

Capral Limited
Conditions of Purchase (January 2024)

1. Definitions

In these Conditions:

Capral means Capral Limited (ABN 78 004 213 692).

Conditions means these Conditions of Purchase.

Contract means a contract between Capral and the Supplier for the supply of Goods and/or Services by the Supplier, formed upon written acceptance by the Supplier of an Order) as constituted by the Order and these Conditions.

Goods means all goods supplied by the Supplier to Capral (and where the context so permits shall include any supply of Services as hereinafter defined) and as are described on the Order.

GST means goods and services tax imposed under *A New Tax System (Goods and Services Tax) Act 1999* (Cth), and any regulation made under that Act (as amended or replaced from time to time).

Insolvent means and includes the situation where: (a) the Supplier ceases or threatens to cease to carry on its business; (b) where execution has been levied upon the whole or any part of the Supplier's assets; (c) in respect of a Supplier who is an individual, the Supplier has committed an act of bankruptcy or is or becomes bankrupt or subject to any deed of assignment, arrangement or composition with creditors in accordance with the bankruptcy laws; (d) in respect of a Supplier which is a corporation, the Supplier is the subject of the presentation of a petition or the making of an order or the proposing or passing of a resolution for its winding up, or has a receiver, receiver and manager, liquidator, provisional liquidator or insolvency administrator appointed in respect of itself or all or any part of its assets, or has a compromise or arrangement proposed between itself and its creditors or any class of them.

Intellectual Property Rights means all intellectual property rights throughout the world, whether present or future, whether registered or unregistered, including rights in relation to copyright, trade secrets, know how, trade, brand names, designs, patents and patentable inventions, semiconductor or circuit layout rights, including the right to apply for registration of any such rights.

Loss means any damage, loss, liability, cost, charge, expense, penalty, outgoing or payment (whether direct or indirect, consequential or incidental) and includes legal costs and expenses on a full indemnity basis.)

Order means an order from Capral requesting the supply of Goods and/or Services by the Supplier.

Supplier means the person, including its successors and permitted assigns, whom supplies Goods and/or Services to Capral.

Price means the price payable for the Goods and/or the Services, as specified in the Order.

Services means all services supplied by the Supplier to Capral (and where the context so permits shall include any supply of Goods as described above).

Specification means any specification, product information or data sheet provided by Capral and/or applicable drawings issued by Capral to the Supplier (if any).

Toolage means all tooling, dies or other equipment supplied or paid for by Capral in relation to the Goods and/or Services (including all Intellectual Property Rights in or relating to the same).

A reference to a **clause** is a clause in these Conditions.

2. Application of Conditions

- (a) These Conditions apply to each and every Contract between Capral and the Supplier.
- (b) The Supplier may accept these Conditions by proceeding with the manufacture or supply of the Goods and/or the provision of the Services requested or by otherwise confirming its acceptance of an Order in writing.
- (c) The parties agree that any reference to the Supplier's terms or conditions on any quotation, invoice, or other document, shall not import those terms into the Contract unless Capral expressly agrees otherwise in writing. Any terms and conditions proposed by the Supplier that deviate from, or are inconsistent with, these Conditions, are expressly rejected by Capral and waived by the Supplier.

3. Formation of Contract

- (a) Capral may request the supply of Goods and/or Services by submitting an Order with the Supplier. An Order constitutes an offer to purchase the Goods and/or Services from the Supplier on the Conditions.
- (b) A binding Contract will only come into existence if the Supplier issues a written acknowledgment of its acceptance of the Order.
- (c) If there is any inconsistency between any of the terms of a Contract, the order of priority for the purpose of construction is:
 - (i) any other additional terms and conditions agreed in writing by the parties;
 - (ii) the Order;
 - (iii) these Conditions.
- (d) The Supplier acknowledges that it has read and has had a reasonable opportunity to negotiate and agree changes to these Conditions and accepts that they are fair and reasonable.

