



STANDARD TERMS AND CONDITIONS

Form No: FO OP 6/1

1. These standard terms and conditions are the minimum terms applicable to all purchase orders, however, these conditions at the discretion of the purchaser may form part of a separate agreement.
2. **DEFINITIONS**

In these conditions "the Purchase Order" shall mean an official document issued by the Purchaser and headed "Order",

"The Purchaser" shall mean the Company so named in the Purchase Order;

"The Supplier" shall mean the person or persons or firm or Company to whom the Purchase Order is issued;

"The Goods" shall mean the Goods described in the Purchaser order; and

"these conditions" shall mean the terms and conditions contained herein.
3. **CONTRACT**
 - (a) Subject to Sub-clause (b) below, these Conditions and the terms of the Purchase Order are the only terms upon which the Purchaser is prepared to do business with the Supplier. All Purchase Orders given and all Contracts made by the Purchaser are subject to these Conditions. No other conditions of contract will be accepted by the Purchaser, nor shall acceptance or receipt of any tender, confirmation of Purchase Order, invoice, advice note, or other document or notification whatsoever constitute the acceptance of any terms or conditions therein or therein referred to.
 - (b) No servant or agent of the Purchaser has any authority to agree to any variation of or addition to these Conditions, unless such variation or addition is expressed in writing and signed on behalf of the Purchaser by a Director or other person duly authorised by the Purchaser.
4. **FORMATION OF CONTRACT**

Where the purchaser has made a Purchase Order to the Supplier for the Supplier to accept, no contract shall arise until such acceptance has been received in the manner specified by the Purchaser. Where the Supplier has made an offer to the Purchaser, a Contract shall arise, if the acceptance is in writing or by faxing or emailing, on the date of the posting, fax or email of that acceptance as the case may be.
5. **PRICE AND PAYMENT**
 - (a) The price of goods shall be as stated in the Purchase Orders except as otherwise agreed between the parties.
 - (b) Unless otherwise agreed in writing by the Purchaser, the price shall include as appropriate:
 - (i) secure and proper packaging, acceptable to the Purchaser and
 - (ii) the cost of delivery to the address specified under Clause 5 hereof:
 - (c) Where the supply of the goods is subject to Goods & Services Tax, the price of the goods and the amount of GST shall be stated separately.
 - (d) The Purchaser reserves the right to off set any sums irrespective of order number in respect of which the supplier may be indebted to the purchaser, whether or not in connection with the sale of supply of the goods or performance of any services.
 - (e) Unless otherwise agreed in writing, the Supplier shall not invoice the Purchaser until performance of this Contract has been completed.
6. **DELIVERY**
 - (a) The goods shall be securely and properly packed by the Supplier in accordance with any instructions given by the Purchaser and delivered to the address specified on the Purchase Order (hereinafter called "the place of Deliver" The Supplier shall give reasonable notice to the Purchaser of the time of deliver.
 - (b) The time of delivery of the Goods shall be of the essence of the Contract.
 - (c) Subject to Sub-clause (b) above, the supplier shall give the Purchaser immediate notice of any potential delay in delivery.
 - (d) Delivery in instalments shall be permitted only with the prior consent in writing of the Purchaser and only in accordance with the terms of such permission, if given, shall not entitle the Supplier to claim payment prior to deliver of the whole of the Goods, unless otherwise expressly agreed in writing by the Purchaser.

7. RISK AND TITLE

- (a) In no circumstances shall the risk of damage to or loss or destruction of the Goods pass to the Purchaser prior to delivery of the Goods to the Place of Delivery.
- (b) Title in the goods or any part thereof shall pass to the Purchaser on delivery of or payment for the Goods or any such part whichever is the sooner. Any Goods for which the Purchaser has paid but which have not been delivered shall be clearly identified as the property of the Purchaser and stored in accordance with any instructions given by the Purchaser.

8. STORAGE

If the Purchaser is not able to accept delivery of the Goods on the due date:-

- (a) The Supplier shall if the Purchaser so requests store the Goods at suitable premises, advising the Purchaser beforehand of the particulars of such storage.
- (b) The Supplier shall insure the Goods and the premises in which they are stored "all risks" terms and against consequential loss to the Purchaser, and shall notify the Purchaser of such insurance cover.
- (c) Subject to receiving a certificate as to title and insurance in a form acceptable to the Purchaser, the Purchaser shall reimburse the supplier in respect of all reasonable storage charges and insurance premiums so incurred or paid.

