

## GENERAL TERMS AND CONDITIONS

## GENERAL TERMS AND CONDITIONS

### 1. INTERPRETATIONS AND GENERAL MATTERS

#### 1.1 Definitions and Interpretations

1.1.1 "Day" means a calendar day

1.1.2 "FOT", means in relation to delivery of the Goods, free on truck and includes the responsibility (and associate costs) for packing, loading, transportation and insurance (for the full replacement value of the Goods) to the nominated delivery point for the Goods.

1.1.3 "Goods" means all goods, equipment, materials, articles, or any other property or parts to be provided and delivery as specified as required hereunder.

1.1.4 "Purchaser" means the person ordering the Goods, as identified in the Purchase Order Form.

1.1.5 "Purchase Order" means the purchase order issued by the Purchaser to the Supplier as evidenced by the documents listed in the Purchase Order Form.

1.1.6 "Purchase Order Form" means the section of the Purchase Order to be completed by the Purchaser, which identifies the Purchaser and the Supplier and includes but is not limited to a brief of the goods and a list of the documents comprising the Purchase Order.

1.1.7 "Supplier" means the person providing the Goods, as identified in the Purchase Order Form.

1.1.8 "Warranty Period" means the period of one (1) year, unless otherwise stated in the Purchase Order.

1.1.9 "Nominated Principle" means any company, agency or person that has a vested relationship in present or past works performed by Varley.

1.1.10 Words importing the singular are deemed to include the plural and vice versa.

Headings and Subheadings are inserted for convenience only and shall not be used to

Breach hereunder, irrespective of whether the Supplier knew the nature or potential extent of any such duties or liabilities which might arise from the Supplier's breach hereunder.

#### 4.6 Tooling

(a) The price shown on the reverse side hereof includes the cost of all patterns, dies, tools, jigs, gauges and fixtures (hereinafter called "tool") unless otherwise stated and any such tools become the Purchaser's property on completion of the contract.

(b) Any tools loaned to the Supplier by the Purchaser loaned as an aid to manufacture the goods by the Purchaser and the Supplier accepts no responsibility as to the accuracy or otherwise of such tooling.

(c) The Supplier shall keep in good order and repair any tools loaned to the Supplier by the Purchaser and in the event of loss, destruction or damage of the tools shall pay the Purchaser the actual cost incurred by the Purchaser in the replacing or repairing the lost, destroyed or damaged tools.

(d) Where the Supplier uses tools supplied by or paid for by the Purchaser (other than those furnished on a charge basis), the ownership of the tools shall remain with the Purchaser and the Supplier will ensure that such tools are marked as to be readily identifiable as the property of the Purchaser at all times.

(e) The Supplier, at his expense, upon completion of the order, undertakes to return the tools to the Purchaser.

#### 4.7 Injury to Persons or Property

The Supplier shall as a separate and distinct obligation indemnify the Purchaser and its servants and agents and at all times keep the Purchaser and its servants or its servants or agents in relation to any injury, loss of life or damage to any property or financial or other consequential loss and in respect of any loss, injury, expense or damage howsoever caused or arising from any cause whatsoever arising directly or indirectly out of or in anyway attribute or incidental to the execution and performance of this order. The Supplier shall insure himself against such liability for a sum agreed

interpret the text. Words denoting a natural person shall include a corporation and vice versa.

#### 1.2 **Supplier to Inform Itself**

The Supplier shall be deemed to have carefully examined all documents furnished by the Purchaser and fully satisfied itself regarding all the conditions, risks, contingencies and other circumstances which might affect the supply of the Goods. No increase in the Purchase Order price will be allowed for the Supplier's failure to ensure that it is fully informed regarding all the circumstances relating to the Purchase Order.

### **1. Order of Precedence**

Unless otherwise stated, the order of precedence listed in the Purchase Order Forms, shall be as follows:

- i. The Purchase Order Form
- ii. Special Terms and Conditions
- i. General Terms and Conditions
- ii. Specification(s)
- iii. Drawing(s)

#### 1.4 **Ambiguities**

If the Supplier discovers any ambiguity in the Purchase Order it shall immediately notify the Purchaser in writing. The Purchaser shall then determine the correct interpretation of the Purchase Order. The determination of the purchase Order shall be final and binding on the Supplier and have no effect on the Purchase Order price.

