

TERMS AND CONDITIONS

GENERAL

- 1.1 This purchase order, including these terms, conditions, and the specifications hereto, constitute the sole and entire agreement between the parties hereto.
- 1.2 No changes may be made in any of the terms, conditions, prices or delivery schedules specified in the order without written consent of Buyer.
- 1.3 This agreement can be modified or rescinded only in writing signed by both parties or their duly authorised agents.
- 1.4 No course or prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any of the terms or conditions hereof.

BUYER'S OPTION

Buyer reserves the right to change specifications and delivery dates. Any difference in price required by such changes shall be equitably adjusted and the Agreement shall be modified in writing accordingly. Buyer further reserves the right to terminate all or part of the work to be performed pursuant to this Agreement. In such event, Buyer shall be liable only for materials or components procured, or work done or supplies partially fabricated within the authorisation of this Agreement. In no event shall Buyer be liable for incidental or consequential damages by reason of such termination. Buyer will not be liable for loss of income on the cancelled portion of the order.

DELIVERY

- 3.1 Time of delivery is of the essence. If Seller fails to deliver the goods in the quantity, quality and within the time or times specified by this order, the Buyer may, without limiting its other rights and remedies provided by this purchase order or by law: (i) defer shipment if Buyer agrees to such deferment in writing; (ii) cancel this order without any obligation to Seller; (iii) reject the goods in whole or in part; (iv) purchase substitute goods and charge the Seller with any loss incurred; or (v) charge the Seller 10% of the selling price of the goods that Seller failed to deliver as specified which amount shall represent liquidated damages and is not a penalty.
- 3.2 The risk of loss of and title to the goods shall not pass to Buyer until Buyer actually receives and accepts the goods at the point of destination, except for goods purchased and agreed in writing to be on a FOB/Ex Works basis if any advance payments have been made to Seller by Buyer prior to delivery to the Buyer of manufactured goods, then in such event title of said goods shall pass to the Buyer, but the risk of loss shall remain with the Seller until actual delivery to, and acceptance by Buyer has been made.
- 3.3 Should Buyer agree to accept early delivery, Buyer shall be entitled to withhold payment in respect of such deliveries until the required delivery date.

SHIPPING ADVICE

Shipping advice shall be given and confirmed by the Buyer, one (1) week at the latest, prior to shipment, containing such information as loading and unloading ports, brief description of the products shipped, name of vessel, ETD, ETA, and invoice amount, etc.

PATENT INDEMNIFICATION

Seller agrees to hold harmless and to defend Buyer against any claims of patent infringement occasioned by the manufacturer involving sale or use of material supplied under this order and Seller agrees to indemnify Buyer against any damages occasioned by such claims whether justified or unjustified.

INSPECTION

- 6.1 Buyer shall have a reasonable time after receipt and beneficial use, within which to inspect and/or reject the goods. Buyer shall give written notice to Seller of any rejection of goods, and goods rejected will, at the Seller's expense, be returned to Seller or otherwise disposed of as Seller shall reasonably request. Seller agrees to pay all additional transportation charges (if necessary, air freight charges) incurred by rejection or claims. The cost of inspection of goods rightfully rejected shall be charged to the Seller. When Seller's samples processed or fabricated by means of tooling and process methods to be used in contract production prior to shipment of contract quantities. If reasonable inspection disclosed that part of the goods received are defective or non-conforming, Buyer shall have the right to cancel any unshipped portion of the order. Payment for goods on this order prior to inspection shall not constitute acceptance thereof and is without prejudice to any and all claims that Buyer may have against Seller. The making or failure to make any inspection of, or payment for or acceptance of the goods, shall in no way impair Buyer's right to reject non-conforming goods, recover damages, or exercise any other remedies to which Buyer may be entitled, notwithstanding Buyer's knowledge of the unconformity, its substantiality, or the ease of its discovery.
- 6.2 Direct Engineering Services and their clients shall be afforded the right to verify at source that purchase product conforms to specified requirements. Verification by them shall not absolve the supplier of the responsibility to provide acceptable product nor shall it preclude subsequent rejection. Such verification shall not be used by the supplier as evidence of effective control of quality by him.
- 6.3 Buyer has the right to cancel its order, or any portion thereof, without liability, if the order has not been fulfilled as specified, but alternatively, Buyer reserves the right to make repairs of defective goods, materials, and parts, and to charge Seller for actual labor cost, material cost, and factory overhead. Rejected and returned goods are not to be replaced by Seller without written consent of Buyer.

TERMS OF PAYMENT

Net cash 30 days, i.e. end of next month following delivery.

WARRANTY

- 8.1 Seller warrants to Buyer and its successors, assigns, customers and users of its products: (a) that the goods shall be of quality specified or of the best

grade of their respective kinds if no quality is specified, shall conform to the specifications, drawings, samples and other descriptions contained herein and to representations made by Seller or its representatives, and shall be merchantable, conform to and operate in Buyer's product as not to prejudice the proper operation thereof; (b) that at the time the goods are accepted by Buyer, the goods shall have been produced, sold, delivered and furnished in strict labor agreements and working conditions to which the goods are subject; and (c) that the goods furnished hereunder are free of any claims or liens of whatever nature whether rightful or otherwise, of any person, corporation, partnership or association.

