

## 1. Definitions, application and interpretation

- (a) Definitions:
- (i) "Agreement" means these General Terms and Conditions of Supply and, where a Supply Agreement is entered into by You, the other parts of that document including any coversheet or covering letter, quotes issued by Us and accepted by You, together with all attachments and any other documents referred to in the Agreement;
  - (ii) "Australian Consumer Law" means Schedule 2 of the CCA;
  - (iii) "SPWG", "We", "Us" and "Our" means South Pacific Welding Group Pty Ltd ABN 46 078 830 878 including its officers, directors, employees and representatives from time to time;
  - (iv) "CCA" means the *Competition and Consumer Act 2010* (Cth);
  - (v) "Our Website" means [www.spwgroup.com.au](http://www.spwgroup.com.au);
  - (vi) "PPSA" means the Personal Property Securities Act 2009;
  - (vii) **Statutory Guarantees** means any right or statutory guarantee under Division 1 of Part 3-2 of the Australian Consumer Law;
  - (viii) "Supply Agreement" means an agreement with You to supply You for a specified period of time;
  - (ix) "Surcharge" means a surcharge imposed pursuant to clause 6(j);
  - (x) "You", "Your" and "Customer" means the person or entity identified in this Agreement or in the applicable SPWG trading account; and
  - (xi) "Your Equipment" means all property, plant and equipment owned or leased by You or Your affiliates, parent companies, subsidiaries, co-owners, co-lessees and joint venturers (but excludes property or equipment leased from Us) and includes surface facilities and other property on Your site.
- (b) This Agreement applies to all supplies of goods and/or services by Us to You and supersedes all previous negotiations and representations, whether oral or written, any earlier agreement for the same goods and/or services, and any earlier sets of terms and conditions issued.
- (c) No variation or waiver of this Agreement and no terms and conditions put forward by You or printed on Your purchase order or other document You give to Us for the supply of goods and/or services will have any effect unless expressly agreed in writing by both parties. Failure to exercise any right or remedy under this Agreement in a timely manner will not constitute acceptance of the matter which gave rise to the right or remedy, nor a waiver of such right or remedy.
- (d) If any provision of this Agreement is invalid, illegal or unenforceable, it will be read down to the extent necessary and reasonable to ensure that it is not invalid, illegal or unenforceable. If it or part of it can not be so read down, it or the relevant part of it will be void and severable and the remaining provisions will not in any way be affected or impaired.
- (e) All warranties, releases, exclusions of liability and indemnities will remain valid and binding following termination.
- (f) In interpreting this Agreement no rules of construction shall apply to Our disadvantage on the basis that We put forward the Agreement, or any part of it. Headings are for convenience only and do not affect interpretation. To the extent of any inconsistency between the General Terms and Conditions of Supply and the Special Conditions, the Special Conditions shall prevail.
- (g) If the Customer comprises two or more persons or entities, each of You is jointly and severally liable for all obligations and liabilities under this Agreement.
- (h) A reference to legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it.

## 2. Goods and services

- (a) Goods sold by Us to You will comply with any technical specifications provided by Us or the manufacturer. Except to the extent that the Statutory Guarantees apply, We do not warrant or guarantee that the

goods are suitable for Your intended use, purpose or process. You are solely responsible for determining the suitability, compatibility, and use of the goods or services.

- (b) Where goods supplied by Us, or materials or equipment used in providing services, have not been manufactured by Us, to the extent We are able to do so, We will pass through to You the benefit of any manufacturer's warranty where it is available

## 3. Your obligations

You will:

