



Terms and Conditions of Purchase

1. DEFINITIONS

In these terms and conditions:

“Conditions” means these terms and conditions of purchase including Quality Requirements, Specifications and conditions noted on the Purchase Order, and any agreed written variations;

“Goods” means the goods described in the Purchase Order;

“Intellectual Property Rights” means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

“Loss” means any loss, liability, cost (including legal costs), expense, claims, suits, actions and damages (whether ordinary, special or consequential) incurred by the Purchaser including, but not limited to, rework, removal and reinstallation costs, field service costs and shipping relating to this Agreement;

“Purchaser” means AHI-Carrier (Australia) Pty Ltd specified on the Purchase Order;

“Purchase Order” means the Purchaser’s order overleaf or attached to these Conditions;

“Quality Requirements” means the quality requirements relating to the Goods or Services which have been supplied by the Purchaser to the Supplier;

“Services” means the services described in the Purchase Order;

“Specifications” means any technical or other specification relating to the Goods or Services which have been supplied by the Purchaser to the Supplier; and

“Supplier” means the person or body corporate that supplies the Goods or Services to the Purchaser.

2. PURCHASE ORDERS

2.1 Purchase Orders will be placed by the Purchaser with the Supplier from time to time. These Conditions shall apply to all Purchase Orders to the exclusion of any terms and conditions or any other materials which the Supplier may purport to apply or which are endorsed upon any correspondence or documents issued by the Supplier irrespective of their date of communication to the Purchaser.

2.2 The Purchase Order shall specify the quantities of the particular Goods or Services and delivery dates.

2.3 The Purchaser may, at any time, terminate a Purchase Order, in whole or in part, without cause, upon written notice to the Supplier. Following any such termination the Supplier shall, to the extent specified by the Purchaser, stop all work on the purchase order, and cause its suppliers and subcontractors to stop work. Charges for any such termination of the Purchase Order will be limited to actual non-recoverable costs incurred by the Supplier which the Supplier can demonstrate were properly incurred prior to the date of termination. In no event shall such reimbursement include anticipated profits for undelivered Goods or unperformed Services.

2.4 The Purchaser may, at any time, terminate a Purchase Order, in whole or in part and without penalty, upon written notice to the Supplier if the Supplier (i) fails to make delivery of the Goods or perform the Services within the time specified in the Purchase Order; (ii) fails to replace defective Goods or Services in accordance with these Conditions; (iii) fails to perform any other term specified in these Conditions; or (iv) becomes insolvent, files or has filed against it a petition in bankruptcy, or makes an assignment for the benefit of creditors.

2.5 Acceptance of a Purchase Order by the Supplier constitutes acceptance of these Conditions.

3. SUPPLY

3.1 The Supplier agrees to supply the Goods to the Purchaser in accordance with any Purchase Order placed by the Purchaser from time

to time and must ensure that the Goods or Services comply with the Quality Requirements and Specifications.

3.2 The Supplier will notify the Purchaser at least 90 days before ceasing production of any Goods to enable the Purchaser to analyse potential needs for and to place a final purchase order for the Goods.

4. PRICING

4.1 The price specified in the Purchase Order is firm, and is not subject to increase. The price is inclusive of all costs of packaging, delivery, duties and taxes payable in any country, and any other incidental charges. Unless otherwise expressly agreed in writing, all prices are F.O.B. destination collect in accordance with the Purchaser’s shipping instructions.

5. COST REDUCTION

5.1 The Supplier agrees to develop a cost reduction plan and must use its best endeavours to continuously explore and realise cost saving opportunities. The Supplier will review its cost reduction plan with the Purchaser on a bi-annual basis. All cost savings must be passed to the Purchaser immediately via a price reduction to the affected Goods or Services.

6. DELIVERY

6.1 The Goods must be received on the dates and at the destination specified in the Purchase Order. Time is of the essence. If the Supplier fails to meet any such delivery date, the Purchaser may, without limiting its other rights or remedies, cancel all or part of the Purchase Order. Title and risk in the Goods passes to the Purchaser on delivery.

6.2 Notwithstanding any prior inspections or payments, all Goods shall be subject to: (i) final inspection which may include measurement, testing or examination; and (ii) acceptance at the Purchaser’s facility within a reasonable time after the receipt of the Goods.

