

TERMS AND CONDITIONS OF PURCHASE

1. Definitions and Interpretations

1.1. In these Terms and Conditions of Purchase (these **Terms**) **Seller** "means the person that an Order is placed with; **Buyer** means the company issuing the Order. **Products** means products supplied or to be supplied by the Seller to the Buyer from time to time pursuant to an Order. **Services** means services provided or to be provided by the Seller to the Buyer from time to time pursuant to an Order. **Specifications** means any plans, drawings, data descriptions, blueprints, designs, samples or other specifications, instructions, guidelines or directions furnished or specified by the Buyer in respect of Products and/or Services the subject of an Order that the Buyer requires compliance with; and **Order** means the purchase order issued by the Buyer to the Seller.

1.2. In these Terms unless the context otherwise requires:

- a. the singular includes the plural;
- b. headings are included for convenience and do not affect the interpretation of the Terms;
- c. a reference to a person includes a reference to a natural person, partnership, trust, company, association or other entity; and
- d. a reference to the terms of an Order is a reference to the terms and conditions of purchase set out in the Order and any Specifications in respect of the Products and/or Services the subject of the Order.

2. Formation of Contract of Purchase of Products/Services

2.1. Each Order will constitute an offer by the Buyer to acquire the Products and/or Services from the Seller on the terms of the Order and these Terms to the exclusion of all other terms and conditions and qualifications (including any terms and conditions of the Seller sent before or after the issuing of the Order). In the event of any inconsistency between the terms of an Order and these Terms, the terms set out in the Order will prevail.

- a. A contract will be made between the Seller and the Buyer for the purchase and sale of the Products and/or Services upon acceptance of an Order by the Seller.
- b. The Seller is deemed to have accepted an Order if the Order has not been rejected by the Seller within 45 business days of the Seller receiving the Order.

3. Packaging, marking and transportation

3.1. All Products must:

- a. be properly packed and marked by the Seller in accordance with the Buyer's instructions; and
- b. comply with the requirements of the carrier transporting the Products. The Seller must reimburse the Buyer for all expenses incurred by the Buyer as a result of improper and/or faulty packaging or marking. No charge will be allowed for packaging, packing, boxing, marking, transport, delivery, insurance and loading costs unless specified in an Order or authorized in writing by the Buyer.

3.2. The Seller must transport or arrange for transportation of the Products in accordance with the terms of an Order and the Buyer's instructions.

3.3. If, because of the failure of the Seller to comply with the terms of an Order or the delivery instructions of the Buyer, the Buyer finds it necessary to require transport of Products the subject of an Order or other Products by a mode of transportation other than the mode originally specified by the Buyer, the Seller must reimburse the Buyer for the amount (if any) by which the cost of the substituted mode of transport exceeds the cost of the mode of transportation originally specified in an Order or by the Buyer.

- a. The Buyer may from time to time change delivery schedules or delivery dates specified in an Order or direct temporary suspension of the delivery of any Products.
- b. The Buyer will have no responsibility for delivery of Products in excess of the quantity of Products ordered and may at the option of the Buyer, be returned to the Seller at the Seller's cost and risk.
- c. If products the subject of an Order are to be delivered by installments, the contract formed by acceptance of the relevant Order will be treated as a single contract for all installments and not severable.

4. Inspection

4.1. The Buyer may at any time inspect the Products and/or Services the subject of an Order and, without prejudice to any other rights and remedies of the Buyer, where

- a. any of the Products supplied by the Seller are judged by the Buyer, in its sole discretion, not to comply with the warranties provided for in clause 5.1 or are otherwise not in good condition or defective the Buyer is entitled to reject the entire delivery or similar Products and the Seller must, at the request of the Buyer, notwithstanding that the Products may have been accepted or deemed to have been accepted previously, repay the price for such Products where the Products have been paid for. Where the Products have not been paid for, the Buyer is under no obligation to pay for the Products. Any return of the Products by the Buyer to the Seller will be at the cost and risk of the Seller; and
- b. any Services provided by the Seller are not in accordance with the warranty provided for in clause 5.3 the Buyer is under no obligation to pay for the Services.

4.2. The Buyer will not be deemed to have accepted any Products and/or Services unless and until the Buyer has had a reasonable time to inspect the Products and/or Services following receipt of the Products or performance of the Services as the case may be.