- (a) provide free of charge, adequate and safe access to Your premises, information and facilities (including labour for loading and unloading of goods, and utilities supply), and to Our equipment on Your premises, for Us to carry out Our duties and rights under this Agreement, including the provision of services, any installation, replacement, delivery to, and the inspection, audit, removal and servicing of equipment. You will be responsible for any additional costs incurred by Us in carrying out Our duties and rights under this Agreement, including installation, replacement, delivery to, and the inspection, audit, removal and servicing of equipment, where those costs relate to: inadequate or unsafe access to Your premises, information and facilities, or to Our equipment on Your premises;
- (b) ensure that all sites, works and materials for which You are responsible, and all Your Equipment which is relevant to this Agreement, comply with current industry standards and all legal and statutory requirements, including those relating to a safe workplace, and with any specifications provided by Us to You prior to entering into this Agreement;
- (c) obtain and maintain all necessary licences, permits, authorisations, approvals and consents, and comply with all legal obligations, in connection with Your possession and use of any goods supplied or Our equipment provided to You, or work done on Your site, including installation or other services provided by Us;
- (d) insure Our equipment to its full replacement cost against loss, damage and destruction and maintain other insurance as required by law and sufficient to insure Your obligations under this Agreement. If requested by Us, You will provide proof of any such insurance within 7 days;
- (e) not obliterate, remove or deface identification marks, tracking devices, labels, barcodes or notices on Our equipment;
- (f) return all Our equipment in a clean and serviceable condition, or pay the cost of restoring it to a clean and serviceable condition, and pay the reasonable new replacement cost if any equipment of Ours is lost or damaged beyond repair,
- (g) not mortgage, pledge, sell, or lend, or create a security interest under the PPSA over, Our equipment, and You will not part with possession of it, except to Us or to an agent or representative authorised by Us;
- (h) not at any time disclose any of the know-how, technology, information, documents or other intellectual property supplied by Us to You or contained in Our equipment, goods or services or otherwise made available to You, nor infringe Our rights in such materials, and You will use such for Your internal purposes only;
- (i) notify Us in writing if You intend to sell Your business, with such notice being provided not less than twenty-one (21) days before any such sale takes place;
- (j) notify Us in writing as soon as reasonably practicable after You become aware of any defect in goods or services supplied by Us, any alleged breach of contract on Our part, any negligence or other tort on Our part, or any breach of statutory duty by Us. You acknowledge and agree that prompt notification may enable Us to mitigate the loss or damage suffered by You as a result of the alleged act or omission or to assist You in doing so. Prompt notification may also enable Us to identify defective goods and services and prevent other customers from suffering loss or injury; and
- (k) warrant that You do not have a binding exclusive supply arrangement

with another supplier for the goods, services and locations covered by this Agreement.

#### 4. Ordering, delivery and collection

- (a) You acknowledge that where You collect goods from, or deliver goods to, Our site or agent, that collection or delivery will be at Your own risk and that You are responsible for handling and transporting the load safely, training the driver on the hazards of the goods and compliance with all relevant legislation.
- (b) Our weights, records and measurements will be evidence of the quantities of goods delivered to You, including for the purposes of invoicing. Subject to clause 6(i) Our delivery/collection note will be evidence of the goods delivered.
- (c) If full delivery cannot be made due to Your act or omission We may charge for abortive journeys or part deliveries.
- (d) We may suspend:-
  - (i) deliveries of goods if the goods storage, handling or process equipment is considered by Us not to be safe.
  - (ii) performance of services and delivery of goods if your site is considered by Us not to be safe.

#### 5. Title and risk

- (a) All goods sold remain Our property until You have paid for them and have paid all other outstanding amounts due and payable to Us. The risk in goods sold or supplied passes to You upon delivery to You or Your agent or collection by You or Your agent.
- (b) Our equipment remains at all times Our absolute property, even if affixed to real property owned or used by You, and is supplied for Your sole use. You have no rights over any property of ours or Our contractors brought onto Your site.
- (c) If Our equipment is installed at Your site and You are not the owner of that site, You will provide Us with the unconditional written agreement of the site owner confirming that the equipment will at all times remain Our property, irrespective of how it may be affixed, and that it may be repossessed by Us in accordance with this Agreement. You indemnify Us against any cost, loss or damage if You fail to provide Us with such site owner's agreement.

#### 6. Charges, invoicing and payment

- (a) Unless stated otherwise in this Agreement, all charges may be varied from time to time (and at least annually) by written notice to You.
- (b) You agree that We may deliver invoices and notices to You by electronic means, such as email. You must notify Us in writing immediately of any error on an invoice together with substantiating documents or information relating to the error, to be dealt with as a dispute in accordance with clause 13 of this Agreement. You must pay all undisputed charges within 30 days of invoice date. After determination of the dispute pursuant to clause 13, if an adjustment in either party's favour is due, We will issue a credit note or You will pay the additional amount as determined, as the case may be.
- (c) Our preferred method of payment is by electronic funds transfer (EFT). If You do not use this method, We may charge You a reasonable administration fee for the extra cost of processing. If We incur any merchant or dishonour fees as a result of Your method of payment, You agree that We may recover those fees from You. At Our discretion We may recover those fees from You directly or by adding the amount to a subsequent bill.
- (d) Except where goods delivered are not in accordance with Your order or Our selling specification, or are defective, the return of goods for credit is at Our absolute discretion. If We grant credits they may be subject to charges for handling or testing.
- (e) For any goods that are specially manufactured, modified or procured for You at Your request and that We are unable to sell to another customer in a timely manner then:

