

## **PURCHASE ORDER TERMS & CONDITIONS**

### **1. DEFINITIONS**

The following words will, unless the context otherwise requires, have the following meanings:

“**Products**” means the goods, chattels, plant, equipment, machinery, stores, associated services and/or the like the subject of the Purchase Order.

“**Buyer**” means the company named on the face of the Purchase Order as the Buyer.

“**GST Act**” means A New Tax System (Goods and Services Tax) Act 1999 (Cwlth) and all associated legislation and regulations.

“**GST**” means tax imposed under the GST Act.

“**Purchase Order**” means the purchase order form to which these terms and conditions are appended.

“**Seller**” means the person, firm or corporation to whom the Purchase Order is addressed.

“**Terms**” means these terms and conditions.

### **2. ENTIRE TERMS**

Subject to any Supply Agreement between the Buyer and the Seller relating to the Products which Supply Agreement (if any) is referred to in the Purchase Order, when properly signed by or for and on behalf of the Buyer, the Purchase Order together with all documents attached to it or incorporated by reference in it (including these Terms) constitute the entire agreement between the Buyer and the Seller for the supply of the Products and will supersede all conditions contained in the Seller's estimate or tender and apply to the exclusion of any terms incorporated in any invoice, delivery docket or other document provided by the Seller. No terms or conditions stated by the Seller in accepting or acknowledging the Purchase Order will be binding on the Buyer unless accepted in writing by the Buyer.

### **3. ASSIGNMENT**

The Seller must not subcontract or otherwise assign the Purchase Order or any part of it without the Buyer's prior written consent.

### **4. CORRESPONDENCE AND DOCUMENTATION**

All correspondence must be in the English language. The order number shown on the face of the Purchase Order must be shown on all documents including, but not limited to, invoices, communications, packing lists, delivery docket, waybills and bills of lading. All documentation and correspondence must be transmitted to the Buyer's address specified in the Purchase Order.

### **5. QUALITY AND QUANTITY**

- 1) The Products delivered by the Seller:
  - a) must conform precisely in quality, quantity, specification and description with the Purchase Order and any plans or specifications provided or nominated by the Buyer; and
  - b) must comply with the standards laid down by any Standards Association, Local Authority, Regulating or Supply Board and/or any other body or association establishing conditions of quality or merchantability in relation to goods, chattels, plant, equipment, machinery, stores, associated services or the like of the kind comprising the Products.

### **6. PAYMENT**

- 1) Unless otherwise provided in the Purchase Order, the terms of payment are as follows:
- 2) The Seller will invoice the Buyer for payment after completion of delivery of all the Products except where the Purchase Order extends over a period of more than one calendar month in which case the Seller may invoice the Buyer at the end of each month for the Products delivered to the delivery point specified in the Purchase Order (but not Products in transit or incomplete Products) during the month.
- 3) Invoices must:
  - a) be in a form approved by the Buyer;

- b) show the order number;
  - c) show the place where the Products were delivered and be accompanied by a signed copy of the delivery docket;
  - d) show whether there are any (and if so the respective amounts of) customs duty, excise or other similar taxes or charges applicable to the Purchase Order; and
  - e) satisfy the requirements for a "tax invoice" under the GST Act if the supply of the Products is a "taxable supply" under the GST Act.
- 4) Payment will be made by the Buyer by the end of the second month following the month in which the Buyer receives the Seller's invoice complying with the requirements of clause 6(2), provided the Products have been accepted by the Buyer and nothing is in dispute. Payment will be made by cheque or electronic funds transfer. Any settlement or other discounts applicable will be deducted from the amount due to the Seller.
  - 5) The Buyer may withhold payment, without loss of settlement or other discounts if the Seller's invoice does not comply with clause 6(2) or the relevant invoice and related delivery docket do not agree or there is any error in or omission from the relevant invoice or related delivery docket.
  - 6) Periods applying to discounts will run from the date the Buyer receives a correct invoice complying with clause 6(2) and supporting proof of delivery.
  - 7) Where the terms of payment are specified in the Purchase Order, payments will be made in accordance with those terms.