5. Warranties

5.1. The Seller warrants that:

- a. any Products supplied pursuant to an Order will in all respects comply with the terms of the Order;
- b. the Products comply with all applicable laws, regulations or other requirements concerning safety and quality, manufacture, packing and delivery;
- c. the Products are marked and packed in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier and in the manner necessary to ensure that they are delivered in an undamaged condition;
- d. the Seller has a right to sell, and sells the Products free from all encumbrances;

- e. the Seller is aware of the particular purpose for which the Buyer is purchasing the Products under an Order and that the products are and will remain suitable and fit for the purpose made known to the Seller by the Buyer and the Seller further acknowledges that the Buyer is relying upon the Seller's skill and judgment to ensure that the Products are and will remain fit for the intended purpose;
- f. the Products are and will remain of good and merchantable quality free from all defects in workmanship and materials;
- g. where the Products are supplied by reference to a sample, that the Products will correspond with the sample in quality; and
- h. all Products supplied pursuant to an Order and their sale or use will not infringe any patent, trade mark, copyright, industrial design or process of manufacture.

5.2. The warranties provided for in clause 5.1 apply notwithstanding the Buyer inspects or has the opportunity to inspect the Products upon delivery and irrespective of whether or not such inspection reveals the existence of defects.

5.3. The Seller warrants that:

- a. all Services supplied pursuant to an Order will in all respects comply with the terms of the Order; and
- b. it will exercise due care and skill, and will adhere to best industry practice in the industry relevant to the Services, in providing Services and where the Services are to be provided on the Buyer's premises that it will comply in all respects with the guidelines and directions given by the Buyer.

The warranties and remedies provided for in these terms and clause 5 are in addition to and not in substitution for those warranties or remedies which are implied by or available under any law and will continue to exist notwithstanding the acceptance by the Buyer of any Products and/or Services in whole or in part.

6. Changes

6.1. The Buyer may, at any time prior to delivery of the Products or performance of the Services, by notice in writing to the Seller, make changes in:

- a. any Specifications relating to an Order; and/or
- b. the method of transportation, packaging and marking of Products the subject of an Order; and/or

c. the place of delivery of the Products or performance of the Services.

6.2. If any such changes affect the supply of Products and/or Services in accordance with an Order, the cost of manufacturing such Products, or the cost of providing such Services, the Buyer will negotiate in good faith with the Seller for an adjustment to the price or the date of delivery or both.

6.3. If no agreement is reached under clause 6.2 within 20 Business Days, then either party may pursue whatever remedies may be available to it at law.

7. Payment

Payment will be made upon acceptance of the Goods or Services, 45 days from the end of the month of receipt of Seller's invoice.

8. Passing of Risk and Title

Title to and risk of loss or damage to Products passes upon the Buyer accepting the Products under clause 4.2.

9. Termination

9.1. If there is a failure by the Seller to comply with the Terms of an Order or any warranty, undertaking or obligation under these Terms, the Buyer is entitled to immediately (without prejudice to the accrued rights and obligations of the parties as at the termination of the Buyer) by notice in writing terminate the supply of Products and/or Services under an Order in whole or in part and the Seller must at the request of the Buyer repay to the Buyer the whole or any part of the price of the Products already paid to the Seller and/or Services supplied pursuant to the Order.

9.2. The insolvency of either party shall give to the other party the right to terminate the supply of Products and/or Services under an Order.

10. Indemnity of Buyer and Insurance

10.1. The Seller indemnifies the Buyer, to the maximum extent permitted by law, in respect of any claim, action, damage, loss, liability, cost, premium, charge, expense, outgoing or payment which the Buyer pays, suffers, incurs or is liable for in connection with any of the following:

- a. any breach of or default under these Terms by the Seller and, in particular, the warranties provided for in clause 5;
- b. any infringement of a third party's intellectual property rights;
- c. where the Seller is required by the terms of an Order to provide, or does provide, any Services on the Buyer's premises or any other site where services are performed, any injury or damage of any kind whatsoever to any person or property; including the Buyer's employees and property that occurs as a result of an act or omission of the Seller, its agents, servants or employees providing the Services; and
- d. any employment benefits including workers compensation or superannuation payments related to the performance of Services by the seller, its employees, agents or servants on or at the Buyer's premises;

11. Confidentiality

Each party must keep these Terms and the terms of any Order, and all information supplied to it under these Terms and the terms of any Order, confidential.

11. General

11.1. If any provision of these Terms infringes any law in Australia it must be read down so that it does not infringe that law, otherwise it will be deemed void and severable.

11.2. The Seller must not assign any contract formed pursuant to clause 2 without the prior written consent of the Buyer

11.3. Other:

- a. Waiver of any right by the Buyer arising from a breach of these Terms must be in writing and executed by the Buyer.
- b. A failure or delay in the exercise of a right arising from a breach of these Terms by the Buyer does not result in a waiver of that right.

11.4. These Terms are governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.