#### 1.5 **Use of Documentation**

The documents shall not be copied or used for any purchase other than the supply of the Goods, without the prior written approval of the Purchaser.

#### 1.6 **Confidentiality**

1.6.1 Any information provided by the Purchaser to the Supplier, which is noted as confidential shall not be disclosed to any third party without the prior written consent of

with the Purchaser, or in the absence of agreement, for a reasonable sum and shall have the Purchaser's name endorsed on the policy.

#### 4.8 **Access**

4.8.1 The Purchaser and/or Nominated Principle shall have right of access to the Supplier's premises and quality records during normal working hours, for such tasks as audit, investigation, inspection, expediting, monitoring and acceptance testing relating to the Goods.

### **5. DELIVERY**

5.1 Unless otherwise specified in the Purchase Order, the Goods shall be delivered FOT (Free on Truck), adequately packaged and protected to ensure safe delivery, to the delivery point and by the delivery date(s) specified in the Purchase Order Form. The Goods shall be accompanied by a delivery docket which shall be signed by a duly authorised representative of the Purchaser at the point of delivery.

5.2 The Goods shall become the property of the Purchaser upon delivery of the Goods to the Purchaser, as evidenced by the signature on the delivery docket by the duly authorised representative of the Purchaser. Notwithstanding that the Purchaser has taken delivery of the Goods, the Supplier shall remain responsible for any loss or damage to the Goods, which may have occurred prior to delivery, and for any non-compliance of the Goods with the requirements of the Purchase Order.

5.3 The Supplier shall take all reasonable steps to minimise and prevent any delay to the delivery of the Goods. Time shall be the essence of this order.

The Purchaser may grant an extension of time to the nominated delivery date provided:

(i) The delay is caused by any reason completely beyond the control of the Supplier, including Statewide or National industrial disputes, acts of God, war, riot, fire, storm or flood.

(ii) The Supplier has notified the Purchaser in writing within fourteen (14) days of the delivery occurring (or such other time as may be specified in the Purchase Order) of its claim for an extension of time. The Purchaser shall not be liable for any extension of

the Purchaser. The obligations under this Clause shall be continuing obligations and shall time claim that is not lodged in writing with the Purchaser within fourteen (14) days of the delay occurring.

1.6.2 The Supplier shall not issue any information which includes details about the Goods or the Purchase Order, for publication in any news or communication media, without the prior written approval of the Purchaser.

1.6.3 All drawings, blueprints, sketches and copies supplied by the Purchaser remain the property of the Purchaser, may not be copied or used by the Supplier for any purpose other than the execution of this order, and are to be returned to the Purchaser with the goods unless otherwise agreed.

1.6.4 By accepting this offer, the Supplier agrees to indemnify and hold harmless and protect the Purchaser, its successors, assigns, customers and users of its products, from and against all costs, including legal fees, loss, damages, liability, claims, demands and suits of law or equity for actual or alleged infringement of any patent, trademarks, designs or copyrights or corresponding right in Australia or any other country resulting from the execution of this order or the sale or use of goods or material supplied hereunder.

#### 1.7 Waiver

No failure or delay on the part of the Purchaser in exercising any of its rights under the Purchase order shall be construed as constituting a waiver of any such rights.

#### 1.8 Subcontracting and Assignment

1.8.1 The Supplier shall not subcontract nor assign all or any part of the Purchase Order without the prior written approval of the Purchaser. The Supplier shall provide full particulars of any work to be subcontracted together with details of the proposed subcontractor.

1.8.2 Approval of the Purchaser to any subcontract shall in no way relieve the Supplier of any of its obligations under the Purchase Order.

