

Terms and Conditions of Purchase

1. General

Unless the context otherwise requires:

Agreement means the agreement between Supplier and AWMA for the supply of Goods by Supplier to AWMA and shall be constituted in its entirety by this Purchase Order, these Terms and Conditions of Purchase together with any documents provided by AWMA including the terms and/or contents of any request, solicitation, sample, drawing, specification, schedule or other document agreed to be so incorporated.

Goods means all goods and services ordered by AWMA pursuant to this Agreement;

Products means the Goods;

Purchase Order means the purchase order or other form of request by AWMA to Supplier for the supply of the Goods;

Supplier means the party named as Supplier on the front page of this Purchase Order.

2. Agreement

The Agreement shall be formed by and upon Supplier accepting the Purchase Order from AWMA either by Supplier's acknowledgement or by performance. The terms of the Agreement shall apply to the exclusion of any conditions of sale appearing on any document of Supplier and will prevail over any documents issued by the Supplier.

3. Delivery

- (a) The delivery of the Goods must be made strictly in accordance with this Agreement and, in particular, within any time and/or method and to such place as AWMA may nominate. Unless otherwise agreed, AWMA will not accept part delivery of the Goods.
- (b) AWMA reserves the right to cancel the Purchase Order at any time and refuse delivery of any of the Goods by return of same to Supplier which return shall at all times be at Supplier's own risk and expense. Signed delivery dockets shall not mean acceptance by AWMA of the Goods delivered but only the number of packages or cartons delivered.
- (c) Delivery shall not be regarded as having been completed until the Goods are fully installed (if applicable), tested and commissioned and AWMA has given its final acceptance.

4. Purchase Price

- (a) The purchase price shall be inclusive of all works, services and materials reasonably necessary to ensure delivery, including any delivery, packaging, freight (unless otherwise agreed), insurance and installation costs and shall also be inclusive of all charges whatsoever including GST, sales, excise, goods and services or other taxes, duties or imposts imposed by any relevant authority in connection with this Agreement. Supplier shall accept, in lieu of any applicable sales or other tax arising out of the purchase of the Goods, any statutory or other appropriate exemption issued in favour of AWMA and the purchase price shall be adjusted accordingly.
- (b) Payment of the purchase price shall be made within 45 days after the last day of the month in which the Supplier's invoice is received or otherwise in accordance with AWMA'S credit arrangement with Supplier;

5. Warranties

Supplier represents and warrants to AWMA that the Goods will:

- (a) be fit for their intended purpose;
- (b) comply with the requirements of all relevant standards in Australia and with any other contractual obligation of AWMA to a third party (as disclosed to Supplier by AWMA).
- (c) conform with all specifications, drawings, samples or other descriptions furnished by AWMA to Supplier from time to time; and
- (d) be of the highest quality and free from any defects in design, manufacturing, materials and workmanship.

6. Title and risk

- (a) Supplier warrants full and unrestricted title for all Goods supplied under the Agreement and that the Goods are free from any lien or encumbrance whatsoever.
- (b) Goods are at Supplier's risk until delivery is completed in accordance with the Agreement.
- (c) Without prejudice to AWMA's right to reject the Goods, risk of loss shall pass to AWMA upon delivery of the Goods, provided that, if the Goods are non-conforming or defective, Supplier shall bear the risk of loss as to the Goods until the defect is remedied by the Supplier.
- (d) Title in the Goods shall pass to AWMA upon payment by AWMA.

7. Installation

Where the Goods are required to be installed by Supplier, Supplier shall provide all work and materials necessary to carry out such installation. All work carried out by Supplier will be completed in a proper and workmanlike manner and Supplier will exercise all due care.

8. Defective Goods and refunds

- (a) All Goods ordered are subject to final inspection and approval by AWMA. In the event that the Goods (or any part) fail (in AWMA's absolute opinion) to conform with Supplier's obligations then AWMA may reject the Goods. Supplier shall refund the purchase price, handling, transportation and other reasonable charges or expenses.
- (b) Acceptance of or payment for all or any part of the Goods shall not be deemed to be a waiver on the part of AWMA's of its contractual, statutory or other rights in respect of the Goods.
- (c) Where AWMA rejects the Goods which are already installed, Supplier shall immediately upon written direction, remove the defective Goods, replace same and make good any damage to other property occasioned in such removal to the satisfaction of and at no cost to AWMA.

9. Insurance

Supplier shall maintain in full force public liability insurance and product liability insurance in respect of the Goods for a minimum amount of AU\$20 million or otherwise in amounts and form satisfactory to AWMA. AWMA may from time to time as reasonable require production of certificates of currency to ensure that Supplier has complied and continues to comply with this clause.

10. Indemnity

Supplier indemnifies AWMA against any loss (including consequential and indirect loss), damage, liability or claim, whether arising under contract, common law, in equity or under any statute, which AWMA suffers or incurs arising out of:

- (a) any breach of this Agreement by Supplier; and
- (b) any injury or death to any person or damage to any property in any way connected with the performance of the Agreement or the Goods supplied by the Supplier.

