Quantem Terms and Conditions for the purchase of Goods and Services – 002

These Standard Terms (including the Schedule if applicable) apply to the supply of Goods and/or Services by the Supplier to Quantem and form part of all Orders issued by or on behalf of Quantem to the Supplier for Goods and/or Services unless specifically excluded or varied by Quantem in writing.

Part 1 Definitions and Interpretations

1.1 In these Standard Terms:

"Delivery Date" means the date on which the Goods are delivered to Quantem or the date on which the Services are completed, as applicable;

"Goods" means the goods supplied or to be supplied by the Supplier and any part supplied by the Supplier in connection with the provision of Services, including if applicable, the goods specified in the Schedule;

"Government Agency" means a government or government department or a court, port, transport or local authority or a person (whether autonomous or not) responsible for the administration of an applicable law, in Australia or elsewhere.

"Legislative Requirements" includes any:

(a) Federal, state or local Acts, ordinances, regulations, by-laws, orders, awards, proclamations;

(b) Building codes, Australian Standards and any other standards and codes applicable to the Goods and Services; and

(c) Certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the supply of Goods or the provision of Services.

"Loss" means any loss, liability, damage, expense or cost whatsoever and includes (without limitation) indirect or consequential loss or damage or loss of profits;

"Modern Slavery" means internationally recognised exploitative practices including human trafficking, slavery, slavery-like practices, servitude, forced labour, forced marriage, debt bondage, child labour and deceptive recruiting for labour services

"Order" means an order placed by Quantem with any Supplier for the supply of Goods or Services;

"PPSA" means the Personal Property Securities Act 2009 (Cth).

"Quantem" means Terminals Pty Ltd (ABN 87 000 348 407) or Liquid Terminals Australia Pty Ltd (ABN 89 001 849 805) as indicated on the Purchase Order;

"Schedule" means the Schedule to these Standard Terms, if applicable;

"Supplier" means any person which enters into a contract with Quantem for the sale of Goods or the provision of Services including its executors, administrators, successors and permitted assigns; and

"Services" means any services supplied or to be supplied by a Supplier including, if applicable, the services specified in the Schedule.

"Site" means the Quantem premises on which the Goods or Services are to be delivered/performed, including, if applicable the site specified in the Order.

1.2 In these Standard Terms:

(a) the singular includes the plural and vice versa, and a gender includes other genders;

(b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

(c) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;

(d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time; and

(e) a reference to A$, $A, dollar or $ is to Australian currency.

1.3 Where there is an inconsistency in or between these Standard Terms, Order and the Schedule, the inconsistency will be referred to Quantem for resolution, which may include a direction that the inconsistency be resolved by applying the provision or interpretation that imposes the higher standard or obligation on the Supplier.

Part 2 Formation of Contract of Sale of Goods or for the Supply of Services

2.1 This form bearing an order number and the signature of an authorised officer of Quantem is the only Order recognised by Quantem.

2.2 Each Order constitutes an offer by Quantem to acquire the Goods or Services subject to these Terms and Conditions. Acceptance by the Supplier of an Order shall create a legally binding contract between Quantem and the Supplier for the supply of Goods or Services as set out in the Order and according to these terms and conditions.

2.3 These Terms and Conditions supersede any previous terms and conditions and may only be varied with the written consent of both parties.

Part 3 General Obligations

3.1 The Supplier must use reasonable endeavors to ensure that the Goods or Services that it provides are not the product of Modern Slavery. The Supplier must require its suppliers to do likewise.

3.2 The Supplier must, in performing this Order, comply with any anti-bribery and corruption laws that are applicable to Quantem, the Supplier, this Order or the jurisdictions in which this Order is performed, including the Australian Criminal Code Act 1995 (Cth) (**ABAC Legislation**) and must not do any act prohibited by the ABAC Legislation, give or offer to give, receive or agree to accept, any payment, gift, benefit or other advantage which is given with the intention of inducing the recipient to act improperly, offer, promise or pay facilitation payments or any other act which is otherwise inconsistent with Quantem policies and procedures.

3.3 The Supplier must not subcontract, assign or delegate the whole or any part of the Services or the production, manufacture or supply of the whole or any part of the Goods without the prior written consent of Quantem. Any subcontracting by the Supplier will not relieve the Supplier of any of its obligations under the Order.

Part 4 General Obligations – supply of Goods

Delivery and Risk- Goods

4.1 Risk of loss of, or damage to, the Goods will pass to Quantem on and from the Delivery Date subject to Quantem exercising its right under provision 4.12 and 4.13 below.

4.2 Where time of delivery is specified by Quantem, time is of the essence.

4.3 Quantem reserves the right to cancel any Order where the Goods or Services are not provided within the nominated time for delivery.