4. Prices

- (a) The Price payable for the Goods and/or the Services shall be all-inclusive and represents the sole and exclusive consideration payable to the Supplier under the Contract for the Goods and/or the Services or otherwise and includes (without limitation):
 - (i) all taxes, duties, charges, levies, excises, inspection charges and other sums payable on or in respect of the Goods and/or the Services or otherwise incurred by the Supplier; and
 - (ii) storage, delivery, and insurance costs in relation to the Goods (including the cost of all boxing, containers, packaging, strapping, bracing, pallets, and crates (as applicable).
- (b) Unless otherwise specified in the Contract, no increase in the Price will be allowed unless agreed in writing in advance by the parties.
- (c) Capral may direct the Supplier to alter, add to or omit all or part of the Goods and/or the Services specified in the Order after a Contract has been formed. The price payable for such variation will be determined using the following order of precedence:
 - (i) prior written agreement;
 - (ii) applicable rates or prices specified in the Order; and
 - (iii) reasonable rates or prices which shall include a reasonable amount for profits and overheads,and any deductions shall include a reasonable amount for profits and overheads.

5. GST

- (a) Unless the context indicates otherwise, terms used in this clause 5 that are defined or used in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**Act**) have the same meaning as in that Act.
- (b) Unless expressly stated to be inclusive of GST, the consideration for any taxable supply made by a party (**Supplying Party**) under or in connection with the Contract does not include GST and may be increased by the Supplying Party by an amount equal to the GST payable on that taxable supply. The recipient need not make any payment for a taxable supply unless the Supplying Party has first issued a tax invoice.
- (c) If an adjustment event occurs in relation to any supply made under or in connection with the Contract, the Supplying Party must issue an adjustment note to the recipient and the difference between the GST payable on the supply (taking into account any adjustments) and the amount of GST included in the price for the supply must be paid by or refunded to the recipient as applicable.
- (d) Any amount to be reimbursed or indemnified in connection with the Contract must be reduced by an amount equal to any input tax credit to which the party being reimbursed (or its representative member) is entitled in respect of that amount.

6. Payments and Invoices

- (a) Subject to clause 6(b), unless otherwise agreed in writing with the Supplier, all valid tax invoices for the Goods and/or Services will be paid within 45 days of the end of the month in which: (i) delivery of the Goods and/or performance of the Services is completed; or (ii) the invoice for the same is received by Capral, whichever is the later.
- (b) Unless agreed in writing by the parties, the Goods and/or Services may not be delivered by instalments and the Supplier shall not be entitled to progress payments. If it is agreed in writing that the delivery of the Goods and/or Services may be made by instalments or that progress payments may be claimed by the Supplier in respect of the Goods and/or Services:
 - (i) the Supplier may invoice each instalment or progress payment separately and each such invoice will be paid within 45 days of the end of the month in which: (i) delivery of the relevant Goods and/or performance of the relevant Services is completed; or (ii) the relevant invoice is received by Capral, whichever is the later; and
 - (ii) a failure by the Supplier to deliver one instalment or to complete any stage or part of the supply of the Goods and/or performance of the Services on time shall entitle Capral to give the Supplier notice requiring the failure to be remedied within 7 days and if not so remedied, Capral may by notice to the Supplier terminate the Contract (either as to the whole Contract if the Goods and/or Services are not in Capral's reasonable option able to be separated, or otherwise, only as to the undelivered or unperformed part of the Contract).
- (c) Without derogating from any other provision of these Conditions, the following shall be conditions precedent to the Supplier's entitlement to payment of the Price:
 - (i) the Supplier must have complied with the Contract in all material respects;
 - (ii) invoices shall be accompanied by matching delivery dockets relating to the provision of the Goods and/or the Services; and
 - (iii) the Supplier must have quoted the relevant Order number onto each invoice.
- (d) If Capral disputes the Supplier's entitlement to any part of the Price

under clause 6(c)(i), then any amount that is not in dispute must be paid pending resolution of the remainder.

- (e) Unless otherwise specified in the Contract or requested by Capral, all invoices must be sent to any of the following:
 - Email: accounts.payable@capral.com.au
 - Mail to PO Box 106, Booval Fair, QLD 4304
- (f) Capral may, acting reasonably, elect to set off money due to the Supplier against any money owed by the Supplier to Capral under any Contract, where Capral has given the Supplier prior notice of same and the moneys owing to Capral remain unpaid.
- (g) Remittance of payment shall not imply or constitute any acceptance of the Goods and/or the Services or of the invoiced amount.

