

RPC TECHNOLOGIES PTY LTD

PURCHASE ORDER

GENERAL TERMS AND CONDITIONS

1. INTERPRETATIONS AND GENERAL MATTERS

1.1. Definitions and Interpretations

“day” means a calendar day.

“**Confidential Information**” means proprietary, commercial and Confidential Information including but not limited to information on the Goods, Purchase Order, Subcontractors, suppliers, supplier contacts, pricing of supplies, client lists, rates or supply agreements, details of the purchase price and discount structure in place with one or more supplier, which may be:

- i) oral, written, recorded, photocopied or stored by electronic, magnetic, electromagnetic, or in any other form, process, media or otherwise in a machine-readable form; or
- ii) translated from the original form, re-compiled, made into a compilation, partially copied, modified, updated or otherwise altered; or
- iii) trade secrets and any other information or material or information classifiable by law or equity as Confidential Information.

“**FIS**” means, in relation to delivery of the Goods, free into store, and includes the responsibility (and associated costs) for packing, loading, transportation and insurance (for the full replacement value of the Goods) to the nominated delivery point for the Goods.

“**Goods**” means all Goods, equipment, materials, articles, or any other property or parts to be provided to the Purchaser by the Supplier under the Purchase Order and includes, without limitation, all services including design, manufacture, inspection, testing, expediting, quality assurance and control, painting, packing and delivery as specified or required hereunder.

“**GST**” means *A New Tax System (Goods and Services Tax) Act 1999 as amended*

“**Insolvency Event**” means any of the following events:

- i) a liquidator, provisional liquidator, trustee, administrator, manager, receiver and manager or similar officer is appointed in respect of the Supplier or any of the Suppliers assets;
- ii) an order is made or a meeting is convened or a resolution is passed for the purpose of appointing a person referred to in paragraph (i) for winding up the Supplier or for implementing a scheme or arrangement for the Supplier or for placing the Supplier under administration.
- iii) As a result of the operation of the Corporations Law, the Supplier is taken to have failed to comply with a statutory demand under Section 459F or the Supplier makes a statement from which it could be reasonably deduced by the Purchaser that the Supplier is the subject of an event described in Section 459C (2) (b), Section 585, Section 588 of the Corporations Law and all amendments:
- iv) A moratorium on any debts of the Supplier or an official assignment or a composition or an arrangement formal or informal with the Supplier’s creditors or any similar proceeding or arrangements by which the Supplier’s assets are submitted to the control of the Supplier’s Creditors is ordered or declared;
- v) The Supplier becomes, is declared, or is deemed insolvent within the meaning of any applicable Law or is unable or admits in writing the Supplier’s inability to pay the Supplier’s debts as these fall due;
- vi) The Supplier takes any step to obtain protection or is granted protection from its creditors under any applicable legislation; or
- vii) Anything analogous or having a substantially similar effect to any of the events in paragraphs (i) to (vi) above happens under the law of any applicable jurisdiction.

“Purchaser” means the person ordering the Goods, as identified in the Purchase Order Form.

“Purchase Order” means the purchase order issued by the Purchaser to the Supplier as evidenced by the documents listed in the Purchase Order Form.

“Purchase Order Form” means the section of the Purchase Order to be completed by the Purchaser, which identifies the Purchaser and the Supplier and includes but is not limited to a brief description of the Goods and a list of the documents comprising the Purchase Order.

“Supplier” means the person providing the Goods, as identified in the Purchase Order Form.

“Taxable Supply” for the purposes of clause 8 means a taxable supply under the GST Act.

“Warranty Period” means the period commencing on the date of final supply of the Goods to the nominated delivery point and lasting for a period of three (3) years, unless otherwise stated in the Purchase Order.

- 1.1.1. Words importing the singular are deemed to include the plural and vice versa. Headings and subheadings are inserted for convenience only and shall not be used to interpret the text. Words denoting a natural person shall include a corporation and vice versa.

1.2. Supplier to Inform Itself

The Supplier shall be deemed to have carefully examined all documents furnished by the Purchaser and fully satisfied itself regarding all the conditions, risks, contingencies and other circumstances which might affect the supply of the Goods. No increase in the Purchase Order price will be allowed for the Supplier’s failure to ensure that it is fully informed regarding all the circumstances relating to the Purchase Order.