4.4 Where Quantem cancels an order in accordance with this provision and the Goods which are the subject of that Order have been manufactured to Quantem's own specification, the Order will be subject to cancellation costs as agreed between Quantem and the Supplier.

Quantities - Goods

4.5 The quantities of the Goods delivered by the Supplier shall correspond to the quantities specified in this Order.

4.6 Quantem reserves the right to return to the Supplier at the Supplier's expense any quantities of Goods over those specified herein and the acceptance of which Quantem has not agreed in writing prior to delivery.

Consignment and Packing - Goods

4.7 At the time of dispatch of the Goods the Supplier shall immediately provide to Quantem documentation showing the number of the Order, the quantity and type of Goods despatched, the method of transport and the expected Delivery Date.

4.8 The Goods shall be packed in the manner specified in the Order, or, if not specified, in a manner acceptable to the carrier, in accordance with all existing applicable Acts, statutory regulations standards and codes and such that damage in transit is prevented.

Hazardous Goods

4.9 If the Goods comprise any hazardous materials or dangerous goods, the Supplier is responsible for clearly marking, transporting and storing the Goods in accordance with all Legislative Requirements and must provide Quantem with the relevant materials safety data sheet for all such Goods.

Title in Goods

4.10 Title in Goods passes to Quantem on and from the Delivery Date.

4.11 If, pursuant to paragraph 4.10 above, title has passed to Quantem, and upon inspection of the Goods, Quantem rejects the Goods through a notice of non-compliance, ownership in the Goods reverts to the Supplier upon giving of the notice to the Supplier.

Inspection of Goods

4.12 Quantem or its nominated agent may inspect all Goods delivered by the Supplier as specified in the Order and may reject any such Goods which do not comply with the details specified in the Order by giving notice of a non-compliance to the Supplier. The Supplier must, at its own expense, remedy any defects in the Goods within a reasonable period to time specified by Quantem. If the Supplier is unable to rectify the defects in the Goods within such reasonable period, Quantem may remedy that defect and any reasonable costs incurred by Quantem in doing so will be paid by the Supplier.

4.13 Without limiting the effect of clause 4.12, if there is a defect in the Goods, Quantem may require the Supplier to resupply the Goods at the Supplier's cost.

Part 5 – General Obligations – supply of Services

5.1 Where the order relates to a supply of Services:

(a) the Supplier must provide the Services competently, diligently, with due care and skill, safely and to the standard that would be reasonably expected of an experienced, professional provider of Services similar to the Services.

(b) The Services must be supplied:

(i) in a timely manner;

(ii) in accordance with all directions given by Quantem;

(iii) in compliance with all relevant laws, including Legislative Requirements; and

(iv) in compliance with applicable Quantem policies and procedures.

Inspection of Services

5.2 Quantem or its nominated agent may inspect all Services carried out by the Supplier as specified in the order and may reject any work or part thereof which does not comply with the details specified in the Order by giving notice of a non-compliance to the Supplier. The Supplier must, at its own expense, remedy any defects in the Services within a reasonable period to time specified by Quantem. If the Supplier is unable to rectify the defects in the Services within such reasonable period, Quantem may remedy that defect and any reasonable costs incurred by Quantem in doing so will be paid by the Supplier.

5.3 Without limiting the effect of clause 5.2, if there is a defect in the Services, Quantem may require the Supplier to resupply the Services at the Supplier's cost.

Part 6 Site Work

6.1 Where it is necessary for the Supplier to enter the Site to undertake work covered by the Order, the Supplier shall:

(a) insure Supplier personnel against death and injury; and

(b) insure Supplier supplied equipment against loss or damage;

and shall indemnify Quantem against any costs which may arise from such death, injury, loss or damage as the case may be.

6.2 The Supplier shall ensure that all requisite permits, licences and approvals have been obtained for the carrying out of the Services prior to commencement of the work.

6.3 The Supplier shall provide their own equipment and tools to carry out the Services specified in the Order.

6.4The Supplier shall comply with all existing applicable Acts, statutory regulations, standards, codes and workplace practices of Quantem and the Supplier.

6.5 The Supplier shall ensure that all Supplier personnel comply with any Site safety and induction requirements.

6.6 Quantem may remove any Supplier personnel from Site if Quantem is of the reasonable opinion that such personnel are in breach of an obligation under this Order, or any Quantem site policy or procedure or otherwise is acting in an unsafe, negligent or disruptive manner.

Part 7 Changes and Variations

7.1 Quantem may direct the Supplier to make certain changes to an Order of Goods or Services. If the Supplier can reasonably accommodate the changes, the Supplier will do so. Quantem and the Supplier will endeavour to agree upon the adjustment to be made to the final contract price to accommodate the change, but if agreement cannot be reached, the parties agree that the Goods or Services will be provided in accordance with the original Order.