#### 1.9 Entire Agreement

The Purchase Order constitutes the entire agreement between the Purchase and the Supplier. The parties shall not be bound or liable for any statement,

5.4 If the Supplier fails to deliver the Goods by the specified delivery date(s), the Purchaser shall be entitled to terminate the Purchase Order for default, either in whole or in part, in accordance with the provisions of Clause 7.2 and/or deduct from monies due to the Supplier as liquidated damages, representing a genuine pre-estimate of the Purchaser's damages and not as a penalty, the amount specified in the Purchase Order Form, for each week or part thereof by which delivery exceeds the specified delivery date.

5.5 The Purchaser reserves the right to refuse to accept liability for any goods delivered in excess of the quantity ordered or delivered in excess of the quantity agreed in any delivery schedule approved by the parties.

5.6 Notwithstanding that the Purchaser may have accepted delivery into the Purchaser's store of the whole or any part of the goods comprised in this order and/or paid for the same, or that any representative of the Purchaser may have signed any delivery docket containing items and conditions inconsistent with this provision (which the Purchaser hereby discloses no representative has power or authority to do) all goods shall, notwithstanding such acceptance and/or payment be subject to rejection and may, if they do not comply with all the requirements of this order, be rejected after the Purchaser shall promptly notify the Supplier of any defects and hold any articles so claimed to be defective for the Supplier's instructions and at his risk for a reasonable period not exceeding 60 days from such notification.

In the event of rectification work being required, the Supplier will be notified and he shall carry out such work as required by the Purchaser in the time as specified by the Purchaser and said rectification will be carried out by the Supplier's personnel at no cost to the Purchaser.

In the event of the Supplier not being able to complete the rectification work within reasonable time, rectification will be carried out by the Purchaser at the Supplier's cost.

#### 5.7 Packing

Goods must be prepared and adequately packed for transformation to avoid damage, to comply with carrier's requirements and to secure minimum transportation

representing, promise or understanding not set herein. Nothing contained in proposals, correspondence, discussions or negotiations prior to the date of the Purchase Order has any effect on the Purchase Order unless specifically incorporated herein.

#### 1.10 **Communications**

Any notice of other communication required under the Purchase Order shall be delivered in writing and shall be in a form which can be read, copied and recorded conveniently. Verbal instructions or directions from the Purchaser shall be confirmed in writing to the Supplier with a reasonable time. The notice shall take effect from the time when it is delivered to or received at the nominated address of the relevant party.

#### 1.11 **Licences and Laws**

The Supplier shall comply with all applicable laws, by-law, ordinances, proclamations, orders and rules and with the law requirements of Public and other Authorities in any way related to the supply of the Goods.

## **2. INSURANCE**

2.1 (a) It will be the responsibility of the Supplier to ensure that its normal Workshop Insurance Policy covers the items listed on the Order for loss or damage during the course of its manufacture.

(b) The Supplier shall insure his liability (including his Common Law Liability) as required under any applicable Workers' Compensation Statute or Regulation thereunder to his employees engaged in doing anything for the purpose of executing this order. The Supplier shall also insure his employees' personal property and effects whilst they are present at the Purchasers premises for any purpose.

2.2 Where the Supplier is required to be present or perform work on or near premises of the Purchaser or any of its customer:

(a) the Supplier shall not impede work in progress by the Purchaser or third parties;

costs and insurance rates. NO charge will be accepted by the Purchaser for packing unless authorised by this order. Finished machine surfaces must be protected against corrosion.

## **6. VARIATIONS**

The Purchaser may vary the work under the Purchase Order or any condition thereof and the Supplier shall carry out any such variations as directed by the Purchaser. The Supplier's price (addition or reduction) for any variation and any effect on the delivery date(s) of the Goods shall preferably be agreed between the Purchaser and Supplier prior to the Supplier carrying out any such variation. However, if agreement cannot be reached, the Purchaser shall determine the price for the variation and the delivery date(s) of the Goods.

6.2 The Supplier shall not vary the work under the Purchase Order or any condition thereof, except as directed and approval by the Purchaser in writing. No variation shall invalidate the Purchase Order.

