

## PURCHASE ORDER TERMS AND CONDITIONS

**1. Supply of goods and/or services.** The Supplier shall supply the goods and/or services specified in this Purchase Order to the Company as and when requested by the Company in accordance with these terms and conditions.

**2. Order and supply.** The Supplier shall:

- (a) confirm its acceptance or rejection of a Purchase Order within two working days of it having been placed by the Company; and
- (b) supply the goods and/or perform the services specified in this Purchase Order on or before the delivery date specified.

**3. Resources.** The Supplier shall maintain sufficient stocks of the goods and retain sufficient staff and resources for the performance of the services, to meet the Company's reasonably foreseeable demand for such goods and services.

**4. Specifications.** The goods and services shall comply with the specifications provided either in this Purchase Order or supplied by the Company or the Supplier separately. Without limiting the foregoing, the services shall be performed in accordance with the best industry practice in Australia.

**5. Approval and Inspection.** All goods or services supplied against this Purchase Order shall in the case of goods be subject to the approval of the Company and its inspection within a reasonable time after delivery and in the case of services, be subject to the approval of the Company during their rendering or following their completion as the case may warrant. The Company may reject any goods if, in the Company's reasonable opinion, they do not comply with any requirement of the relevant Purchase Order or these terms and conditions.

**6. Reserved Rights.** (a) If goods are rejected by the Company they shall be held at the Supplier's risk and returned to the Supplier at the Supplier's expense. In the case of defective goods, the Company reserves the right to require the Supplier, upon giving written notice, to, within the timeframe specified in the notice:

- (i) replace the goods or supply equivalent goods;
- (ii) pay the cost of replacing the goods or of acquiring equivalent goods;
- (iii) repair the goods; or
- (iv) pay the cost of repairing the goods.

(b) If services are rejected by the Company, the Company reserves the right to require the Supplier, upon giving written notice, to supply the services again or pay the cost of having the services supplied again.

(c) The rights conferred on the Company under sub-clauses (a) and (b) may be exercised without prejudice to any other rights or remedies the Company may have at law or in equity.

(d) The Supplier shall, at the Company's option, pay (or credit to the Company) all costs incurred by the Company due to the delivery of goods or services which are rejected by the Company under sub-clauses (a) or (b), including but not limited to administrative costs.

(e) No faulty or surplus goods manufactured under a Purchase Order for the Company, whether rejected by the Company or not are to be offered for sale or sold by the Supplier to third parties.

**7. Supplier's Indemnity.** The Supplier releases and indemnifies the Company its employees and agents against all costs, losses, liabilities, damages, fines, penalties, economic losses, loss of profits, actions claims and demands (including the cost of defending or settling any action claim or demand) suffered by the Company whether arising directly or indirectly out of a breach of this agreement by the Supplier or the willful, fraudulent, reckless, negligent or intended act or omission of the Supplier, its agents, employees or sub-contractors or of any other person for whose acts or omissions the Supplier is vicariously liable, except to the extent that any of the loss, liability, damages, costs and expenses are caused by or contributed to by the Company's negligent act or omission.

**8. Insurances.** The Supplier shall (at its own cost) effect and keep in force during the supply of any goods or services against this Purchase Order the following insurances:

- (a) workers' compensation (to include any subcontractors of the Supplier) in accordance with the requirements of all relevant laws;
- (b) motor vehicle liability;
- (c) loss of or damage to the goods (including while in storage or in transit) until risk has passed to the Company, for their full reinstatement value;
- (d) public and products liability insurance of not less than \$20,000,000 per occurrence; and

(e) any other insurances as required by law or that a prudent person would take out in relation to the supply of the goods or services.

The insurances referred to in (c) and (d) shall if required by the Company be endorsed to include the interests of the Company. When requested, the Supplier shall provide the Company with satisfactory evidence that all such insurances specified are in force.