11. Default

If Supplier:

- (a) is in default of any provisions of this Agreement and such default is not rectified within 7 days of receipt of notice from AWMA to rectify such default; or
- (b) is adjudged bankrupt, its assets are liquidated or if it makes a general assignment for the benefit of its creditors; or
- (a) has a receiver, liquidator, administrator or other controller of property appointed to Supplier on account of its solvency or ability to pay its debts as they fall due; then. AWMA may, without prejudice to any other rights or remedies it may have hereunder terminate this Agreement, forfeit any retention, take possession of any premises, materials, tools and appliances, acquire alternative products and/or finish any outstanding work by whatever means it may deem expedient. AWMA shall not be liable to pay Supplier any further monies that may otherwise be owing to Supplier in connection with this Agreement (Outstanding Amounts) until such work or services are completed. All losses, damages, costs and expenses incurred by AWMA in connection with Supplier's default (AWMA's Costs) shall be offset against any Outstanding Amounts. If AWMA's Costs exceed any Outstanding Amounts, then, without limiting AWMA's rights, the amount of the excess shall be paid by Supplier to AWMA upon demand.
12. Maintenance manuals
Supplier shall provide comprehensive operating instructions, maintenance manuals, drawings, software protocol (if applicable) to enable AWMA to maintain the Goods.
13. Intellectual property
- (a) Supplier warrants that it is the owner of or, where appropriate, is the registered user of, any patents, trademarks, Copyright, data or trade secrets connected directly or indirectly to the Goods and Supplier agrees to indemnify and forever hold harmless AWMA against any actions arising from any breach of this warranty.
- (b) AWMA shall at all times retain title to the copyright or any other intellectual property rights in any plans, designs, sketches, drawings, blue prints, patterns, models, tools, dyes, moulds, special appliances, materials and patents and in any other document or material furnished by AWMA. (whether furnished by AWMA in connection with this Agreement or produced by Supplier for the purposes of this Agreement) (AWMA IP). During the term of this Agreement AWMA IP shall be deemed to be held by Supplier on consignment or as a bailee only and at Supplier's sole risk.
- (c) AWMA IP shall only be used by Supplier in the production for AWMA of the Goods or the performance of related work.
- (d) Supplier shall not disclose AWMA IP to others except where, prior to disclosure, AWMA so agrees in writing. AWMA IP shall not include matters or things known to the general public or to Supplier prior to the date of this Agreement and such knowledge was not the result of a breach of any other confidentiality obligation of Supplier.
- (e) Supplier shall return all property of AWMA upon receipt of demand and Supplier shall not under any circumstances whatsoever make any unauthorised copies of any information provided to Supplier by AWMA, including AWMA IP.
14. Hazardous Materials
Supplier shall notify AWMA forthwith in writing upon acceptance of the Purchase Order if the Goods are subject to laws and/or regulations relating to hazardous and/or toxic substances, or when disposed of, to regulations governing hazardous wastes, or any other applicable environmental, health or safety laws or regulations. Written instructions for handling, warnings and material data sheets shall be provided by Supplier to AWMA with each shipment or delivery of Goods.
15. Liquidated Damages
In the event that delivery of the Goods is delayed due to the fault of the Supplier then without prejudice to any other rights of AWMA, the Supplier shall pay to AWMA liquidated damages at the rate of 0.5% of the purchase price stated in the Purchase Order for each day of delay up to a maximum of 10% of the purchase price. Supplier agrees that the foregoing amount of liquidated damages is fair and reasonable compensation to AWMA for delay without the need for AWMA to prove actual loss.
16. Miscellaneous
- (a) The Goods are for the use of or resale by AWMA and may be incorporated in any products. In no event shall any claim for royalties or other additional compensation be made by Supplier by reason of such use, resale or manufacture.
- (b) AWMA shall not be liable for any failure to fulfil or any delay in fulfilling any obligation arising from the Agreement if the failure or delay has been caused directly or indirectly by any act of God, war or other civil commotion, strikes, lockouts, stoppages and restraints of labour, breakdown of machinery, inability to obtain raw materials or fuel, fire or explosion, any government action or any other cause beyond the reasonable control of AWMA and not a consequence of AWMA's negligence.
- (c) Supplier shall at all times comply with the requirements of all applicable statutes, regulations or standards in the supply of the Goods pursuant to this Agreement.
- (d) The Agreement is governed by and must be interpreted in accordance with the laws of the place where the Goods are to be delivered.
- (e) No variation of this Agreement will be effective unless such variation is in writing and signed by AWMA.
- (f) This Agreement cannot be assigned, transferred or any part subcontracted by Supplier without the prior written consent of AWMA.
- (g) In the event of any dispute or differences, the parties shall first attempt to resolve the same between them and engage in a mediation process before proceeding to litigation or arbitration as the case may be.
- (h) Unless otherwise stated, all amounts shall be in Australian dollars or the currency stipulated in the Purchase Order.
- (i) Notices must be in writing and sent to the other party by ordinary pre-paid post or facsimile.