

Purchase Order Terms and Conditions

1. Definitions

In these Terms and Conditions unless context requires otherwise:

- a. "Buyer" means Constructpro Pty Limited (ABN 821 299 367 96);
- b. "Terms and Conditions" means these terms and conditions including the Purchase Order;
- c. "Goods" means all goods referred to in the Purchase Order whether raw materials, processed materials or fabricated products to be supplied by Seller;
- d. "Intellectual Property Rights" means and patent, copyright, design or trade mark and any right to registration of any patent, copyright, design or trade mark, or any other similar or other like right, including rights to trade secrets, know-how and proprietary or confidential information;
- e. "Moral Rights" has the meaning given to it in the Copyright Act 1968(Cth);
- f. "Non-excludable Rights" means any rights, terms or warranties which are imposed by statute (including but not limited to the Trade Practices Act, 1974 (Cth)) and which cannot be modified, limited or excluded by law;
- g. "Personal Information" has the meaning given to it in the Privacy Act 1988 (Cth);
- h. "Price" means the price to be paid by Buyer to Seller for the Goods or Services;
- i. "Purchase Order" means Buyer's purchase order which cross references or is supplied with these Terms and Conditions;
- j. "Seller" means the Person to whom the Purchase Order is issued;
- k. "Services" means services referred to in the Purchase Order to be provided by Seller;
- l. "Person" includes legal person;
- m. "Warranty Period" means the period specified as such in the Purchase Order (which may not be less than 90 days), or in the event that no such period is specified, a period which commences upon the delivery date of the goods or the date of performance for services and Conditions for 12 months from the date of acceptance.

2. Obligations and Warranties

The Seller covenants, represents and warrants to the Buyer that the Goods and the Services:

- a. Conform to the description provided by the Seller at the date of delivery;
- b. Are and will for the Warranty Period continue:
 - i. to conform to specifications agreed by the Buyer and the Seller or if no such specifications are agreed the Seller's published specifications for the goods or the Services; and
 - ii. Be free from defects in design, workmanship and materials;

- c. Comply with all applicable laws, regulations and Australian Standards and are supplied with all necessary approvals, licences and certification to fully enjoy the benefit of the goods and the Services;
- d. Are of merchantable quality and are fit for the purpose for which they are ordinarily acquired;
- e. Are new (unless otherwise agreed by the Buyer);
- f. Are free of all charges, liens and encumbrances;
- g. Carry a commercially realistic remaining period at date of receipt, for goods with “use-by” dates;
- h. Do not infringe the Intellectual Property Rights of any Person;
- i. The Goods will interface and interoperate with all systems with which the Goods must interface or interoperate with;
- j. Are date capable (meaning that the Goods or Services are and will continue in accordance with the Terms and Conditions notwithstanding any change of the date);
- k. Do not contain and will not introduce any virus, Trojan, worm, disabling code and/bugs into the Buyer’s network or systems;
- l. Are delivered and will be performed by the Seller’s personnel who shall comply with all relevant directions, policies and procedures of the Buyer when on the Buyer’s premises or handling the Buyer’s data or Intellectual Property Rights including those directions, policies and procedures regarding security and occupational health and safety.

3. Definitions

- a. Time is of the essence in respect to the Seller’s obligations for the delivery of the Goods and Services. The Seller must deliver the goods by the time date, which is indicated in the purchase order.
- b. The Seller must perform the services or deliver the Goods at or to (as the case may be) the premises specified in the Purchase Order.
- c. Proof of delivery signed by an authorised Buyer representative is required to be held by the Seller as a record the Goods have been delivered. The Buyer’s acknowledgement of delivery does not imply acceptance of the quality or quantity of Goods.
- d. Acceptance occurs only after the inspection and approval of both the quality and quantity of the Goods delivered.
- e. Where the failure to deliver on the date and at the place specified in the Purchase Order is directly or indirectly caused by the Seller, the Seller shall indemnify the Buyer for any loss or damage suffered (including full legal expenses, any consequential loss, loss of profits or loss resulting from third party claims) arising out of or connected with the failure to deliver.