9. VARIATIONS

- (a) The Supplier shall not make any variations in the design, materials or method of manufacture of the Goods, nor substitute other parts or fitment for any proprietary or special parts of fitments ordered by the Purchaser WITHOUT THE PRIOR WRITTEN CONSENT OF THE PURCHASER which consent shall not be unreasonably withheld.
- (b) If the purchaser refuses its consent under Sub-clause (a) above and the Supplier is for any reason unable to perform the Contract without making the variation or substitution as requested the Purchaser may terminate the Contract forthwith by giving notice in writing to the Supplier.
- (c) Where the Contract is terminated under Sub-clause 9b) above, any payments already made by the Purchaser shall be returned to the Purchaser and the Purchaser shall be entitled to recover from the Supplier any loss suffered by the Purchaser as a consequence of the Supplier failure to perform the Contract.

10. QUALITY

- (a) (i) All Goods (including raw materials and unfinished goods) shall, on delivery to the supplier be of merchantable quality, fit for the purpose for which the Purchaser requires them and where applicable in accordance with the Purchaser's specifications, and of first class materials, workmanship and design.
(ii) All Goods shall comply in all respects with any express Warranties given or express or implied representations made on behalf of the Supplier. For the avoidance of doubt any express Warranty or Guarantee given by the Supplier shall extend to parts and labour.
- (b) The Supplier shall satisfy itself that it understands the Purchaser's requirements in order to comply with the obligations contained in Sub-clause (a) above and also to prevent delay caused by any work which may be necessary to meet the Purchaser's requirements. The cost of any such work shall be borne by the Supplier.
- (c) For the purpose of satisfying the Purchaser that the obligations contained herein are being observed, the Supplier shall at all times allow persons duly authorised by the Purchaser to make any such inspections or test which the Purchaser may require and shall afford to the Purchaser all reasonable facilities and assistance which shall be free of cost to the Purchaser unless specifically agreed to the contrary.

11. DEFECTS

- (a) If, on inspection, (whether at any time prior to or after discharge of the Contract by performance) or in manufacture or use, any Goods are found to be faulty in quality, damaged, defective or not to comply with these conditions (including goods damaged in transit), the Purchaser may, at its option, either reject the whole or any part of the Goods, or require the Supplier at its own cost either to replace the Goods or to rectify any defect.
- (b) In addition to its remedies under Sub-clause (a) above the Purchaser shall be indemnified by the Supplier against all loss of whatsoever kind (including any claims by third parties, loss of profits and loss of business) arising by reason of any failure of the Goods to comply with Clause 9 (a) or any other terms of these Conditions whether express or implied by statute, common law, custom or otherwise.

- (c) Where the Purchaser requires the Supplier to rectify a defect:-
 - (i) the cost of collecting the Goods from and returning them to the Purchaser shall be borne by the Supplier.
 - (ii) The Supplier shall return the goods to the place from which they were collected, unless otherwise specified in writing by the Purchaser; and
 - (iii) The Supplier shall pay to the Purchaser a sum equal to the cost of any addition insurance considered necessary by the Purchaser.

12. NON-ASSIGNABILITY

The Supplier shall not assign the whole or any part of the Contract or the benefit thereof without the prior written consent of the Purchaser.

13. HEALTH AND SAFETY

- (a) The attention of the Supplier is drawn to the obligations imposed by the OS&H Act 1984 and OS&H Regulations 1996, on designs, manufacturers, importers, suppliers, installers or erectors of articles or substances for use at work to ensure so far as is reasonably practicable that such articles or substances are so designed, constructed or installed and directed to be safe and without risks to health when properly used.
- (b) Where by reason of obligations under the said Act and Regulations or otherwise the Supplier has carried out or arranged for the carrying out of testing and examination of goods to be sold hereunder for the purpose of ensuring that they are safe and without risks to health when properly used. The Supplier shall provide the Purchaser where appropriate on or before delivery of the Goods with proper documented results of such tests or examinations or, in default thereof, certificates issued by a duly qualified and authorised person that the tests and examinations proved satisfactory. The Supplier will also supply Instructions, MSDS, JSA's etc.
- (c) Without prejudice to the obligation contained in Sub-clause (b) above, on or before delivery of the goods to the Purchaser, the Supplier shall make available to the Purchaser in connection with the Goods information about the use for which such Goods have been supplied and tested, and about any conditions necessary to ensure that when put to use at work the Goods will be safe and without risks to health.