- (i) if during the term of the Agreement You no longer require such goods or have not collected or have not arranged for the delivery of such goods within 14 days after We have notified You of their receipt; or

- (ii) upon termination of this Agreement for any reason,

You agree to pay for all remaining stock of such goods either held in stock by Us, in transit to You or ordered from Our suppliers and such order cannot be cancelled by Us without penalty. Unless otherwise agreed, You will:

- (iii) give Us authorisation to make reasonable endeavours to return to Our Supplier such goods not collected by or delivered to You within 90 days after We have notified You of their receipt; and
- (iv) pay Us any restocking fee or other fee charged to Us by our Supplier and a reasonable administration fee for Our efforts to return the goods.

- (f) If any amounts are overdue:

- (i) We may suspend supply of goods and/or services to You until payment for those overdue amounts has been made in accordance with clause 6(f)(ii) below;
- (ii) You must pay charges and interest in accordance with the applicable Court interest rate at the time;
- (iii) if We are entitled to take debt recovery action against You and do so, You must pay Us Our reasonable costs incurred in recovering overdue amounts owing by You, including our reasonable administration costs incurred in taking that action; and
- (iv) as a condition of any subsequent supply, We may vary Your payment terms, including requiring You to provide reasonable security of payment in a form acceptable to Us (such as a bank undertaking, director or shareholder guarantee or pre-payment).

- (g) Prices in this Agreement exclude GST unless stated otherwise. You will pay GST and any other government charges, duties or taxes in connection with supply of goods or services under this Agreement.

- (h) Payment of a service charge invoice will be evidence of (subject to clause 6(i)) Your holding of Our equipment as shown on that invoice.

- (i) If any transaction or notification by You indicates a holding of Our equipment greater than recorded, We may amend Our records and charge You service charges accordingly.

- (j) Notwithstanding any other term of this Agreement, if at any time Our costs of supplying goods and/or services under this Agreement increase due to:

- (i) government action (including imposition of a new tax or charge), a change in law, a change in tax, the introduction of any emissions trading scheme or any other scheme relating to greenhouse gases or other environmental emissions;
- (ii) a fuel levy or fuel surcharge (or the like) being charged to Us by Our delivery contractors; or
- (iii) an inability to supply due to an event which impacts Our supply chain for procurement of the goods or services) due to events or circumstances beyond Our control; or
- (iv) any other events or circumstances beyond Our control,

We may by notice in writing to You apply or vary a Surcharge to the impacted products to take account of such change in Our costs.

#### 7. Liability and exclusions

- (a) Nothing in any agreement between Us and You excludes, restricts or modifies Your rights pursuant to any Statutory Guarantee if that right cannot, by law, be excluded, restricted or modified. Limitations and exclusions are made only to the extent that We may legally do so.

- (b) Notwithstanding any other provision of this Agreement (including any indemnity) or any transaction document (including any purchase order, statement of work or similar document), whether liability arises in

contract, negligence or other tort, breach of any statutory or equitable duty, or otherwise, and except where such liability cannot by law be limited or excluded:

- (i) neither party will be liable in any circumstances for pure economic loss, any loss of or damage to revenue, profits, savings, contract, use, goodwill, business or business opportunity or consequential or indirect loss or damage. This clause shall not excuse You from complying with any obligation to pay for the Goods and Services supplied under this Agreement);
  - (ii) a party (**first party**) is not liable to the other party to the extent that such liability results from the acts or omissions of:
    - A. the other party and/or the other party's employees, agents or contractors; and/or
    - B. any other third party;and the first party's liability is reduced proportionally to the extent those other parties' acts or omissions caused or contributed to the relevant loss or damage.
  - (iii) where the Goods or Services supplied under this Agreement are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then in the case of a breach of any Statutory Guarantee, Your remedy is limited to:
    - A. in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods or the payment of the cost of having the goods repaired; and
    - B. in the case of services, supplying the services again or paying the cost of having the services supplied again.
  - (iv) Subject to clause 7(b)(iii):
    - A. Our liability per event or series of connected events arising from one originating cause is limited to the lesser of \$500,000 and the annual revenue derived by Us in the preceding Contract Year (provided that in the first year of this Agreement, the annual revenue shall be calculated pro-rata from the Commencement Date up until the date the cause of action first arose); and
    - B. Our total cumulative aggregate liability shall not exceed the lesser of \$1,000,000 and the total revenue derived by Us in connection with this Agreement.