6.3 The Purchaser’s acceptance does not waive rights. If the Purchaser accepts any Goods, this does not extinguish any of the Purchaser’s rights if the Goods do not comply with these Conditions.

6.4 The Purchaser may reject any Goods which do not comply strictly with these Conditions. Once the Goods are rejected, the Purchaser may require: (i) the Supplier to refund any payment within 7 days; or (ii) replacement of the Goods within 24 hours at the Supplier’s cost. Title and risk in the rejected Goods immediately re-vests in the Supplier. The Supplier is liable for all Loss incurred by the Purchaser due to the rejection of the Goods. The Supplier must, at its cost, remove the rejected Goods any of the Purchaser’s intellectual property or any other distinguishing features such as name or logos.

7. PAYMENT

7.1 Payment for Goods or Services supplied by the Supplier to the Purchaser will be tendered 60 days from receipt of invoice (rendered in accordance with clause 7.2) and acceptance of the Goods unless otherwise agreed to in writing between the Parties. Payment of the invoices does not constitute acceptance of the Goods and shall be subject to adjustment for errors, shortages or defects in the Goods, or any other failure of the Supplier to meet the requirements of the Purchase Order.

7.2 Invoices must contain the following information: purchase order number, item number, description of Goods or Services, sizes, quantities, weight, unit prices, value added taxes payable and extended totals.

8. QUALITY

8.1 The Supplier shall have its manufacturing quality system certified to one of the international specifications nominated by the Purchaser by an independent and qualified third party.

8.2 The Purchaser may perform periodic quality audits and the Supplier shall cooperate as required in the inspection and testing of Goods, components, equipment and quality systems.

8.3 Without limiting any other remedies available to the Purchaser, the Supplier will be charged the Purchaser's reasonable actual costs incurred as the result of the provision of defective Goods.

8.4 The Supplier may outsource elements of production to third parties, provided that the Supplier retains responsibility for the quality of the final Goods, the ability to trace the source of material and product numbers is maintained, and the Supplier obtains written approval from the Purchaser prior to outsourcing or substituting third party producers.

8.5 The Supplier must inform the Purchaser of any proposed changes to processes or materials as they relate to the Goods or Services and obtain written approval from the Purchaser to implement the proposed changes.

9. SPARE PARTS

9.1 The Supplier shall make spare parts available for 10 years after the last delivery date of any Goods.

10. MANAGEMENT REVIEWS

10.1 The Supplier agrees to meet with the Purchaser's management on a periodic basis to review delivery performance, quality issues, continuous improvement activities and cost reduction strategies.

11. PURCHASER'S PROPERTY

11.1 The Purchaser or its licensors own the Intellectual Property Rights and all other rights in all drawings, specifications, artwork, data, supplies, equipment, tooling, dies, moulds, designs, fixtures, patterns and any other materials provided by the Purchaser to the Supplier in connection with this agreement ("Purchaser Material").

11.2 Where the Supplier develops a product that is supplied to the Purchaser under a Purchase Order:

(i) to the extent that the development of the product involves the creation of Intellectual Property Rights by the Supplier ("Developed Material"), the Supplier assigns unconditionally to the Purchaser the Developed Material upon its creation. The Supplier will do all things necessary to give effect to the assignment of Developed Material, including executing any documents which are reasonably required by the Purchaser to be executed; and

(ii) to the extent that the development of the product involves the use or modification of drawings, specifications, artwork, data, supplies, equipment, tooling, dies, moulds, designs, fixtures, patterns or any other materials owned by the Supplier or its licensors ("Supplier Material"), the Supplier grants the Purchaser a non-exclusive, royalty-free, irrevocable and perpetual licence (including the right to sub-license) to use the Supplier Material to the extent necessary for the Purchaser to operate, maintain, develop, repair or otherwise support the product.

11.3 The Purchaser grants the Supplier a limited non-exclusive, royalty-free, non-transferrable and non-sublicensable licence to use the Purchaser Material and the Developed Material only for the sole purpose of fulfilling a Purchase Order. The Supplier must not use the Purchaser Material or Developed Material for any other purpose without the Purchaser's prior written approval.

11.4 Upon the termination or expiry of this agreement, the Supplier must:

(i) immediately cease to use any of the Purchaser Material or Developed Material; and

(ii) at the Purchaser's option, return to the Purchaser all records of the Purchaser Material or Developed Material in the Supplier's possession or control, or destroy or permanently disable access to all records of the Purchaser Material or Developed Material in the Supplier's possession or control.