**9. Warranties.** The Supplier warrants that:

- (a) at the time of delivery, all goods supplied shall:
  - (i) correspond with their description and specifications provided either in this Purchase Order or supplied by the Company or the Supplier separately;
  - (ii) be unused and free from any encumbrance or security interest;
  - (iii) be of acceptable quality and free from any defects;
  - (iv) be reasonably fit for the purpose for which they are acquired and be free from defects in design, material and workmanship;
  - (v) correspond with any sample in quality; and
  - (vi) carry any applicable manufacturer's warranty which shall pass to the Company;
- (b) all services supplied shall:
  - (i) be reasonably fit for the purpose for which they are supplied;
  - (ii) comply with the specifications provided either in this Purchase Order or supplied by the Company or the Supplier separately;
  - (iii) be provided within the time specified by the Company either in the Purchase Order or separately, or, if no time is specified, within a reasonable time; and
  - (iv) be rendered with due care and skill;
- (c) the Company's possession or use of the goods and/or services will not infringe upon or violate any intellectual property rights of any person;
- (d) it has and will maintain all necessary licences, approvals, permits and authorities in relation to the supply of the goods and/or performance of the services;
- (e) it will comply with all relevant laws (including without limitation, the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) as amended from time to time) and the reasonable directions of the Company in relation to the supply of the goods and/or performance of the services;
- (f) it will use only, and provide all, appropriately skilled, qualified and experienced personnel, processes and resources required to supply the goods and/or perform the services; and
- (g) without limiting sub-clauses (a) to (f) it will exercise that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, reasonable and experienced operator in the same or similar circumstances, with reference to best international standards.

The warranties contained in this clause 9 are deemed to be repeated on each occasion a good is delivered to the Company or a service is performed for the Company, by the Supplier.

**10. Advertising.** This Purchase Order does not entitle the Supplier to use the Company's name, logo, trademarks or any other brand-related elements in any advertising or for any other purpose without the Company's prior written consent.

**11. Alterations.** (a) No changes to this Purchase Order by the Supplier shall be made without the prior written consent of the Company.

(b) The Company shall be entitled to vary the Purchase Order or, subject to agreement by the Supplier, the specification of goods and/or services the subject of the Purchase Order, at any time in writing to the Supplier.

**12. Spare Parts.** The Supplier agrees that spare parts and replacements for the goods will be available to the Company on reasonable commercial terms for a period of not less than ten years from the date of the Purchase Order and that prior to the goods or spare parts being made obsolete at least 4 months' written notice will be given to the Company.

**13. Price.** (a) This Purchase Order is placed on a firm price basis in accordance with the price listed overleaf and includes delivery to the stated destination and the off-loading of the goods by the Supplier at the point of destination. The price may not be increased without the prior written consent of the Company.

(b) Except as provided in sub-clause (c), payment for the goods or services shall be made within 90 days following receipt of invoice which shall not be rendered until the goods are delivered to the Company or the services fully rendered. Any payment so made shall be without prejudice to the rights of the Company under these terms and conditions.

(c) All invoices, delivery notices and statements of account must show clearly the order number used by the Company.

(d) If the Company in good faith disputes the accuracy of any invoice, the Company shall, prior to the due date for payment of that invoice, give notice of that fact to the Supplier. That notice shall state the basis of the dispute and give

relevant supporting details. The Company may withhold payment of an entire invoice, notwithstanding that a portion of the invoice may not be disputed. If the parties do not resolve the dispute within 20 working days of the date of the notice, representatives from each party must meet and use all reasonable endeavours to resolve the dispute by negotiation.

(e) The Supplier acknowledges that the Company may deduct or set-off against any monies due by the Company to the Supplier, any amounts owed by the Supplier to the Company, including damages, costs or expenses incurred or suffered by the Company.

**14. No Royalties.** All goods supplied are for the use of or re-sale by the Company or its associated companies and may be incorporated in any products in which event no claim shall lie for royalties or other additional compensation.

**15. No Minimum.** The Company is not required to obtain from the Supplier any minimum value of goods or services, or to provide any minimum level of income to the Supplier.