In this clause 7(b)(iv) "Contract Year" means a 12 month period beginning on the Commencement Date of this Agreement and each anniversary thereof.
  - (v) The liability caps set out in clause 7(b)(iv) apply across all purchase orders (or similar documents) collectively and to any liability to all indemnified parties and/or related bodies corporate collectively.
- (c) You indemnify Us and hold Us harmless against all loss, damage, proceedings, claims, costs and expenses howsoever caused (except to the extent caused or contributed to by Us) arising directly or indirectly:
    - (i) out of Your possession, use or ownership (as applicable) of goods;
    - (ii) from any unauthorised use of Our intellectual property; and
    - (iii) from Our presence on Your site, including Our equipment, materials and personnel.
  - (d) If performance of any contract obligation by its normal means is prevented or delayed due to any cause beyond Your or Our reasonable control (including in respect to any event which impacts Our supply chain for procurement of the goods or services), the party so prevented or delayed will notify the other party as soon as reasonably practicable after becoming aware and that contract obligation (other than a payment obligation) will be suspended during the period affected by such cause.
  - (e) We will not be liable for any defect arising from fair wear and tear to the materials or equipment installed or used in relation to or in connection with the goods and/or services.

- (f) To enable Us to address promptly any potential safety or operational issues, You must notify us in writing within 30 days of receipt of goods by You of any shortage in, loss of discrepancy in, or damage to the goods supplied under this Agreement. If it was not reasonably possible to notify Us within that timeframe, You must notify Us within 5 working days after You first became aware, or could reasonably be expected to have become aware, of the issue. This clause does not prevent a claim under a Statutory Guarantee.

## 8. Our equipment

- (a) Our equipment will comply with any technical specifications provided by Us. We do not warrant that the equipment is suitable for Your intended use or process. If We warrant any particular performance levels, any claim for failure to meet those levels in any period is limited to a proportional reduction in the service charge for that period. This clause does not apply to the extent of any inconsistency with the Statutory Guarantees.
- (b) We will maintain Our equipment in accordance with Our procedures and current safety requirements. If this requires interruption of supply this will, whenever possible, be by arrangement with You.
- (c) Service charges are payable from delivery, or from the date of completion where We provide installation, whichever is earlier.
- (d) We may maintain Our equipment by a program of regular maintenance undertaken during normal business hours. If regular maintenance is carried out outside of normal business hours at Your request then You will incur an additional charge at Our then current rates.
- (e) For any repairs or maintenance required beyond that in 8(d) We will charge You an additional charge at Our then current rates, except We will not charge You to the extent that We caused the need for such repairs or maintenance, or where such repairs or maintenance are necessitated by a defect.
- (f) You will comply with any manual (or other instructions) provided, and will not otherwise adjust, repair or interfere with Our equipment. If You do not comply with this clause then, to the maximum extent permitted by law, We will have no liability to You for the consequences and We may charge You for additional service parts and/or maintenance and repair charges as appropriate.

## 9. Breach and termination

- (a) If either party commits any act of bankruptcy or has a receiver, liquidator or administrator (or similar) appointed, or commits any material breach of any provision of this Agreement and fails to take action to remedy that breach within 30 days of being given notice to do so by the other party, then the other party may by written notice with immediate effect either:
  - (i) terminate the whole or any part of this Agreement; or
  - (ii) suspend performance of all or any of their obligations (except a payment obligation), and at any time during such suspension terminate the whole or any part of this Agreement. Service charges will continue to accrue and be payable by You during any period of suspension.
- (b) Termination will be without prejudice to any accrued rights of either party.
- (c) On suspension or termination under any circumstances, or where You have breached clause 3(k), We may recover possession of any goods, equipment, or materials belonging to Us, and You must authorise Us to enter Your premises for this purpose on receipt of prior notice from Us. You must pay Our reasonable charges for the costs of removal of Our equipment (except where such termination is for Our unremedied breach of a material term of this Agreement). Any delay by Us in removing Our equipment will not waive Our rights nor give You any rights over Our property.