14. ENVIRONMENT

- (a) The attention of the Supplier is drawn to the obligations imposed by the Environmental Protection Act 1986 and Environmental Protection Regulations 1987, on designs, manufacturers, importers, suppliers, installers or erectors of articles or substances for use at work to ensure so far as is reasonably practicable that such articles or substances are so designed, constructed or installed and directed to be safe and without risks to the environment, when properly used.
- (b) Where by reason of obligations under the said Act and Regulations or otherwise the Supplier has carried out or arranged for the carrying out of testing and examination of goods to be sold hereunder for the purpose of ensuring that they are safe and without risks to the environment, when properly used. The Supplier shall provide the Purchaser where appropriate on or before delivery of the Goods with proper documented results of such tests or examinations or, in default thereof, certificates issued by a duly qualified and authorised person that the tests and examinations proved satisfactory. The Supplier will also supply Instructions, MSDS, JSEA's etc.
- (c) Without prejudice to the obligation contained in Sub-clause (b) above, on or before delivery of the goods to the Purchaser, the Supplier shall make available to the Purchaser in connection with the Goods information about the use for which such Goods have been supplied and tested, and about any conditions necessary to ensure that when put to use at work the Goods will be safe and without risks to the environment.

15. TERMINATION OF CONTRACT

- (a) Subject as provided in Clause 8 (b) hereof the Purchaser shall be entitled to terminate the whole or part of the contract at any time prior to the discharge of the Contract by performance on terms to be agreed between the Purchaser and the Supplier.
- (b) The Purchaser shall have the right to terminate the Contract forthwith:
 - (i) if the Supplier shall be in breach of any of the obligations set out in these Conditions or in the Purchase Order and (if the breach is capable of being remedied) shall not have remedied such breach to the complete satisfaction of the Purchaser within seven days after notice thereof in writing;
 - (ii) in the event that the Supplier, not being a body corporate, becomes bankrupt, or compounds or makes any arrangements with creditors, or commits any act of bankruptcy, or where the Supplier, being a Body Corporate, goes into liquidation, where compulsory or voluntary (save for the purpose of reconstruction or amalgamation) or has a Receiver and/or Manager appointed of its undertaking or assets or any part thereof.
- (c) Termination of this Contract for any reason shall be without prejudice to the rights and remedies of the Purchaser accrued up to and including the date of such termination.

16. PATENTS, COPYRIGHTS ETC.

The Supplier warrants that the supply by the Supplier and the use by the Purchaser of the Goods does not and will not infringe the industrial property of any third part, whether in the form of letters patent, registered designs, design copyright or any other similar right, and the Supplier shall indemnify the Purchaser from all claims, demands, damages, penalties, costs, expenses or liability arising as a result of the breach of this warranty by the Supplier.

17. CONFIDENTIALITY

Any specifications, plans, drawings, samples, designs or equipment supplied by the Purchaser to the Supplier in connection with the Contract shall remain the property of the Purchaser and shall be treated as confidential and shall not be published or disclosed to any third party or used by the Supplier save with the consent in writing of the Purchaser.

18. FORCE MAJEURE

If the performance of either party's obligations hereunder is prevented or delayed by the causes beyond its control, then that party shall not be liable for any loss or damage caused to the other by the delay. In such event the Contract may be terminated or suspended by either party with no liability on either party (by notice to be given or confirmed as soon as possible in writing) for loss or damage thereby occasioned. The following shall, without prejudice to the generality of the above, be considered causes beyond a party's control: Act of God; or war civil disturbance; requisition; governmental or parliamentary restriction, prohibitions or enactments of any kind; import or export regulations; strike, lock out or other trade dispute; difficulties in obtaining labour or materials; breakdown in machinery; fire or accident.

19. LABELLING AND INSTRUCTIONS

- (a) The Supplier warrants that the design, construction, quality and labelling of the Goods shall comply in all respects with any requirements of any statute, order or other instrument have the force of law, which may be in force at the times when the Goods are supplied.
- (b) When required by the Purchaser, the Supplier shall mark the goods in accordance with the reasonable instructions of the Purchaser. All marking and labelling shall ensure safe and proper handling of the Goods.
- (c) Hazardous Goods must have prominent warnings in English on all packing and documents.

20. INSTALLATION OF GOODS

Where the Purchase Order provides for installation of the Goods or any other labour services incidental thereto to be performed by the Supplier the Purchaser's current sub-contract conditions for the aforementioned project will also apply insofar as they are not inconsistent with these Conditions.

21. LEGAL CONSTRUCTION

Unless otherwise agreed in writing this Contract shall in all respects be construed and governed by the law of Australia and the parties agree to submit to the jurisdiction of the courts of Australia.