- 8.2 The warranty obligation is valid for twelve (12) months or a period negotiated in writing by both parties from the date when products have been put into service or operation.
- 8.3 The seller shall be obliged and entitled to repair, replace or supplement any defects, defective parts and shortages of the contract commodity at Seller's expenses which are proved due to defective materials and/or poor workmanship design and/or imperfection of such warranty as the result of inspection by the Buyer and/or inspector(s) designated by Buyer.
- 8.4 In the event of restoration or replacement, the warranty period shall be extended by twelve months from the date the warranty work performed on the goods was approved by the Buyer's inspectors.

9. INDEMNIFICATION

Seller agrees to protect, indemnify, save and hold harmless Buyer, its officers and employees, from and against all losses, costs and expenses, and from and against all claims, demands, suits and actions for damages, losses, costs and expenses and from and against all liability awards, judgements and decrees of whatsoever nature for any and all damages to property of the Buyer or others of whatsoever nature, and for any and all injury to any persons arising out of or resulting from the negligence of Seller; breach of this order in the manufacture of the goods; from any defect in materials or workmanship from the failure of the goods to perform to its full capacity as specified in the order; specification or other data or from the breach of any stress of implied warranties.

10. CONTINGENCIES

Performance of any obligation under this Agreement may be suspended by either party, without liability, to the extent that an act of God, war, riot, fire, explosion, accident, flood, sabotage, inability to obtain fuel or power, government laws, regulations or orders, or labor trouble, strike, lookout or injunction (whether or not such labor event is within the reasonable control of such party), delays, prevents, restricts or limits the performance of this Agreement or the consumption sale, use, or end use of the goods or any product manufactured or processed therefrom or therewith. The affected party shall invoke this provision by promptly notifying the other party of the nature and estimated duration of the suspension period. At Buyer's option, either the Agreement period shall be extended by the term of any such suspension and deliveries omitted because of such suspension shall be made during such extension, or the total Agreement quantity hereunder shall be reduced by the quantity not delivered during the term of such suspension, and, in either event, the Agreement shall otherwise remain unaffected in the event Seller's performance is suspended for more than thirty (3) days during the term hereof. Buyer may at its option, terminate the Agreement upon written notice to Seller.

11. PRICE PROTECTION

Seller warrants that the price(s) set forth herein are equal to the lowest net price, and the terms and conditions of sale as favourable, as the price(s), terms and conditions afforded by Seller to any other customer for goods or services of comparable grade or quality during the term hereof. Should Buyer be able to purchase goods to comparable quality from another source at a lower delivered cost then in effect hereunder, and Buyer gives Seller written notice thereto. Buyer may purchase such goods from such other source at such lower delivered cost unless within fifteen (15) days of receipt by Seller of said notice, Seller shall meet such lower delivered cost for such quantity of goods. Any quantity so purchased from another source by Buyer shall be deducted from the total quantity ordered on this Agreement, but the Agreement shall otherwise remain unaffected.

12. PACKING AND CRATING

The quantities of goods as indicated on the face hereof must not be exceeded without prior written authorisation from Buyer. Excess quantities may be returned to Seller's at Seller's own expense.

13. SUPERVISOR

For installation and operation on site, the Seller shall dispatch supervisor(s) to put the commodities into operation and give technical and maintenance guidance to Buyer's operators for (negotiated) working days. Supervisor(s) shall be made as scheduled when supervisor(s) start working on site and the Seller shall dispatch his experienced supervisor(s) in time.

14. AGREEMENT

No right or interest in this Agreement shall be assigned by Seller without the written permission of the Buyer, and no designation of any obligation owed by either Buyer or seller shall be made without the written permission of the other party. Any attempted assignment or delegation shall be wholly void and totally ineffective for all purposes.

15. ARBITRATION

All disputes, controversies or differences in opinion, which may arise between the parties hereto in connection with this contract, or for any breach thereof, shall be settled in Western Australia in accordance with the Commercial Arbitration Act, 1985 and under the laws of Western Australia.

16. The Supplier acknowledges he has notice of all provisions of the Main Contract between the Purchaser and the Head Contractor and in respect to the Supplier's goods or equipment the Supplier's goods or equipment the Supplier hereby assumes the same quality and performance responsibilities as does the Purchaser to the Head Contractor under the said Main Contract.

17. The Supplier shall provide by the date or dates specified all drawings, technical data and operating and maintenance manuals with and as part of the goods or equipment so supplied. The Purchaser may withhold all monies then due and owing until compliance by the Supplier with the requirements of this clause.

18. GOVERNING LAW

This contract shall be construed by the laws of Western Australia.