## 10. PPSA

- (a) We may allocate amounts received from You in any manner we determine, but in default will apply same first to payment of any

unsecured amount owing to Us, next as to any reasonable enforcement expenses and then as to any secured balance owing to Us.

- (b) You will not (except with Our written consent) allow to be, or be liable to become, perfected or attached in favour of any person, a security interest or transitional security interest in any of the monies from time to time payable to Us (if any) or otherwise, or in Our property (including equipment) and whether to a provider of new value or otherwise.
- (c) You waive the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interests under this Agreement. You agree that You and We contract out of and nothing in the provisions of Sections 95, 96, 117, 118, 121(4), 130, 132(3)(d), 132(4), 142 and 143 of the PPSA shall apply to this Agreement.
- (d) You and We acknowledge that You are the grantor and We are the holder of a Purchase Money Security Interest ("PMSI") by virtue of this Agreement and/ or the PPSA. You agree to do anything that We reasonably require to ensure that We have at all times a continuously perfected security interest over all of Our property, including Our equipment

## 11. General

- (a) If You purchase goods and/or services from Us through Our website or other e-commerce process, then (without limiting the foregoing) You agree to also be bound by the applicable terms and conditions set out or referred to in that site or relating to that process.
- (b) Nothing in this Agreement will be interpreted or implied as constituting either Us or You as having the relationship of employee and employer or You as Our agent or Us as Your principal.
- (c) We may assign or transfer this Agreement and/or any security under the PPSA to a related body corporate at any time by notice to You. A party must not otherwise assign or transfer the benefit or obligations of this Agreement without the prior written consent of the other party, not to be unreasonably withheld.
- (d) We will be entitled to the full and unrestricted right, including the right to apply for patent or other protection in Our own name, to exploit any invention, technical information or know-how arising from or developed in the course of carrying out this Agreement.
- (e) (e) SPWG and the SPWG logo are trademarks and/or service marks of SPWG. You have no right under this Agreement to use any trademark, service mark, logo, and/or trade name of SPWG or its affiliates, suppliers, advertisers, or agents or sponsors.
- (f) This Agreement is governed by the laws of New South Wales, Australia.
- (g) We have the right to vary the Agreement to the extent that such variation does not adversely affect You.

## 12. Confidentiality

- (a) This Supply Agreement and all pricing information and any other commercially sensitive or confidential information relating to this Agreement must be kept strictly confidential by both Parties at all times (**Confidential Information**).
- (b) Except as stated in this Agreement or where required by PPSA, the parties to this Agreement must not **and** must not permit any of their officers, employees, agents, contractors or related bodies corporate to disclose any Confidential Information to any person, other than their

professional advisers or as required by law, without the prior written consent of the party to whom the Confidential Information relates.

- (c) This clause 12:
    - (i) operates for the benefit of all parties; and
    - (ii) continues despite the termination of this Agreement.
  - (d) Our treatment of personal information will be in accordance with Our Privacy Policy (a copy of which can be obtained from Our website, [www.spwgnsup.com.au](http://www.spwgnsup.com.au), or by calling 1300 135 216).
  - (e) You agree that We may obtain from, and provide to, third parties information about Your creditworthiness and payment record. You agree that We may use, for purposes related to this Agreement, any personal information We hold on You.
- ## 13. Dispute Resolution
- (a) If a dispute arises between the parties, either party is to give the other party written notice of the dispute and the authorised representatives of the parties are to attempt to resolve the dispute within 14 days of such notice.
  - (b) In the event the parties cannot resolve the dispute within 14 days, the authorised representatives must internally escalate the matter to attempt to resolve the dispute within a further 14 days. Failing resolution by that time:
    - (i) the parties may agree to use an alternative dispute resolution process to attempt to resolve the dispute; or
    - (ii) either party can commence legal proceedings.
  - (c) The parties shall at all times during the dispute continue to fulfil their obligations under this Agreement.
  - (d) Nothing in this clause prevents either party seeking interlocutory relief.

## SPW Group

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