7. Toolage

- (a) All Toolage shall remain the property of Capral and shall be returned to Capral on completion of the supply of the Goods and/or Services, unless otherwise agreed by Capral in writing.
- (b) Any Toolage loaned to the Supplier by Capral is loaned as an aid to manufacture of the Goods and/or supply of the Services and Capral accepts no responsibility as to the accuracy or suitability or otherwise of such Toolage.
- (c) The Supplier shall keep in good order and repair any Toolage referred to in clause 7(a) or 7(b) and in the event of loss, destruction or damage of such Toolage shall, without prejudice to any other right or remedy available to Capral in respect of the same, on demand by Capral (and at Capral's option) either replace or pay to Capral the actual cost incurred by Capral in replacing or repairing such Toolage.
- (d) No Toolage may be used by the Supplier otherwise than for the manufacture of the Goods and/or supply of the Services to Capral.
- (e) Capral reserves all Intellectual Property Rights in and associated with any Toolage (to the extent that it is entitled to those Intellectual Property Rights) and the Supplier shall not copy, modify or otherwise use any Toolage except as expressly permitted by the Contract.

8. Delivery

- (a) The Goods and/or Services shall be delivered and/or performed in the manner and by the date specified in the Contract and time shall be of the essence other than where the Contract specifies that delivery and/or performance is based on an estimate, in which case, within a reasonable time of the estimate.
- (b) All invoices, packing slips, delivery dockets and correspondence must show the Order number. Failure to do so may result in delays in processing such documents, in inspection and acceptance of Goods and/or Services and in payment, and shall entitle Capral in such circumstances to claim an extension of time for attending to the same.
- (c) The Goods and/or Services shall be delivered free at the destination indicated on the Order, unless otherwise specified in the Contract.
- (d) Capral reserves the right to refuse Goods and/or Services delivered in excess of the quantity ordered or not in accordance with any delivery schedule referred to in the Contract.
- (e) All deliveries must be accompanied by a delivery docket and receipt of Goods and/or Services must be acknowledged in writing by an authorised representative of Capral. The Supplier will keep copy receipts.

9. Packaging

All Goods must be suitably packed or otherwise prepared for transportation in such a way as to avoid damage, to comply with carrier's requirements and to secure minimum transportation costs and insurance rates.

10. Inspection and Title

- (a) All Goods and/or Services delivered to Capral are subject to Capral's inspection and the signing of a delivery docket does not constitute acceptance of them.
- (b) All Goods and/or Services shall, notwithstanding acceptance of delivery or the payment by Capral of the whole or any part of the Price, be subject to inspection and testing by Capral after arrival and unpacking at the ultimate destination. If Goods are to be incorporated into any plant or premises such inspection and testing may be carried out after installation or incorporation and under operating conditions. If the Goods and/or Services are found to be unsatisfactory, defective or of inferior quality or workmanship or not in accordance with the Contract, Capral may, within a time that is reasonable in the circumstances (noting the foregoing regarding when inspection and testing may occur), without prejudice to any other right or remedy available to it in respect of the same, reject the Goods and/or Services and return the same to the Supplier at the Supplier's cost, whereupon the Supplier shall at Capral's option either reimburse Capral for any amount paid by Capral to the Supplier, replace or repair the Goods or re-perform the Services, or supply equivalent goods and/or services. In addition the Supplier shall reimburse Capral for any reasonable costs incurred by Capral in returning the Goods and/or Services.
- (c) Capral may inspect, and where practicable test, the Goods whilst

they are in the course of being produced or installed and may for this purpose enter upon the premises of the Supplier from time to time during normal business hours. Capral may within a reasonable time, reject any work performed or being performed that does not confirm to the Contract, whereupon the work rejected shall be redone at no additional cost to Capral. Any such inspection shall not relieve the Supplier of its obligations under the Contract.

- (d) Except in respect of Goods and/or Services rejected by Capral where title does not pass, or as otherwise provided in the Contract, title to Goods and/or Services shall pass to Capral on payment.
- (e) If any part payment has been made by Capral in respect of Goods and/or Services and the same have been accepted by Capral (whether delivered or not) title to the same shall pass to Capral, but in the case of undelivered Goods and/or Services the risk shall remain with the Supplier.

11. Warranties

The Supplier warrants and represents that:

- (a) the Goods and/or Services shall comply with the Specification and with any examples previously supplied by the Supplier and otherwise be in accordance with the Contract and applicable laws, regulations, Australian standards, industry codes of conduct and Capral policies;
- (b) the Goods shall be of merchantable quality and free of defects in materials or workmanship;
- (c) the Goods and/or Services shall be reasonably fit for the purpose or results for which they are required by Capral and shall be of such a nature and quality that they might reasonably be expected to achieve that result;
- (d) the Services shall be rendered with due care and skill and any materials supplied in connection with those Services will be reasonably fit for the purpose for which they are supplied;
- (e) the Goods shall, unless otherwise specified in the Contract, be new; and
- (f) it has a right to supply the Goods and/or Services and they shall be free from all charges, liens or encumbrances whatsoever.

