



STANDARD TERMS AND CONDITIONS OF PURCHASE

KHG-FRM-COM-1132

Purchase Order Terms and Conditions

1. ACCEPTANCE.

This purchase order constitutes the entire agreement between KHG Contracting Pty Ltd (KHG) and Supplier regarding the subject matter hereof and supersedes all provisions in any prior offer, quotation or proposal by Supplier. It may be amended only by written change orders signed by KHG. By acknowledging receipt of this order or by shipping the goods or performing the services called for by this order, Supplier agrees and accepts the terms and conditions contained herein.

KHG shall not be bound to this purchase order, any order confirmation or other form of Supplier unless signed by KHG.

2. PRICING AND PAYMENT.

All pricing is in Australian Dollars (unless otherwise stated). If prices are omitted on the face of this order, Supplier's prices are subject to KHG's written approval attached to the face of this order. To the extent that rates for variations are specified, they shall be used by the Supplier to calculate the cost of a variation, but otherwise the cost of the variation shall be estimated by the Supplier at the lowest reasonable cost.

Unless otherwise agreed, the Supplier shall invoice KHG at the end of each month for the goods or services duly completed in that month. Invoices received earlier than the end of the month, will be deemed as received at the end of the month. KHG will (subject to the goods or services having been satisfactorily received, or completed and accepted by KHG) pay the amount properly invoiced by the Supplier (except to the extent that the invoice is in dispute). KHG will pay to the Supplier all undisputed amounts. The amount payable by KHG will be paid 25 Business Days from month end in which the Supplier's tax invoice is received by KHG. KHG may deduct from such amount due and payable by KHG pursuant to these Terms and Conditions, any amounts payable by the Supplier to KHG on any account whatsoever.

3. SHIPPING.

Supplier shall pay all packing and cartage costs unless otherwise shown on the face of this order. The goods shall be packed and shipped by Supplier in accordance with KHG's instructions and good commercial practice to ensure against damage from weather or transportation.

4. PAYMENT OF DISCOUNTED INVOICES.

Payment of Supplier's invoices shall be subject to subsequent adjustment for shortages and for allowance for articles rejected and expense of rework incurred by KHG. Under no circumstances will KHG pay interest charges resulting from late payment of Supplier's invoices.

5. CHANGES.

KHG may at any time make changes to this order KHG deems necessary. If any such change causes an increase or decrease in Supplier's cost, Supplier shall within 15 days submit a detailed cost breakdown showing the reasons for such increase/decrease. If any such change affects delivery, Supplier shall also within 15 days notify KHG in writing of the new delivery schedule and the reasons for such change. Any change will only be authorised by written amendment to the basic purchase order signed by KHG and attached to the original order. Nothing herein shall excuse Supplier from processing with the order as changed.

6. TIME IS OF THE ESSENCE.

Time is of the essence. If deliveries are not made at the time specified KHG reserves the right to cancel, or require that delivery be made by express air freight at Supplier's cost, or purchase the goods and/or services elsewhere and hold Supplier accountable.

7. TERMINATION.

KHG may terminate this purchase order at any time and for any reason by written notice to Supplier. In the event of termination for cause, KHG shall have no liability whatsoever to Supplier. In the event termination is not for cause, then Supplier shall be entitled to receive only reasonable costs and expense incurred in performance of this purchase order to the date of termination, provided Supplier submits notice of the costs and expense incurred to KHG within 60 days after the date of termination. Any termination by KHG shall be without prejudice to any claims for damages or other rights of KHG against Supplier. KHG shall have the right to audit all elements of any termination claim and Supplier shall make available to KHG on request all books, records and documents relating thereto.

8. PROPRIETARY INFORMATION.

KHG shall at all times have title to all drawings, specifications and other documents furnished by KHG hereunder. Supplier shall hold them in confidence and use the same only to the extent necessary for execution of this purchase order and shall, upon KHG's request, promptly return to KHG all copies of the same.

9. KHG-FURNISHED MATERIAL.

When KHG furnishes material for this order, no scrap allowance will be allowed without KHG's express written agreement. Additional material supplied as a result of Supplier's spoilage will be charged to Supplier at KHG's cost plus handling. Such charges may be deducted from any amounts due to Supplier. Spoiled and unused material shall be returned F.O.B. KHG's plant, or a credit allowed at prevailing market prices, at KHG's option. Supplier will promptly furnish KHG, upon request, a detailed inventory of all materials belonging in Supplier's possession.