If requested by the Purchaser, the Supplier agrees to provide a statutory declaration by its chief executive officer that the Supplier has complied with this clause 11.4.

11.5 The Supplier warrants that the Developed Material and Supplier Material, and the exercise of the Purchaser's rights in respect of the Developed Material and Supplier Material under this agreement, do not infringe the Intellectual Property Rights of any person.

11.6 The Supplier indemnifies the Purchaser against all loss, damage, expense or liability arising out of or in connection with:

(i) any breach of the warranty in clause 11.5; or

(ii) any third party claim that the Developed Material or Supplier Material, or the exercise of the Purchaser's rights in respect of the Developed Material or Supplier Material under this agreement, infringes their Intellectual Property Rights.

11.7 The Supplier further agrees not to use the Purchaser's trademarks and trade names on any products except on the Products, including packaging, sold to Purchaser.

12. ETHICS

12.1 The Supplier shall comply in all aspects, and take reasonable steps to ensure compliance by its employees and subcontractors, with the Code of Ethics.

13. CONFIDENTIALITY

13.1 As part of the business relationship between Purchaser and Supplier, Supplier may learn or come into possession of information or data that constitutes trade secrets, know-how, confidential information or other data which are confidential information of Purchaser ("Confidential Information"). Confidential Information does not include information which is already in the public domain, except to the extent that the information is in the public domain by reason of a breach of this clause 13.2. Supplier must not disclose the Confidential Information to any person except:

(i) representatives of the Supplier requiring it for the purposes of this agreement, subject to the recipient agreeing to be bound by confidentiality obligations no less onerous than those in this clause 14. Any act or omission by the recipient in respect of the Confidential Information will be deemed to be an act or omission by the Supplier;

(ii) with the consent of the Purchaser;

(iii) if the Supplier is required to do so by law or the lawful request of a stock exchange; or

(iv) if the Supplier is required to do so in connection with legal proceedings relating to this agreement or any other agreement between the parties.

14. WARRANTY & INDEMNITY

14.1 The Supplier warrants that the Goods: (i) are safe; (ii) are free from encumbrances, defect or fault; (iii) are of merchantable quality; (iv) include appropriate and correct warnings and instructions; (v) are fit for the purpose for which purchased; (vi) comply with any representations, descriptions, samples or Specifications including quality, function, performance or designs; and (vii) include a Supplier's warranty for a period of at least 12 months that passes to the consumer from the Purchaser without liability to the Purchaser.

14.2 The Supplier must defend, indemnify and hold the Purchaser, its affiliated companies, and their representatives, successors, and assigns harmless from and against any and all Loss arising directly or indirectly from or in connection with: (i) the acts, negligence, omissions or willful misconduct of the Supplier; (ii) the Goods supplied; (iii) a breach of any of the Supplier's warranties or any other term specified in these Conditions; (iv) a claim that any Goods supplied to the Purchaser infringe upon or misappropriate any patent, copyright, trademark, trade secret or other intellectual property interest of another; or (v) a claim of any lien, security interest or other encumbrance made by a third party.

15. MISCELLANEOUS

15.1 The Supplier may not assign or otherwise transfer its rights and obligations under these Conditions without the prior written consent of the Purchaser.

15.2 The laws of the territory in which the Goods are supplied or the Services performed will govern the Purchase Order.

15.3 The Supplier must obtain and maintain public liability insurance with a reputable insurer for at least US\$10 million, and insure the Goods with a reputable insurer for their full replacement cost.

15.4 The Supplier is an independent contractor of the Purchaser.

15.5 These Conditions constitute the entire agreement between the parties as to its subject matter and supersedes any prior understanding or agreement between the parties.

15.6 If either party gives or is required to give a notice to the other party, it must be in writing and directed to the General Manager. The notice may be sent by registered post or facsimile.

15.7 The failure of a party to require performance of any obligation under these Conditions is not a waiver of that party's right to insist on performance or, or claim damages for breach of, that obligation unless that party acknowledges in writing that the failure is a waiver.

15.8 Each provision of these Conditions is severable. Severance does not affect any other provision.

15.9 No variation to these Conditions will be of any force or effect unless in writing signed by an authorised representative of each party.