## 7. PRICE

- 1) Unless otherwise provided in the Purchase Order, the purchase price stated in the Purchase Order:
  - a) is firm and is not subject to escalation;
  - b) includes all costs of producing and supplying the Products (including without limitation of delivery and packaging of the Products in accordance with the applicable delivery and packaging instructions set out in the Purchase Order);
  - c) unless, customs duty, excise and other like charges are separately stated on the Purchase Order, includes customs duty, excise and other like charges (any reduction or refunds of customs duty or excise will be to the benefit of the Buyer);
  - d) if the supply of the Products is a "taxable supply" under the GST Act is exclusive of any GST.

## 8. CUSTOM DUTY AND GST

- 1) The Seller will co-operate fully with the Buyer in the preparation of any required documentation such that the Products carry their correct value for customs duty and/or excise assessment.
- 2) If the supply of the Products is a "taxable supply" under the GST Act, then the Buyer must also pay, at the same time and in the same manner as the purchase price is otherwise payable, the amount of any GST payable in respect of that "taxable supply" the amount of which must be separately stated on the Seller's invoice.

## 9. DELIVERY

- 1) The Products must be delivered and packed in accordance with the delivery and packaging instructions set out in the Purchase Order. If packaging instructions are not specified then the Products must be packed in a proper and suitable manner, in accordance with the requirements of the carrier (if a carrier is being used) and so that the Products will reach the ultimate destination without damage and in good working condition.
- 2) Every case, carton, box and container and each separate Product must be clearly identified as detailed in the Purchase Order. The Seller must ensure that delivery dockets detailing order number, quantity and description of the Product are attached to the Products or consignment note to accompany Products to their destination.
- 3) The Seller will be liable for all damage, loss or destruction to any Products supplied in accordance with the Purchase Order or any consequential loss, damage or destruction to any other goods or property resulting from improper packaging or handling by the Seller. All packing must be adequately designed for rough road transport including allowance for handling by craneage.
- 4) The Buyer has the right to designate the carrier or delivering agent and routing of the Products provided that it does not entail additional costs to the Seller.
- 5) Upon dispatching the Products, the Seller must immediately notify the Buyer of the date and time of dispatch, the order number, the quantity and description of the Products dispatched and the expected date and time of arrival at the delivery point specified in the Purchase Order.
- 6) The Seller will be liable for any difference in freight costs arising from its failure to follow any transport instruction in the Purchase Order or non-advice to the Buyer of time of arrival.
- 7) All Products will be at the Seller's risk until delivered to the delivery point specified in the Purchase Order and accepted by the Buyer.
- 8) The Buyer and the Seller must assist each other in obtaining documents and other information desirable for the prosecution of claims against carriers.

**NOTE:** Sellers failing to observe the requirements of clause 9 risk delays in payment.

## 10. INSURANCE

Unless otherwise provided in the Purchase Order, the Seller must insure the Buyer's interest in the Products whilst in manufacture, pending delivery and in transit to the delivery point specified in the Purchase Order.

## 11. INSPECTION

- 1) The Buyer or its representative named in the Purchase Order or in a written or oral notice to the Seller will have:
  - a) full and free access at all reasonable times to inspect and discuss all work related to the manufacture and/or supply of the Products while in any stage of engineering, manufacture or installation at the shops, factories or other places or businesses of the Seller or the sub-contractors of, or suppliers to, the Seller. The Seller must make this a condition of any work which it sub-contracts and of its supply arrangements; and
  - b) the right to reject work performed or being performed that does not conform to the requirements of the Purchase Order whereupon the work rejected will be re-done at no additional cost to the Buyer.
- 2) Any inspection or lack of inspection will not relieve the Seller of any obligations and the failure to reject any work performed or being performed does not constitute approval of that work.
- 3) Acceptance of Products by the Buyer is subject to inspection and testing after delivery and unpacking and, if any of the Products are to be installed or incorporated into plant or premises, subject to inspection and testing following such installation or incorporation and under operation conditions.
- 4) in every case inspection and testing must be carried out to the satisfaction of the Buyer and the Buyer will be the sole judge of whether Products supplied are in accordance with the Purchase Order and are to the standard, quality and finish required.
- 5) if the Seller delivers the wrong quality or quantity of Products or delivers Products that do not conform with the specification or description set out in the Purchase Order, the Buyer may without prejudice to its other rights:
  - a) accept or reject in part or whole the Products so delivered; or
  - b) if possible, convert the Products into a condition acceptable to the Buyer,
  - c) at the Seller's expense unless the changed quality, quantity, specification or description has been agreed to in writing by the Buyer.