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Part 8 Price and Payment

8.1 The Supplier acknowledges that the price payable for Goods or Services is the price stated in this Order and includes all costs of forwarding, delivery, packing, installation, storage and maintenance.

8.2 Unless otherwise agreed between Quantem and the Supplier, the price shown on the Order for the Goods or Services shall not be altered for the duration of the Order and shall not be subject to any increase resulting from the cost of labour, material or rate of international exchange.

8.3 Payment by Quantem will be made to the Supplier within 30 days after the end of the month of receipt of an original Tax Invoice from the Supplier subject to Quantem' acceptance of such Goods or Services pursuant to provisions 4.6, 4.12 and 5.2 of this agreement.

8.4 All Tax Invoices presented for payment shall clearly show the number of the Order, quantities delivered and the name of plant to which the Goods were delivered or at which the Services carried out.

Part 9 Taxation

9.1 Certain terms used in this Part 9 are defined as followed:

Amount of the Consideration means:

(a) The amount of any payment in connection with a supply; and

(b) In relation to non-monetary consideration in connection with a supply, the GST exclusive market value of that consideration as reasonably determined by the Supplier.

GST has the meaning it has in the GST Act.

GST exclusive market value has the meaning it has in the GST Act.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cwlth).

Input Tax Credit has the meaning it has in the GST Act.

Tax Invoice has the meaning it has in the GST Act.

9.2 The consideration specified in an Order does not include any amount for excise, GST or other tax charged. Any excise, GST or other tax charged must be shown as a separate cost on the Order.

9.3 If a supply under an Order is subject to GST, the recipient must pay to the Supplier an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate.

9.4 The additional amount is payable at the same time as the consideration for the supply is payable or is to be provided. However, the additional amount need not be paid until the Supplier gives the recipient a Tax Invoice.

9.5 If the additional amount differs from the amount of GST payable by the Supplier, the parties must adjust the additional amount.

9.6 If a party is entitled to be reimbursed or indemnified under an Order, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

Part 10 Insurance

10.1 The Supplier must insure itself fully in respect of all potential liability arising out of the supply of the Goods or the performance of the Services, including having the following insurances:

(a) Public and products liability insurance for at least AUD $10 million per claim;

(b) If Services are provided, workers' compensation insurance as required by applicable Legislative Requirements;

(c) Professional indemnity insurance (where relevant), to a minimum cover of AUD $1 million per claim and to be maintained for a period of 5 years from the cessation of the supply of the Goods and/or Services;

(d) Where relevant, motor vehicle insurance for all types of motor vehicles and equipment owned or controlled by the Supplier; and

(e) Any other insurance as specified in the Order or as required by law or regarded as sound commercial practice.

10.2 The Supplier must provide certificates of currency or such other evidence of the insurances being effected and maintained under this clause as and when directed by Quantem.

10.3 The Supplier will be responsible for the payment of any insurance excess or deductible for the insurances provided under this clause 10 and is not entitled to recover such amount from Quantem.

10.4 Despite paragraph 10.1, the taking out of insurance will not limit the liabilities or obligations of the Supplier under other provisions of the contract.

Part 11 Warranty / Liability of Supplier and indemnity of Quantem

11.1 The Supplier warrants that the Goods to be supplied are of good merchantable quality and are fit for their intended purpose and supplied in accordance with all Legislative Requirements.

11.2 The Supplier further warrants that the Goods and/or Services and the use of the Goods or provision of Services shall not infringe any patents, copyrights or any other intellectual property rights of any person. The Supplier shall indemnify Quantem against any Loss incurred by Quantem arising from such infringement.

11.3 The Supplier further warrants that it has not been convicted of any offence involving slavery and human trafficking nor has it been subject to any investigation or proceedings by any Government Agency in connection with slavery and human trafficking.

11.4 To the extent permitted by law, the Supplier indemnifies Quantem against, and releases Quantem from, all Losses that Quantem may incur or sustain arising out of or in connection with: (i) the loss of, or damage to, or loss of use of, any real or personal property, or the personal injury, disease or illness to, or death of, any person arising from the condition of the Goods or otherwise from the provision of the Goods or Services; (ii) a breach of the terms of this Order; and (iii) any claim by a third party that its intellectual property rights have been, or will be, infringed by Quantem's use of the Goods and/or Services.

11.5 The Supplier's liability to indemnify Quantem will be reduced proportionally to the extent that any negligent act or omission of Quantem contributes to the Loss.

11.6 Without limiting clause 11.4, Quantem is not liable for, and the Supplier releases Quantem from, all Loss arising from or in connection with any: (i) injury or death of the Supplier's employees, agents or contractors; or (ii) any damage or loss sustained by the Supplier, its agent or contractors; while on Site or otherwise in the course of providing the Goods or Services, except to the extent it arises from the negligent act of Quantem.