**16. Subcontractors.** (a) The Supplier shall not without the prior written consent of the Company subcontract the execution of any Purchase Order.

(b) The Supplier shall, notwithstanding any subcontracting, remain liable to the Company for all of its obligations under these terms and conditions and all acts, defaults and negligence of any subcontractor as fully as if they were the acts, defaults or negligence of the Supplier.

**17. Programme.** If requested by the Company when the Purchase Order is placed, the Supplier shall furnish the Company with a detailed manufacturing schedule in respect of the goods and shall keep the Company informed of all variations from such schedule provided that no acceptance by the Company of any such notice or variation shall be deemed a waiver by the Company of any of these additions or its rights under these terms and conditions in respect of late delivery.

**18. Termination by Company.** Without prejudice to any other rights the Company may have at law or under statute or under these terms and conditions or otherwise and without incurring any liability whatsoever to the Supplier:

(a) the Company may terminate this Purchase Order immediately by notice in writing if:

(i) the Supplier breaches any material obligation under these terms and conditions or any Purchase Order and fails to remedy the breach to the Company's reasonable satisfaction within 20 working days after receiving written notice from the Company specifying the breach and requiring remedy; or

(ii) the Supplier ceases to carry on all or substantially all of its business or operations;

(iii) any execution or other legal process is levied upon any of the Supplier's assets;

(iv) the Supplier or any of its directors, officers or employees becomes for any reason persona non-grata in any jurisdiction or to any Government or Government official;

(v) the Supplier fails or refuses to cooperate with any audit or investigation conducted by the Company under clause 28; or

(vi) the Supplier commits an act of bankruptcy or fails to pay its debts as and when they fall due.

(b) Without limiting the Company's other rights and remedies, if the Supplier refuses or otherwise fails to supply goods or services in accordance with this Purchase Order, the Company may terminate this Purchase Order(s) immediately by written notice and refuse to take delivery of all goods not delivered and accepted at the date of such notice. The Company shall not be liable in any way whatsoever to the Supplier in respect of such termination and the Supplier shall pay any costs incurred by the Company due to the Supplier's refusal or failure, including any additional costs of obtaining such goods or services from an alternate provider.

**19. Force majeure.** In the event of any complete or partial stoppage of the business of the Company by reason of any strike, lock-out, fire flood, government regulation or any other cause beyond the control of the Company, the Company shall have the right at its option to suspend delivery of the goods or to cancel the Purchase Order in whole or in part or to delay payment.

**20. Termination by Supplier.** Without prejudice to any other rights the Supplier may have at law or under statute or under these terms and conditions or otherwise and without incurring any liability whatsoever to the Supplier, the Supplier may terminate this Purchase Order immediately by notice in writing if:

(a) the Company breaches any material obligation under these terms and conditions or any Purchase Order and fails to remedy the breach to the Supplier's reasonable satisfaction within 20 working days after receiving written notice from the Supplier specifying the breach and requiring remedy; or

(b) the Company ceases to carry on all or substantially all of its business or operations;

(c) any execution or other legal process is levied upon any of the Company's assets; or

(d) the Company commits an act of bankruptcy or fails to pay its debts as and when they fall due.

**21. Termination for Convenience.** (a) Either party may terminate this Purchase Order in whole or in part at any time by giving 30 days' written notice to the other party in which event the Supplier shall:

(i) stop all work and place no further orders or subcontract for materials, services, equipment or supplies except as may be necessary to complete any part of its performance under this Purchase Order not terminated;

(ii) take any other action toward completion and termination of its performance under this Purchase Order which the Company may direct.

(b) In the event of termination under this clause, the Company shall pay to the Supplier the price of all such goods and services, including works in progress, as shall have been delivered to and accepted by the Company at the date of the notice of termination and in respect of which the Supplier has not been paid.

