

1 TERMS AND CONDITIONS

1.1 General

The acceptance of this order by the seller includes acceptance of the terms and conditions as the sole basis of the sale to the exclusion of any conditions of sale appearing on any document of the seller. Modification of these conditions expressed in any document of the seller does not apply to this order unless expressly accepted in writing by the buyer.

1.2 Alterations

No changes to this order are to be made by the seller without the written agreement of the buyer.

1.3 Price

This order is placed on a firm price basis in accordance with the price(s) listed on the Order and is not subject to increases in price without the buyer's prior approval in writing and includes delivery to the destination stated in this order and the off-loading of the goods by the supplier at the point of destination.

1.4 Standard to conform to specifications

The seller must ensure that the goods are in accordance with and conform to any specifications, drawings, samples or other description (if any) furnished by the buyer to the seller. Any in-progress inspection by the buyer's employees or agents or other representative does not affect this requirement.

1.5 Warranties

The goods must:

- a. Be fit for the purpose for which goods of the same kind are commonly supplied and any other purpose made known to the seller;
- b. Be of merchantable quality and to be free from defect in material and workmanship;
- c. Be covered by a warranty that is valid for 90 days, or the length of the manufacturer's standard warranty period, whichever is longer;
- d. Carry any applicable manufacturer's warranty which passes on to any buyer or customer from the buyer without liability to the buyer. The seller must assign to the buyer at the request of the buyer the benefit of any warranty or guarantee that the seller has received from any supplier (whether under contract or by implication or operation of law).

1.6 Inspection and return

All goods are received subject to inspection within a reasonable time after delivery or before delivery at the buyer's discretion irrespective of date of payment. Signed delivery dockets do not mean acceptance by the buyer of goods delivered but only the number of packages or cartons delivered. The buyer must promptly notify the seller of any defects appearing and hold goods so found to be defective for the seller's instructions and at the seller's risk for a reasonable period not exceeding 60 days. If the seller's instructions are not received within that period, the buyer may return the defective goods to the seller's premises at the seller's expense and risk and any expense incurred by the buyer in such return is payable forthwith by the seller and may be set off by the buyer against any moneys otherwise due by the buyer to the seller.

In addition, buyer shall have the right to enter seller's facility at reasonable times to inspect the facility, goods, materials and any property of buyer covered by this contract. Buyer's inspection of the goods, whether during manufacture, prior to delivery, shall not constitute acceptance of any work-in-progress or finished goods.

1.7 Royalties

- a. The seller agrees to defend, protect and completely indemnify the buyer, its successors, assigns, customers and the users of the buyer's products from and against any claim arising by reason of the use of the goods, including all claims for actual or alleged infringement of any letters patent, trade marks, copyright, design, confidential information or similar protection whether granted by the Commonwealth of Australia or any foreign state or the common law.
- b. If the seller makes any representation or statement directly or indirectly to the buyer that the goods ordered are protected by one or more patents and any such patent is found to be invalid, the buyer may forthwith cancel this order or any contract arising from this order and recover any money paid to the seller under this agreement as a liquidated debt.

1.8 Indemnity

The seller agrees that it shall at all times indemnify and hold harmless the buyer, its officers, employees and agents (those indemnified) against all losses and additional expenses and liabilities reasonably incurred or suffered by those indemnified, caused by willful, unlawful, or negligent act or omission of the buyer, its officer, employees, agents, or subcontractors in connection with this Order and which arises from any claim, suit, demand, action, or proceeding by any person.

1.9 Designs and specifications to be retained in confidence

Any goods or work made or done according to the buyer's design or specifications or developed for the buyer at the direction of the buyer, or any original or copy designs or specifications supplied by the buyer are held by the seller on the buyer's behalf and at the buyer's disposal and must not be disclosed or furnished to any other person, firm or government without the buyer's prior written consent. The seller must take all reasonable precautions to protect such confidentiality.

1.10 Packing costs and standard

- a. The seller and any of its agents or suppliers must not make any charge to the buyer for wrapping, packing, cartons or crating unless authority for such charge is expressly incorporated in this order.
- b. The seller must ensure that all goods are suitably packed or otherwise prepared for shipment so as to secure the lowest transportation and insurance rates and in accordance with carriers' requirements.

1.11 Advertising

The seller must not, without the buyer's prior written consent, in any manner advertise or publish the fact that the seller has contracted to the buyer with the goods.

1.12 Delivery documents

- a. The seller must invoice the buyer promptly, followed by monthly statements of account.
- b. The seller must dispatch packing lists, shipping documents and certified invoices to the buyer's office by direct mail on the day of shipment unless a different method or date of dispatch (or both) is agreed by the buyer.

1.13 Cancellations

- a. The buyer reserves the right to cancel this order if the full amount of all goods ordered is not delivered to its premises on or before the delivery date specified in this order.
- b. The seller does not have and may not prosecute any claim whatsoever at law or in equity against the buyer if the buyer cancels the order under the preceding subclause.
- c. The seller must, in addition to any other liability, pay the costs of removing the goods from the buyer's premises, if the buyer cancels the order under the para (a) of this clause.

1.14 Responsibility

The goods are at the seller's risk until delivered to the destination stated in this order, or accepted by the buyer, whichever is the later. Nothing in the conduct of the buyer or the transfer of property in the goods (including delay that is or is not the fault of the buyer or of any person who represents the buyer) alters the incidence of risk under this clause.