Part 12 Confidentiality and Privacy

12.1 If, in the supply of the Goods or the performance of the Services, or otherwise, the Supplier obtains or becomes aware of any sensitive or confidential information relating to Quantem or its business (Confidential Information), the Supplier must not, without Quantem's written consent, disclose to any person the Confidential Information, except to those of its employees that are involved in the supply of the Goods or the performance of the Services and need to know the information, and then only on a strictly confidential basis or unless otherwise required to be disclosed at law. The Supplier must immediately notify Quantem if it knows of, or suspects, any unauthorised disclosure of the Confidential Information.

Part 13 Force Majeure and suspension

13.1 Quantem may immediately suspend the performance of any or all Services or supply of Goods at any time for any reasons by giving written notice to the Supplier.

13.2 Neither party will be liable for any loss incurred as a result of delay or failure to observe any of these Terms and Conditions (other than any obligation to pay money which is due and payable) due to any event of force majeure, being any cause or circumstance beyond the party's control, including but not limited to any failure or delay in performance caused by any strikes, lock-outs, labour disputes, quarantine, epidemic, fires, acts of God or public enemy, acts of terror, malicious or accidental damage, delays in transport, breakdowns in machinery or restrictions or prohibitions by any government or any semi-government authorities or embargoes.

13.3 During the continuance of any event of force majeure each party's obligations hereunder (other than to pay money which is due and payable) shall be suspended and will resume as soon as possible after the cause or circumstances has ceased to have effect.

Part 14 Step in

14.1 If the Supplier does not deliver the Goods and/or perform the Services by the specified date, or supplies any Goods and/or Services, which in the opinion of Quantem do not comply with every requirement of the terms applying to the order, Quantem may purchase replacement Goods from a third party or engage another contractor to perform the Services and the difference (if any) between the cost of the replacement Goods or Services and the purchase price of the Goods or Services (as applicable) will be a debt due and owing from the Supplier to Quantem.

Part 15 Set Off

15.1 Any amount payable by the Supplier to Quantem or any amount to be borne by the Supplier in connection with this Order may be set off by Quantem against any amount owing by Quantem to the Supplier under this Order, and Quantem may recover any net amount as a debt due to Quantem.

Part 16 Notices

16.1 All notices to be given under these Terms and Conditions shall be in English and in writing and may be given to the other party by hand delivery, prepaid post, facsimile or email addressed to the other party at its last known address.

Part 17 Disputes

17.1 If any dispute arises in connection with this Order which cannot be settled amicably between the parties, either party may give written notice of the dispute to the other party.

17.2 Within 14 days after service of a notice of dispute in clause 17.1, the parties must meet and endeavour to resolve the dispute and failing resolution of the dispute to explore and if possible, agree on methods of resolving the dispute by other means.

17.3 If the dispute has not been resolved within 30 days of giving written notice of the dispute in clause 17.1, either party may take any action necessary to have the dispute determined by litigation.

17.4 Notwithstanding clause 17.1 and clause 17.2, the Supplier must continue to supply the Goods and/or provide the Services.

Part 18 PPSA

18.1 To the extent that Chapter 4 of the PPSA would otherwise apply to an enforcement by either party of any security interest provided for by the Order, the parties agree that the following provisions of the PPSA do not apply:

(a) to the extent that section 115(1) of the PPSA allows them to be excluded: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 138B(4), 142 and 143; and

(b) to the extent that section 115(7) of the PPSA allows them to be excluded: sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137.

Part 19 Governing Law

19.1 These Terms and Conditions are governed by and must be construed in accordance with the laws of Victoria and the Supplier hereby agrees to submit to the exclusive jurisdiction of the courts of Victoria and any court of appeal therefrom.

Part 20 General

20.1 Each party must promptly, at its own cost, do all things (including executing all documents) necessary or desirable to give full effect to the Order

20.2 If anything in the Order is unenforceable, illegal or void then that part of the Order will be severed to the extent necessary to remove the offending provision and the remaining part of the Order will remain in force.

20.3 The Order contains the entire agreement and understanding between the parties on everything connected with the subject matter of the Order and supersedes any prior agreement or understanding on anything connected with that subject matter.

20.4 Each party has entered into the Order without relying on any representation by any other party or any person purporting to represent that party.

20.5 A party's failure to exercise or delay in exercising a power, right or remedy does not constitute an election to waive that power, right or remedy. An election to waive must be in writing, signed by the relevant party.

20.6 Quantem may assign its rights under this Order to a third party providing that third party has the financial capability to meet the obligations under this Order.

20.7 This Order may only be amended, supplemented or replaced by another document signed by Quantem and the Supplier.