The foregoing are in addition to any express warranties or conditions given by the Supplier and any warranties or conditions implied by law.

12. Confidential Information

Any Specifications, engineering and other data, software, drawings, sketches, blueprints and other documents provided by Capral (or any third party at the request of Capral) to the Supplier for the purposes of the Order or produced by the Supplier specifically for Capral for the purpose of or in the course of meeting the Order, belong to Capral and are confidential. The Supplier shall:

- (a) not use or copy them for any purpose other than the fulfilment of the Contract;
- (b) not disclose them to any other person without the prior written consent of Capral; and
- (c) return or hand the same (including, if so demanded by Capral, all copies) to Capral on completion of the delivery of the Goods and/or performance of the Services.

13. Intellectual Property

The Supplier warrants and represents that the manufacture, supply or use of the Goods and/or the Services will not infringe upon the Intellectual Property Rights of any third party (whether copyright, registered design, patent, trade mark, confidential information or otherwise). The Supplier shall indemnify and keep Capral indemnified from and against any Loss arising from a breach of this warranty. This clause 13 does not apply to Intellectual Property Rights owned or licensed by Capral and supplied to the Supplier for the purposes of the Order.

14. Non-transfer

The Contract may not be assigned, mortgaged, charged or dealt with in any way. Without limiting this, the Supplier may not, except with the prior written consent of Capral, subcontract the whole or any part of its obligation under the Contract.

15. Cancellation and Termination

- (a) Capral may, at any time prior to the delivery of the Goods and/or full performance of the Services, cancel all or part of the Contract.
- (b) Without limiting clause 15(a), if:
 - (i) the Supplier defaults in complying with the Contract which it fails to remedy within 7 days of written notice from Capral; or
 - (ii) the Supplier is or becomes Insolvent,Capral may, without any liability to the Supplier, immediately terminate the Contract by notice in writing to the Supplier, without prejudice to any other right or remedy of Capral under or in respect of the Contract.
- (c) Where a cancellation is not a termination of Contract pursuant to clause 15(b), Capral shall:
 - (i) give written notice to the Supplier whereupon the Supplier shall cease all work in relation to the Goods and/or Services;
 - (ii) provided the Supplier is not in default under the Contract, be liable, where Goods are not yet completed for delivery or Services not yet fully performed, only for:
 - (1) all reasonable costs actually incurred by the Supplier

- up to the date of cancellation;
- (2) that part of the profit element of the Price for the Goods and/or Services which is the same fraction of the total profit element as the stage reached in the completion of the Goods and/or Services at the date of cancellation is of the completion of the Goods and/or Services as a whole, except where the Supplier can demonstrate to Capral's satisfaction that this fraction would be unreasonable in which case Capral will not unreasonably withhold its consent to an alternative calculation; and
- (3) such winding down or disestablishment expenses as shall be agreed between Capral and the Supplier; and
- (iii) provided the Supplier is not in default under the Contract, be liable, where the Goods are completed for delivery, for the cost thereof as specified in the Contract only where the Supplier is not able readily to dispose of the Goods elsewhere.
- (d) If there is any dispute regarding the amount of Capral's liability under clause 15(c), such amount shall be determined by Capral's auditors for the time being, who shall act as experts and not as arbitrators, and whose decision shall be final and binding on the parties except in the case of manifest error. Upon payment of any such amounts, title to any materials or Goods, whether completed or not, intended for the fulfilment of the Contract shall pass to Capral.

16. Safety Precautions

If any work necessary for the purposes of the Contract is to be performed on Capral premises, the Supplier shall at all times: (a) exercise all necessary precautions for the safety of persons who might be affected by such work, and without limiting this, (b) duly comply with the requirements of any applicable law, statute, regulation, ordinance or by-law, and of any authority or instrumentality having jurisdiction in the matter, and with any direction that may from time to time be given by any supervisor or other responsible employee of Capral.