4. Rejection of Goods/Services

Where the Goods or Services are not delivered / performed within the time specified on the Purchase Order, the Buyer may refuse to accept Goods or Services and terminate the Purchase Order; and / or at its option make alternative arrangements to supply. The Buyer may also reject Goods or Services not conforming with the Purchase Order, upon delivery or at any time thereafter. Payment for such Goods or Services shall not prejudice the right of rejection and any claim for refund. Any payment made to the Seller by the Buyer with respect to Goods or Services, which are later rejected by the Buyer, must be refunded.

5. Purchase Order Acceptance

All Purchase Orders shall bear a number and be approved by a duly authorised Buyer representative. All Purchase Orders shall be subject to these Terms and Conditions and any additional conditions noted in the Purchase Order. The supply of Goods and / or Services by the Seller shall constitute acceptance by the Seller of these Terms and Conditions as the only terms and conditions relevant to this transaction.

The Seller must quote on all invoices and delivery dockets, the number appearing on the Purchase Order. Any Buyer part number appearing on the Purchase Order must be shown on all invoices and delivery notes, and on the Goods label.

6. Invoice Terms

- a. Each invoice must specify the Purchase Order number, contain a brief description of the Goods or Services provided, specify the Supplier's name and ABN, specify the GST exclusive price, the GST and total price including GST, and comply with the requirements for a tax invoice.
- b. The Supplier must not render an invoice until the Goods are delivered or the Service performed.
- c. Buyer is not required to pay an invoice until 30 days after it is given to Buyer.
- d. Buyer may deduct from any payment:
 - i. Any amount owing by the Supplier to Buyer;
 - ii. Any expenses incurred by Buyer as a result of breach by the Supplier of the Contract; and
 - iii. The amount of any compensation or damages Buyer is entitled to claim from the Supplier as a result of a breach by the Supplier of the Contract.
- e. Payment of the invoice is without prejudice to any rights Buyer may have against the Supplier in respect of a breach of the contract.

7. Price and GST

The Prices of the Goods and / or the Services are specified in the Purchase Order and include any and all incidental costs of performing the Seller's obligations under these Terms and Conditions (including the delivery and installation of Goods). The Purchase Order will state the Price exclusive of GST, identify the amount of GST payable; and state the GST inclusive

price. The Price are deemed to include all other duties, taxes, levies, imposts and other like costs as well as the full cost of packaging and marking and delivery.

8. Title & Risk in Goods

The property and risk in the Goods remains the Seller's until they are both delivered and accepted at the delivery point specified in the Purchase Order, whereupon property and risk pass to the Buyer.

The Buyer shall be entitled at the time (including following of acceptance of the Goods or Services) to reject any Goods or Services and return to the Seller any Goods supplied that do not comply with the warranties given by the Seller and to obtain a full refund of any amount paid under this Purchase Order and any related Purchaser Order.

9. Insurance

The Seller warrants that it has currently a place: (a) public and product liability insurance and professional indemnity cover for a reasonable amount bearing in mind the nature of the Goods or Services being supplied and cover for such other risks as is usual or reasonable in the circumstances or as reasonably directed by the Buyer; and (b) workers' compensation insurance and any other insurance which is required by law. Where requested by the Buyer, the Seller shall have the Buyer's interested noted upon the public liability policy and shall provide certificates of currency for these policies for the Buyer's review and approval.

10. General Indemnity and Liability

The Seller shall indemnify the Buyer against any and all claims, actions, losses, damages, liabilities, expenses, or penalties arising either indirectly or directly out of: the failure by the Seller to comply with any requirement by Law; or any wilful or negligent act or omission by the Seller. Subject to any Non-excludable Rights, the Buyer's liability to the Seller howsoever caused under or in this Purchase Order is limited in the aggregate to the amount specified on the Purchase ever caused under or in relation to this Purchase Order is limited in the aggregate to the amount on the Purchase Order.