10. UNAUTHORISED REWORK.

Under no circumstances is the Supplier permitted to use substitute material, to replace defective articles or to repair or rework them, by welding or otherwise without KHG's written permission.

11. NON-ASSIGNMENT.

Assignment by Supplier of this order or any part thereof without written consent of KHG shall be void.

12. WARRANTY-PRODUCT.

Supplier warrants all goods delivered hereunder shall be of new and first quality material, of good workmanship and free from defects, and that such goods shall conform to specifications, drawings, samples or other descriptions referenced herein and shall be fit for the purpose for which purchased. Supplier further warrants that services furnished hereunder shall conform to specifications and shall be performed in a skilled and workmanlike manner. Goods or services found to be defective in material or workmanship or nonconforming with specifications shall, at KHG's option, be replaced, corrected, or repaired in place by Supplier, or be replaced at KHG's premises by Supplier, or be returned to Supplier at Supplier's expense (including transportation and handling costs) for full refund. This warranty shall survive any inspection, delivery, or acceptance of the goods or services, or payment by KHG. This warranty shall run to KHG, its successors, assigns and customers and the users of its products. Nothing herein, not KHG's exercise of any right hereunder, not replacement, repair or correction of defective goods or services by Supplier, shall limit KHG's right to be reimbursed for any and all damages resulting from any breach of this warranty, including without limitation consequential and indirect costs of any nature.

13. WARRANTY-PRICE.

Supplier warrants that the price charged KHG for the goods and services furnished pursuant to this order are no higher than prices charged to others for similar orders of comparable goods and/or services subsequent to the last general announced price change. In the event Supplier breaches this warranty the prices of the goods and/or services shall be reduced accordingly, retroactively to the date of such breach. If at any time during the term of this agreement KHG is able to secure any goods and/or services specified herein at a lower price than herein stated, and if, after notice in writing, Supplier is unwilling or unable to meet such lower price, KHG shall have the right of purchasing such specific amount and applying it against this agreement. Supplier agrees that any price reduction in the goods and/or services subsequent to placement of this order, but prior to shipment, shall be applied to this order. Unless otherwise specified on the front side hereof, the stated price includes all applicable federal, state and local taxes and any duties or other charges applicable to the goods and/or services.

14. INDEMNITY AND INSURANCE.

Supplier shall defend, indemnify and hold KHG, its employees, agents, customers, successors and assigns, harmless from any and all liabilities (including legal fees), claims, or suits arising out of: (a) Supplier's defective performance of this purchase order; and (b) any claim that the subject goods or services infringe any patent, trademark, or similar rights. Supplier shall maintain such public liability insurance (including products liability, completed operations, contractors' liability and protective liability), automobile liability insurance, (including non-owned automobile liability), and workmen's compensation and employers' liability insurance as will adequately protect KHG against such damages, liabilities claims, losses and expense (including legal fees). Supplier agrees to submit certificates of insurance evidencing its insurance coverage when requested by KHG.

15. REMEDIES; WAIVER; MISCELLANEOUS.

No remedy herein provided shall be deemed exclusive of any other remedy allowed by law. Risk of loss of the goods shall pass to KHG at the time they are actually delivered to its premises. No claim or right arising out of a breach of this agreement can be discharged in whole or part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. Waiver by KHG of a breach by Supplier of any provision of this agreement shall not be deemed a waiver of any other provision or of future compliance with all provisions of this agreement, and all such provisions shall remain in full force and effect. All warranties shall be construed as conditions as well as warranties. No modification of any provision of this order shall be valid or binding upon KHG unless approved by KHG in writing by an authorised agent. This order is a final, complete and exclusive statement of the terms of the agreement between KHG and Supplier. In addition to any other damage or remedies provided by law, Supplier shall be liable to KHG for actual legal fees incurred by KHG in the enforcement and adjudication of its right under this agreement. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from the agreement, but the rest of the agreement is not affected.

16. LAWS AND GOVERNMENT REGULATIONS.

These Terms and Conditions shall be governed by the laws of Western Australia.

Supplier warrants and represents that it will fully comply with all laws, orders, rules and regulations of all governmental authorities which regulate or affect the goods or services supplied. If this order is indicated for a government contract, Supplier further agrees to fully comply with all applicable regulations and filings governing such contracts.

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