## 12. TIME

Time is the essence of the Seller's obligations. The Seller must complete delivery of the Products to the delivery point specified in the Purchase Order within the time(s) stated in the Purchase Order. Extension of time may be granted at the sole discretion of the Buyer. If an extension of time in respect of the Purchase Order is granted by the Buyer, time will remain of the essence in respect of the extended time. If the Seller is unable to make delivery within the time stipulated in the Purchase Order or within any extension of time granted by the Buyer, the Buyer will, unless the delay results from the Buyer's own act or omission, be at liberty either to cancel the Purchase Order without prejudice to any right or remedy which has accrued or may thereafter accrue to the Buyer; or to make special arrangements for transport to the Buyer's site at which the Products are required; and the Buyer may deduct from amounts payable to the Seller the transport and related expenses incurred over and above those which would have been incurred had delivery not been delayed.

## 13. CANCELLATION

- 1) If the Products are standard stock items, the Buyer at its option may at any time cancel the Purchase Order in respect of any Products not then delivered or in transit without further obligation.
- 2) If the Products are manufactured or fabricated to the specifications of the Buyer then at any time prior to completion of the work to be performed, the Buyer may at its option cancel the Purchase Order upon written notice to the Seller and upon the effective date of the cancellation (being the date of the Buyer's notice or the later date (if any) specified in that notice), the Seller must stop all work pertaining to the Purchase Order (except as otherwise directed by the Buyer), must not place any further order in connection with the Purchase Order made, must preserve and protect all materials acquired, work in progress and finished Products connected with the Purchase Order at its own premises or its subcontractors premises pending the Buyer's instructions and must dispose of the same as the Buyer instructs. Upon cancellation directly referable to the Purchase Order under this clause 13(2) the Buyer will pay to the Seller the following amounts: Seller's costs and expenses to the date of cancellation including its expenses in connection with cancellation of any sub-contracts, all as determined by Buyer plus five per cent (5%) of such costs and expenses (to cover the Seller's overheads and profit), but in no event will the total amount to be paid (when added to all previous payments made or becoming payable under the Purchase Order) exceed the purchase price specified on the face of the Purchase Order and if the Seller, at the time notice of cancellation is given, is in default in delivery or under any other terms or conditions applicable to the Purchase Order, the Seller will not be entitled to the additional five per cent (5%) of its costs and expenses. The Seller must provide to the Buyer all documentation which the Buyer requires to verify the Seller's costs and expenses. Upon payment under this clause 13 any Products and uncompleted portions of the work and materials acquired by the Vendor for incorporation into the Products will be the property of the Buyer and subject to its disposition. Notwithstanding anything contained in this clause 13 the Seller will not be entitled to any anticipatory profits or any damages caused by the cancellation.
- 3) Nothing contained in this clause 13 will affect the Buyer's right to terminate the Purchase Order on account of a default by the Seller under any of the terms and condition applicable to the Purchase Order or to pursue remedies as provided by law for such default.