17. Modern Slavery

- (a) The Supplier warrants that:
 - (i) it will comply with all applicable laws and regulations in force from time to time in relation to human rights and modern slavery (**Modern Slavery**);
 - (ii) it will take reasonable steps to ensure that there is no Modern Slavery in its (or its suppliers or subcontractors) supply chains;
 - (iii) it will implement and maintain throughout the term of the Contract appropriate due diligence procedures for its own suppliers and sub-contractors to ensure that there is no Modern Slavery in its supply chains;
 - (iv) it will notify Capral as soon as it becomes aware of actual or suspected Modern Slavery in a supply chain which has a connection with the Contract; and
 - (v) it will maintain records to trace the supply chain of all Goods and/or Services provided to Capral in connection with the Contract.
- (b) Upon request, the Supplier will permit Capral's employees or nominated representative(s) to undertake verification activities to validate the Supplier's compliance with this clause 17, including access to the Supplier's premises and records as required.
- (c) The Supplier will include a condition similar to this clause 17 in all contracts it enters into with its suppliers or subcontractors.
- (d) If the Supplier does not remedy, or provide an acceptable plan to remedy, any identified instances of Modern Slavery within the time period specified by Capral, Capral may terminate the Contract in accordance with clause 15(b).

18. Indemnity and Insurance

- (a) The Supplier must defend and indemnify Capral and its personnel from and against all Loss suffered or incurred by any of those indemnified to the extent that Loss is suffered or incurred, whether directly or indirectly, as a result of:
 - (i) any breach of the Contract by the Supplier;
 - (ii) any claim, demand, suit, action or proceeding by a third party arising from an act or omission of the Supplier or its personnel in connection with the Contract whether negligent or not, including claims in respect of personal injury or death or loss of or damage to Capral's or a third party's physical property.
- (b) Capral will take steps to mitigate its Loss and act reasonably (including by giving the Supplier notice of any such Loss and a reasonable opportunity to remedy same) in relation to any Loss being the subject to clause 18(a).
- (c) The Supplier's liability under clause 18(a) will be reduced proportionally to the extent that any fraud, negligence, or wilful misconduct by Capral or a breach by Capral of its obligations under the Contract has contributed to the Loss which is the subject of the indemnity.
- (d) The Supplier must take out and maintain valid and enforceable insurance policies to adequately cover any liability to Capral under a Contract. If requested by Capral, the Supplier must provide Capral with certificates from the Supplier's insurers certifying that the Supplier has insurance as required by this clause 18.

19. Taxation Deductions and Withholdings

- (a) Where payment for Goods and/or Services provided against the Contract constitutes a prescribed payment within the meaning of the *Income Tax Assessment Act 1936* (as amended or replaced), Capral shall be entitled to deduct from such payment, such amount as is required under that Act unless, prior to payment, the Supplier submits satisfactory proof that it is the holder of the necessary deduction exemption certificate or deduction variation certificate.
- (b) Capral shall be entitled to make such withholdings payable by it in respect of supplies of Goods and/or Services by the Supplier under the Contract as it may from time to time be required to make in accordance with the PAYG system (within the meaning of the *Taxation Administration Act 1953*), and will not be required to compensate the Supplier (whether by the payment of an additional amount or otherwise) for any such withholding.

20. Waiver

Failure by Capral or the Supplier to insist on strict performance of any term, warranty or condition of the Contract will not be taken as a waiver of it or any rights that party may have and no waiver will be taken as a waiver of any subsequent breach of any term, warranty or condition.

21. Notices

Any notice to be given under a Contract must be sent by email or prepaid mail to the other party's email address or address (as notified by that party from time to time).

22. Severance

A term or part of a term of a Contract that is illegal or unenforceable may be severed from a Contract and the remaining terms or parts of the term of a Contract continue in force.

23. Governing Law

The Contract shall be governed and construed with the law of New South Wales and each party submits to the non-exclusive jurisdiction of the courts of that State.

24. Relationship

The relationship between Capral and the Supplier is that of principal and independent contractor. For the avoidance of doubt, the Supplier is not in any way a partner, employee, joint venturer, franchisee or authorised representative of Capral and must not represent itself as such in any circumstances.

25. Entire Agreement

The Supplier warrants that if they have entered into this Contract in reliance upon any oral understanding of representation that they have written such matters in the Contract and brought them to Capral's attention. Otherwise, this Contract constitutes the entire agreement between the parties as to its subject matter and, subject to clause 4(c), may only be amended as mutually agreed in writing signed by both parties.