## **7. SUSPENSION/TERMINATION**

### **7.1 Suspension**

The Purchaser may, at any time by written notice, suspend all or part of the Purchase Order for any reason whatsoever. Upon receipt of a notice of suspension, the Supplier shall cease work in accordance with the directions of the notice. The Supplier shall recommence the work under the Purchase Order within forty eight (48) hours of being directed to do so by the Purchaser.

### **7.2 Termination by Default**

In the event of a substantial breach by the Supplier of any terms and conditions of the Purchase Order and which is not remedied within seven (7) days of the Purchaser notifying the Supplier in writing of any such breach, the Purchaser may terminate the Purchase Order in whole or part.

### **7.3 Termination for Insolvency**

(b) the Supplier enters the premises at which work is to be performed at its own risk and indemnifies the Purchaser against all loss, damages, claims and liabilities (including legal costs) which might arise out of such entry or the performance of work;

(c) the Supplier, its workman, agents, sub-contractors shall comply with all instructions of the Purchaser.

### 3. INDEMNIFICATION

The Supplier shall indemnify and keep indemnified the Purchaser and its officers, employees and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses arising as a result of any act, neglect or default of the Supplier, its employees or agents related to its obligations under the Purchase Order.

## 4. PERFORMANCE AND QUALITY

### 4.1 Materials and Workmanship

All Goods shall be suitable for the purpose for which they are required. The Supplier shall use new and undamaged materials, unless otherwise specified in the Purchase Order and the workmanship shall be of the highest quality and standard. The work shall be carried out in accordance with good engineering and comply with all applicable Australian Standards and/or other reference codes, the requirements of the relevant Statutory Authorities and the Law.

### 4.2 Supplier Qualifications

The Supplier represents and warrants to the Purchaser that it has necessary skills, resources and experience to successfully supply the Goods in accordance with the requirements of the Purchase Order.

### 4.3 Testing and Inspection

4.3.1 The Goods must be tested/inspected in accordance with the requirements of the Purchase Order. Unless otherwise prescribed in the Purchase Order, any tests/inspections and costs thereof shall be the responsibility of the Supplier. The result of all tests shall be promptly supplied to the Purchase in writing.

If in the opinion of the Purchaser, the Supplier is unable to perform its obligations under the Purchase Order due to insolvency, bankruptcy or related reasons, the Purchaser shall be entitled to terminate the Purchase Order.

### 7.4 Termination at Purchaser's Option

Notwithstanding any other provision of the Purchase Order, the Purchaser may terminate the Purchase Order, the Purchaser may terminate the Purchase Order by giving fourteen (14) days written notice to the Supplier.

### 7.5 Suppliers Rights and Obligations on Suspension/Termination

7.5.1 In the event of suspension of the Purchase Order, the Supplier shall not be entitled to payment by the Purchase for any costs it may incur as a result of any such suspension.

7.5.2 In the event of insolvency of the Supplier or its default under Clause 7.2 the Purchaser shall immediately suspend any further payment to the Supplier. Any additional monies required by the Purchase order in excess of what the Purchaser would have paid under the Purchase Order shall be a debt due and payable by the Supplier to the Purchaser.

7.5.3 In the event of termination by the Purchaser, under Clause 7.4 and providing the Supplier is not in default, the Purchaser shall pay the Supplier for the work carried out prior to termination and all reasonable costs associated with the cancellation of any orders placed by the Supplier prior to termination. The Purchaser shall not be liable for any cost of the Supplier in respect of termination which cannot be fully substantiated.

## 8. PRICE AND PAYMENT

8.1 Unless otherwise stated in the Purchase Order, prices shall be fixed and not subject to any variation, including but not limited to variations in the cost of labour, material or exchange rates.

8.2 The Supplier shall be responsible for the payment of all relevant Australian (Federal, State and Local Government) and overseas taxes, duties and charges payable with respect to the Goods. The Purchase Order price shall be deemed to be inclusive of all such taxes, duties and charges.