## 14. TERMINATION FOR DEFAULT

- 1) If the Seller breaches any of the terms or conditions applicable to the Purchase Order (including any of the Seller's warranties), the Buyer may at its option and without prejudice to any of its other rights cancel the Purchase Order in respect of any undelivered Products. Clause 13 does not apply to cancellation under this clause 14. The Seller shall not be entitled to any payment if the Purchase Order is cancelled under this clause 14 except for payment of the purchase price in respect of the Products which have been delivered.
- 2) If the Seller is adjudged bankrupt or in the case of a company, becomes an "externally-administered body corporate" as that term is defined in the Corporations Law of Australia, or if the Seller does not correct or, if immediate correction is not possible, commence and diligently continue action to correct any default of the Seller to comply with any of the terms or conditions applicable to the Purchase Order within fourteen (14) days after being notified in writing of the default by the Buyer, the Buyer may, by written notice to the Seller, without prejudice to any other rights or remedies which the Buyer may have, terminate any further performance by the Seller of the Purchase Order. If such termination occurs, the Buyer may complete the performance of the Purchase Order by such means as the Buyer selects and the Seller will be responsible for any additional cost incurred by the Buyer in so doing. Any amounts due to the Seller for Products delivered by the Seller prior to such termination will be subject to offset of the Buyer's additional costs of completing the Purchase Order and other damages incurred by the Buyer as a result of the Seller's default.
- 3) In the case of a default by the Seller the Buyer may select either of the remedies in clause 14(1) and 14(2) each of which remedies is in addition to and not in substitution for any other remedy available at law or in equity.

## 15. WAIVER

No waiver of any breach of any term or condition applicable to the Purchase Order will constitute a waiver of any other breach of that term or condition or of any other term or condition.

## 16. WARRANTY

- 1) The Seller warrants that the Products including all relevant materials:
  - a) conform to the description set out in the Purchase Order and any applicable specifications;
  - b) comply with all applicable Australian Federal, State and Municipal laws, ordinances and regulations;
  - c) are new (unless otherwise specified);
  - d) are of good merchantable quality and fit for the known purpose for which they are sold;
  - e) are free from defects and imperfections;
  - f) are of current manufacture; and
  - g) are free from all liens, restrictions, reservations, security interests, charges and encumbrances of any kind and the Seller has good marketable title to and property in them.
- 2) These warranties are in addition to any other warranty contained in the Purchase Order and to any manufacturer's warranty, service guarantee or guarantee of performance. If there is any inconsistency between any implied warranty or express warranty or guarantee the most favourable to the Buyer will prevail.

## 17. SERVICE WARRANTY

Without prejudice to clause 16, the Seller will at its own expense make good by repair or replacement all defects attributable to faulty design and/or workmanship which appear in the Products within the period of the Seller's guarantee or within 12 months from the date the plant or premises into which they are intended to be installed or incorporated is commissioned or within 12 months from date of delivery of the Products, whichever is the longer period. The Seller must make such repair or replacement within 7 days from the time of being notified of such defects, unless further time is allowed by the Buyer. This clause 17 will likewise apply to any of the Products which have been repaired or replaced until the termination of a similar period from the date of repair or replacement.

## 18. INDEMNITY

The Seller will indemnify and hold harmless the Buyer from and against all losses, liability, claims, causes of action and suits arising out of defects in the Products or from failure of Products to comply with all applicable Australian Federal, State and Municipal laws, ordinances and regulations.

## 19. INJURY

If the Seller or any employee or agent of the Seller enters upon any premises or property of the Buyer in order to do any work including but not limited to delivery, construction, inspection, servicing or repairing, the Seller will indemnify and hold harmless the Buyer from and against all liability, actions, suits, claims and demands on account of personal injury including death or property loss or damage to others (including the Seller and employees, agents and invitees of the Seller and of the Buyer) arising out of or in any manner connected with the performance of such work and caused by the negligent or wilful act or omission of the Seller or an employee or agent of the Seller and the Seller will at its own expense defend any and all actions based thereon and will pay all legal costs and other costs and expenses arising therefrom. The Seller must also procure and carry the insurance of employees on such work that may be required by law. The Seller must procure and maintain such other insurance in connection with the work as the Buyer may specify.

