only in performance of this order and shall be returned to it by Seller on completion of this order.

15. Licences

Unless otherwise specified in this order, Seller at its cost shall obtain all requisite licences, permits and authorities required in performance of this order and shall comply with all applicable laws and regulations in relation to the Merchandise and its installation (where applicable).

16. Installation

The following conditions also apply where Seller, under terms of this order or to enable its performance is required to be present or perform the work on or near premises of the Gladstone Ports Corporation:-

- (a) All work shall be performed in the best and workmanlike manner.
- (b) Defective or unsatisfactory work may be replaced by Gladstone Ports Corporation at Seller's expense.

- (c) Seller shall supply all labour, tools, equipment and materials necessary to complete the work and perform this order.
- (d) Seller shall not impede work in progress by Gladstone Ports Corporation or third parties.
- (e) Seller enters the premises on which the work is to be performed at its own risk and indemnifies Gladstone Ports Corporation and/or any Officer of the Gladstone Ports Corporation against loss, damage, claims and liability arising out of or in connection with the performance of this order or presence of the Seller, its workmen, agents, subcontractors, and invites on the said premises including claims against Gladstone Ports Corporation and/or any Officer of the Gladstone Ports Corporation whether alleging negligence on the part of the Gladstone Ports Corporation or otherwise. For the purpose of this clause Officer of the Gladstone Ports Corporation is defined to mean:-
- (a) A present director to the Gladstone Ports Corporation, and
- (b) a future director to the Gladstone Ports Corporation, and
- (c) a past director to the Gladstone Ports Corporation, and
- (d) the Chief Executive Officer of the Gladstone Ports Corporation, and
- (e) another person who is concerned, or takes part, in the management of the Gladstone Ports Corporation, and
- (f) an employee of the Gladstone Ports Corporation, and
- (g) a lawful agent of the Gladstone Ports Corporation.
- (f) Seller, its workmen, agents, subcontractors and invitees shall comply with all safety and other regulations applicable to the said premises and shall obey all instruction of the Gladstone Ports Corporation, its manager, foreman, or authorised officer.
- (g) Seller shall not subcontract or assign work under this

order which is to be performed on the said premises without the written consent of Gladstone Ports Corporation.

- (h) Seller performs all work under this order as an independent contractor.

17. Insurance

The Seller shall have in place valid and enforceable policies of insurance:-

- (a) with respect to its employees under the provisions of any relevant Workers Compensation legislation, and
- (b) for Public Properties Liability Insurance.

Such insurances to have a minimum coverage of 10 million dollars each and the seller shall provide the Gladstone Ports Corporation with a copy of all such insurance policies together with certificates of currency forthwith upon demand.

18. Time

The Sellar shall deliver (and if applicable, complete the installation of) the merchandise by the due date set out in this Purchase Order unless otherwise agreed in writing by the Gladstone Ports Corporation.

19. Precedence of Documents

Where the terms of this order (including any General Condition of Contract annexed to this form or incorporated in this order by reference) conflict with these Standard Conditions then the said terms shall take precedence over and by construed as varying these Standard Conditions to the extent to which the conflict occurs.

20. Law

The order shall be governed by and construed in accordance with the laws of the State of Queensland