4.3.2 The Purchaser and/or Nominated Principle shall have the right to inspect, expedite and monitor the Goods prior to delivery. The Goods will not be accepted until inspected and approved by the Purchaser. Any inspection by the Purchaser and/or Nominated Principle shall not relieve the Supplier from its obligations to comply with the requirements of the Purchase Order and shall in no way impair the Purchaser's right to require subsequent correction of non-conforming Goods.

#### 4.4 Quality Standards

The Supplier shall comply with the standards of quality specified in the Purchase Order. If not standards are specified the Supplier shall comply with the best quality standards applicable to the Good concerned.

#### 4.5 Defects and Warranty

4.5.1 The Supplier warrants that the Goods shall":

- (i) Be free from liens, charges, encumbrances, mortgages or other defects in title;
- (ii) Be free from defects in design, materials and workmanship;
- (iii) Conform to the conditions and specifications of the Purchase Order;
- (iv) Conform to all applicable laws and regulations to which the goods are subject;
- (v) Be new and made to the specified quality.

4.5.2 The warranties noted in Clause 4.5.1 above are in addition to any statutory warranties applicable to the Goods.

4.5.3 During the Warranty Period, the Purchaser shall give written notice to the Supplier of any failure or defect in the Goods. The Supplier shall without delay and at no cost to the Purchaser, correct any defect or failure in the Goods covered by the warranty, by way of repair, replacement, modification or other means of acceptable to the Purchaser.

8.3 Unless otherwise specified in the Purchase Order, invoices for payment shall be submitted to the Purchaser for payment following delivery of the Goods and payment of the approval amount shall be made by the Purchase no later than thirty (30) days from the first day of the month after the month in which was received.

#### 8.4 Withholding Payments for Minor Omissions and Defects

The Purchaser may exclude from payment certificates issued pursuant to a claim the amount reasonable representing the cost of remedying any minor omissions and defects under this order. The Supplier may claim any amount so excluding when such minor omissions and defects are remedied.

### 9. DISPUTES

9.1 Disputes of differences arising between the Purchaser and the Supplier shall be settled quickly and by negotiation.

9.2 In the event of any unresolved dispute between the Purchaser and the Supplier, the Supplier shall ensure that the progress of the work under the Purchase Order is continued without any effect on the specified delivery date.

9.3 The preferred method of determination of unresolved disputes shall be by amicable agreement at the senior management level of the Purchaser and Supplier.

9.4 Failing such agreement, the parties agree that the dispute shall be resolved by mediation conducted in accordance with the Australian Commercial Disputes Centre ("ACDC") mediation procedures.

9.5 In the event that the dispute has not been settled within six (6) weeks (or such other period as may be agreed to in writing between the parties) after the appointment of the mediator, the dispute shall be referred by either party to the arbitration in accordance with the provisions of Commercial Arbitration Act in force in the State or Territory in which the Purchase Order is issued. In the arbitration both parties shall be entitled to be legally represented. Unless parties agree upon an arbitrator, the arbitrator shall be appointed by the Chief Executive Officer, for the time being, of the ACDC.

### 10. APPLICABLE LAW

4.5.4 If the Supplier fails to correct any defects and failures, of which it has been notified by the Purchaser, within the time specified in the notice (which shall not be unreasonable), the Purchaser shall have the right to rectify the Goods itself or have the rectification undertaken by a third party. All costs so incurred shall be a debt due and payable by the Supplier or deducted from moneys otherwise owing to the Supplier.

4.5.5 Any Goods repaired under warranty may be subject to a further full Warranty Period, if required by the Purchaser, commencing on the date of completion of any such repair.

#### 4.5.6 Damages

The Supplier acknowledges that the Purchaser has placed this order, to enable it to fulfil contractual and other duties to third parties, and that any damages to which the Purchaser may become entitled against the Supplier under the terms and conditions shall include all the Purchasers liabilities for breach of such duties occasioned by the Suppliers'

Unless otherwise specified, the Purchase Order shall be governed and construed in accordance with the laws in place in the State or Territory in which the Purchase Order is issued. The Purchaser and the Supplier shall submit to the jurisdiction of the courts of that State or Territory.