(c) After receipt of a notice of termination the Supplier shall submit to the Company its written claim for amounts payable by the Company in the form and with the certification which the Company may prescribe. Such claim shall be submitted promptly (but in no event more than 45 days after the effective date of termination) for the Company's agreement. Payment of any such part of a claim as is agreed shall be made by the Company to the Supplier in full as soon as practicable but not later than 45 days from the Supplier receiving written notification from the Company of its agreement to the claim or claims and shall constitute a complete discharge of the Company from all liability to the Supplier howsoever arising.

**22. Health and Safety.** (a) The Supplier shall upon acceptance of the Purchase Order supply the Company with a written statement indicating any possible risk to health and/or safety which may be connected with the goods when these are properly used together with particulars of safety instructions to be followed by the Company to ensure that the goods are safe for use at work.

(b) The Supplier warrants that it will ensure that its personnel comply with all health and safety plans and procedures notified by the Company to the Supplier and otherwise comply with the occupational health and safety laws in force from time to time.

**23. GST.** If GST is imposed on any supply made by one party ("GST Supplier") to the other party under this Purchase Order, the recipient of the supply ("Recipient") must pay, in addition to any consideration payable under this agreement for the supply, an additional amount for the supply calculated by multiplying the prevailing GST rate by the consideration for the relevant supply provided always that the GST Supplier issues a valid tax invoice to the Recipient within 7 days after the occurrence of any event that causes the GST liability of the GST Supplier on any taxable supply to the Recipient to be attributed to a particular tax period. In this clause, the expression "GST" means the goods and services tax imposed in Australia by *A New Tax System (Goods and Services Tax) Act 1999* and the terms "taxable supply" and "tax invoice" have the same meaning as in that Act.

**24. Intellectual Property.** (a) The Supplier indemnify the Company and users of goods and services supplied against this Purchase Order from and against any claim relating to the supply to and/or use of the goods and/or services by the Company based on actual or alleged infringement of any intellectual property in the goods or services.

(b) Intellectual property rights which are owned by the Company will remain owned by the Company, and the Supplier shall not have any rights to such intellectual property rights.

(c) The Supplier shall assign to the Company all rights, title and interests in all existing and future intellectual property rights expressly commissioned by the Company for the purposes of a Purchase Order and authored or developed by the Supplier or the Supplier's employees, contractors or agents in connection with the provision of the goods and/or services.

(d) The Supplier shall not use, or permit the use of, the intellectual property rights of the Company, other than where, and only to the extent that, it is required to do so to give effect to a Purchase Order, or with the Company's written consent.

(e) The Supplier shall not permit any information about or photographs of the goods supplied or to be supplied under any Purchase Order made by the Company to be used for any publicity purposes whatsoever without the prior written consent of the Company.

**25. Risk.** (a) All goods supplied against this Purchase Order are at the Supplier's risk until delivered to the destination stated in this Purchase Order.

(b) The goods shall be packed or crated and protected as necessary during transit in such a manner as to reach the Company in good condition, and the Supplier will repair or replace without charge to the Company all goods damaged or lost in transit however sent.

**26. Title.** (a) Without prejudice to the rights of the Company expressed in these terms and conditions whether implied by law, statute or otherwise and subject to sub-clause (b) below, property in the goods shall pass to the Company on their delivery in accordance with the terms and conditions of the Purchase Order.

(b) Any goods or materials purchased or allocated by the Supplier for the purpose of the Purchase Order shall immediately vest in the Company where advance or progress payments have been or are being made by the Company and the Supplier expressly waives any lien on such goods or materials which might otherwise attach by operation of law or custom and usage.

**27. Ethics and Compliance.** When carrying out its obligations hereunder, the Supplier must comply with the UTC Supplier Code of Conduct available at [http://www.utc.com/Suppliers/Documents/UTC\\_Supplier\\_COC.pdf](http://www.utc.com/Suppliers/Documents/UTC_Supplier_COC.pdf), as updated from time to time, including, without limitation:

(a) complying at all times with applicable law, including laws prohibiting collusion, conflicts of interest, corruption and unfair competition;

(b) refraining (directly or indirectly) at all times from offering, promising, attempting to provide or providing any corrupt payment to any employee of the Company or government official, any ownership or financial interest in the Supplier;

(c) promptly and accurately recording in its books and records all transactions and expenses related to the provision of the goods and/or services to the Company;

(d) comply with all applicable registration and reporting requirements relating to the provision of the goods and/or services to the Company.