11. Assignment and Subcontracting

The Supplier must not assign the Contract or Subcontract supply of Goods or Services without Buyer consent in writing. Buyer may withhold its consent in its absolute discretion, or grant consent subject to conditions.

12. Damage to Property

If the Supplier causes damage to any property in delivering Goods or performing Services, it must at Buyer's request rectify all damage or compensate Buyer for the damage incurred.

13. Intellectual Property, Moral Rights and Intellectual Property Indemnity

Unless otherwise stated in the Purchase Order: any new Intellectual property Rights created in the performing the Services vest upon their creation with the Buyer. Any pre-existing Intellectual Property Rights contained in the Goods or provided as part of the Services are licensed to the Buyer on a perpetual, non-exclusive, worldwide, and transferable basis to the extent necessary for the Buyer to fully enjoy the benefit of the Goods or Services. The Seller agrees to provide the buyer with any Moral Rights consent requested by the Buyer to enable it to fully enjoy the benefit of the Goods and Services. The Seller will indemnify and keep indemnifying the Buyer against liability, loss, expense or cost (including the cost of defending such claim on a solicitor and client basis) or claim for infringement of Intellectual Property Rights arising from the use or sale of any Goods, Services or related material provided by the Seller except to the extent that such liability, loss, expenses or cost is caused or contributed to by the Buyer modifying the Goods and/or Services without the Seller's approval or by the Buyer using the Goods and/or Services in a manner inconsistent with the Specifications.

14. Confidentiality and Privacy

The Seller must not disclose any of the Buyer's confidential information to any Person and must not use the Buyer's confidential information for purpose other than the provision of the Goods or Services under the Purchase Order. In relation to any Personal information, the Seller must comply with the Buyer's Privacy policy and must not cause the Buyer to be in breach of its obligations under the Privacy Act 1988 (Cth).

15. Advertising

The Supplier must not, without Buyers consent, publish or advertise that Buyer is a customer of the Supplier. Buyer may withhold its consent in its absolute discretion.

16. Hazardous Goods

The Seller shall observe the requirements of Australian law and any international agreements, treaties or conventions to which the Australian government is a party in relation to the packing, labelling and carriage of hazardous goods. All information held by, or reasonably available to, the Seller regarding any potential hazards known or believed to exist in transport, handling or use of the Goods shall be promptly communicated in writing to the Buyer. A Material Safety Data Sheet (MSDS) written in English, must accompany, the first delivery and each first delivery following a change to the materials MSDS.

17. Variations

No variations to the Terms and Conditions will be accepted unless it is in writing signed by both parties.

18. No Waiver

The Buyer's delay or failure to exercise a right or remedy does not operate as a waiver of any right or remedy at law or in equity.

19. No Assignment



The Purchase Order shall not be assigned or sub-contracted, in whole or in part, by the Seller without the prior written approval of the Buyer.

20. Default & Termination

If the Seller is in default of any provisions of the terms and Conditions and such default is not capable of rectification; is capable of rectification but is not rectified within seven (7) days of receipt of notice from the Buyer to rectify such default; or the Seller is adjudged bankrupt, makes a general assignment for the benefit of its creditors, has a receiver, liquidator, administrator or other controller of property appointed to the Seller on account of its solvency or ability to pay its debts as they fall due; then, the Buyer may, without prejudice to any other rights or remedies it may have hereunder, immediately upon notice to the Seller terminate the Purchase Order. Buyer may also at any time terminate the Purchase Order for convenience and unless otherwise set out in the Purchase Order, the Buyer's sole liability shall be limited to Goods or Services already delivered to and accepted by the Buyer at the effective date of termination.

21. No Merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by the Purchase Order.

22. Governing Law and Jurisdiction

These Terms and Conditions shall be governed by the laws of Victoria. The parties submit to the exclusive jurisdiction of the courts exercising jurisdiction in Victoria notwithstanding the domicile or residence of any party or the occurrence of any act, matter or thing outside of Victoria or the jurisdiction of those courts.