## 20. TITLE

- 1) Subject always to the Buyer's right of rejection of Products, title to and property in Products delivered passes to the Buyer on delivery to the delivery point specified in the Purchase Order. The risk of loss will remain with the Seller until acceptance by the Buyer of the Products delivered.
- 2) If any payment for or in respect of Products is made by the Buyer prior to delivery to the Buyer, the title to and property in the completed or partly completed Products and any materials or parts to be used in the manufacture in respect of which such payment has been made will pass to the Buyer and the same will be appropriately marked. The risk of loss will remain with the Seller.
- 3) Where Products are destroyed or damaged prior to delivery the Buyer will be entitled to cancel the Purchase Order in respect of those Products without the Seller being entitled to any payment or compensation and where any payment has been made by the Buyer in respect of those Products the Seller must immediately refund the amount paid in full.

## 21. SUPPLY OF INFORMATION AND MANUALS

The Seller must furnish to the Buyer all engineering and other data (including all technical data) required for the satisfactory use, maintenance, repair, installation or operation of the Products in accordance with the Purchase Order and within the time stated in the Purchase Order and must promptly furnish to the Buyer a copy of each update of any data previously furnished which the Seller furnishes to any of its customers.

## 22. HAZARDOUS OR DANGEROUS GOODS

If the Products constitute dangerous or hazardous goods, the Seller must clearly mark/label the Products with dangerous or hazardous goods information and must ensure that all applicable Federal and State Acts and Regulations and the Buyer's requirements are fully complied with and implemented, without exception. Material Safety Data Sheets must be included with each delivery docket for the Products if they constitute dangerous or hazardous goods.

## 23. CONFIDENTIALITY

Any engineering and other data furnished to the Seller by the Buyer is confidential and must not be disclosed by the Seller to any third person without the prior written consent of the Buyer. Unless otherwise provided in the Purchase Order, all plans, drawings and specifications prepared or supplied by or on behalf of the Buyer and any patterns made therefore will be and remain the property of the Buyer, may be used by the Seller only in the performance of the Purchase Order and must be returned by the Seller to the Buyer on completion of the Purchase Order.

## 24. INTELLECTUAL PROPERTY

- 1) The Seller warrants to the Buyer and its successors in title that the manufacture, sale or use of the Product will not infringe or contribute to the infringement of any patent, trademark, design or copyright in Australia or in any other country.
- 2) The Seller will, at its expense, indemnify, hold harmless and defend the Buyer and its successors in title against any claim, suit or proceeding brought against the Buyer which is based upon a claim, whether rightful or otherwise, that any Product, process or material, or any part thereof, furnished by the Seller under the Purchase Order, constitutes an infringement of any patent, trademark, design or copyright and the Seller will pay all damages and costs awarded against the Buyer resulting there from. If a court rules that any Product, process or material, or any part thereof infringes a patent, trademark, design or copyright or if an injunction is granted prohibiting their use, the Seller will at its expense, subject to the following provisions, either procure for the Buyer an irrevocable royalty-free licence to continue using the Product, process or material concerned, or with the Buyer's prior written approval, replace them with substantially equal but non-infringing items or modify them so they become non-infringing, provided that no replacement or modification will in any way amend or relieve the Seller of its warranties and guarantees set forth in or applicable to the Purchase Order. This indemnity is given upon the condition that the Buyer promptly notifies the Seller of any claim or proceeding involving the Buyer in which an infringement is alleged, and the Buyer must permit the Seller to control the defence or compromise of any allegation of infringement and the Buyer must render reasonable assistance, at the Seller's cost, in the defence thereof as the Seller may require.

## 25. GOVERNING LAW

Unless otherwise provided in the Purchase Order, the laws of the jurisdiction from which the Buyer issues the Purchase Order govern the Purchase Order, and each party submits to the jurisdiction of the courts of that jurisdiction and the courts which may hear appeals from the courts of that jurisdiction.

## 26. ON SITE WORK

Where the Seller is required to undertake any work on any premises or property of the Buyer the Seller must observe the Buyer's standard conditions for on-site work, a copy of which will be given to the Seller before entering the relevant premises or property.

***THIS IS THE END OF THE PURCHASE ORDER CONDITIONS***