**28. Audit.** The Company or its nominee may, on reasonable notice to the Supplier, conduct an independent audit of the Supplier's operations to verify the Supplier's compliance with these terms and conditions, the UTC Supplier Code of Conduct and its accounting and business practices relating to the provision of the goods and/or services to the Company. The Supplier must provide access to its operating site, books, records and relevant company compliance systems documentation for the purposes of such an audit. In the event an audit identifies the Supplier is in breach of these terms and conditions the Supplier will bear the cost of the audit and the Company will be entitled to recover damages arising from such breach.

**29. Confidentiality.** (a) Except as may be required by law, necessary to comply with the listing rules of any recognised stock exchange or to obtain the benefits of, and fulfil obligations under, these terms and conditions or if that information already is, or becomes, public knowledge other than as a result of a breach of this clause 29, each party undertakes to keep the confidential information of the other party secret and to protect and preserve the confidential nature and secrecy of the confidential information of the other party.

(b) Upon the request of the Company, the Supplier shall, as soon as possible, return to the Company all confidential information provided to the Supplier by the Company.

**30. Entire Agreement.** These terms and conditions constitute the entire agreement between the parties with respect to the matters dealt with in this Purchase Order and any previous agreements, correspondence or representations in relation to such matters shall cease to have any further force or effect, save for any agreement executed by the parties which contemplates a Purchase Order being issued, in which case the order of precedence set out in that agreement applies. If there is no such order of precedence, the executed agreement prevails over this Purchase Order to the extent of any inconsistency. For the avoidance of doubt, the acceptance of the Purchase Order by the Supplier shall be deemed to be an acceptance of these terms and conditions to the exclusion of any terms and conditions of supply used or imposed by the Supplier.

**31. Interpretation.** In these terms and conditions:

(i) "Company" means the company and ABN stated on the Purchase Order;

(ii) "Supplier" means the seller of the goods and services specified in the Purchase Order overleaf;

(iii) "goods" and "services" means the products and, if any, services specified overleaf; and

(iv) "Purchase Order" means the order for the goods or services constituted by this document.

**32. Notices.** Any notice required to be given under these terms and conditions shall be sufficiently given if sent by registered post or by hand to the recipient at its

registered or last known address and shall be deemed to have been properly served, if posted, on the next business day following postage or, if served by hand, on the day of delivery.

**33. No Assignment.** The Supplier may not assign, transfer, novate, encumber or otherwise deal with all or part of its rights or obligations under this Purchase Order without the prior written consent of the Company.

**34. No waiver.** No party shall be deemed to have waived any rights under this Purchase Order unless such waiver is in writing and signed by such party and any such waiver by one party of a breach of any provision of these terms and conditions by any other party shall not be deemed to be a waiver of any subsequent or continuing breach of such provision or of the breach of any other provision of this Purchase Order by that other party. A delay or omission by or of a party to exercise any right under this Purchase Order shall not in any manner impair the later exercise of that right or any other right accruing to it thereafter.

**35. No partnership or agency.** Nothing in this Purchase Order shall create or evidence any partnership, joint venture, agency, trust or employer/employee relationship between the parties and a party may not make, or allow to be made, any representation that any such relationship exists between the parties. A party shall not have authority to act for, or to incur any obligation on behalf of, the other party, except as expressly provided for in this Purchase Order.

**36. Governing Law.** These terms and conditions and Purchase Order shall be governed, construed and shall take effect in accordance with, the laws of New South Wales and the parties agree to submit to the exclusive jurisdiction of the Courts of that State.