1.3. Order of Precedence

Unless otherwise stated, the order of precedence of any of the following documents listed in the Purchase Order Form shall be as follows:

- | | | | |
|------|------------------------------|-----|------------------|
| i) | The Purchase Order Form | iv) | Specification(s) |
| ii) | Special Terms and Conditions | v) | Drawing(s) |
| iii) | General Terms and Conditions | | |

1.4. Entire Agreement

The Purchase Order constitutes the entire agreement between the Purchaser and the Supplier. The parties shall not be bound by or liable for any statement, representation, promise or understanding not set forth herein. Nothing contained in proposals, correspondence, discussions or negotiations prior to the date of the Purchase Order has any effect on the Purchase Order unless specifically incorporated herein.

1.5. Ambiguities

If the Supplier discovers any ambiguity in the Purchase Order it shall immediately notify the Purchaser in writing. The Purchaser shall then determine the correct interpretation of the Purchase Order. The determination of the Purchaser shall be final and binding on the Supplier and have no effect on the Purchase Order price.

1.6. Use of Documentation

The documents shall not be copied or used for any other purpose than the supply of the Goods, without the prior written approval of the Purchaser.

1.7. Confidentiality and Intellectual Property

- 1.7.1. Any Confidential Information provided by the Purchaser to the Supplier, shall not be disclosed to any third party without the prior written consent of the Purchaser. The Supplier shall keep the Confidential Information confidential and acknowledges that damages may be inadequate compensation for breach of this agreement and, at the discretion of the court, the Purchaser may seek and obtain injunctive relief or similar remedy against a threatened or actual breach of this clause 1.7.
- 1.7.2. The Supplier shall not issue any information which includes details about the Goods or the Purchase Order, for publication in any news or communication media, without the prior written approval of the Purchaser.
- 1.7.3. Intellectual Property rights in all Goods that are first created by the Supplier for or during the performance of the Purchase Order, vest unconditionally in the Purchaser.
- 1.7.4. The obligations under this Clause shall be continuing obligations and shall survive the completion or termination of the Purchase Order.

1.8. Waiver

No failure or delay on the part of the Purchaser in exercising any of its rights under the Purchase Order shall be construed as constituting a waiver of any such rights.

1.9. Subcontracting and Assignment

- 1.9.1. The Supplier shall not subcontract nor assign all or any part of the Purchase Order without the prior written approval of the Purchaser. The Supplier shall provide full particulars of any work to be subcontracted together with details of the proposed subcontractor.
- 1.9.2. Approval of the Purchaser to any subcontract shall in no way relieve the Supplier of any of its obligations under the Purchase Order.

1.10. Communications

Any notice or other communication required under the Purchase Order shall be delivered in writing and shall be in a form which can be read, copied and recorded conveniently. Verbal instructions or directions from the Purchaser shall be confirmed in writing to the Supplier within a reasonable time. The notice shall take effect from the time when it is delivered to or received at the nominated address of the parties.

1.11. Licences and Laws

The Supplier shall comply with all applicable laws, by-laws, ordinances, regulations, proclamations, orders and rules and with the lawful requirements of Public and other Authorities in any way related to the supply of the Goods.

2. INSURANCE

The Supplier shall at all times have and maintain, as a minimum, insurances which fully cover the full replacement value of any Purchaser free issue materials, the work in progress and completed work held by the Supplier or in storage by the Supplier. Insurance shall cover all insurable events applicable to damage and loss. Other insurances may be required as noted in the Purchase Order.

3. INDEMNIFICATION

The Supplier shall indemnify and keep indemnified the Purchaser and its officers, employees and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses arising as a result of any act, neglect or default of the Supplier, its employees or agents related to its obligations under the Purchase Order.

4. PERFORMANCE AND QUALITY

4.1. Materials and Workmanship

All Goods shall be suitable for the purpose for which they are required. The Supplier shall use new and undamaged materials, unless otherwise specified in the Purchase Order and the workmanship shall be of the highest quality and standard, The work shall be carried out in accordance with good engineering practice and comply with all applicable Australian Standards and/or other referenced codes, the requirements of the relevant Statutory Authorities and the Law.

4.2. Supplier Qualifications

The Supplier represents and warrants to the Purchaser that it has the necessary skills, resources and experience to successfully supply the Goods in accordance with the requirements of the Purchase Order. Payment may be withheld or portions deducted or setoffs may be made against monies otherwise due if the Seller does not provide the Goods in accordance with the provisions of this order.

4.3. Quantity of Goods

4.3.1. The quantity of Goods supplied must not be greater than the amount specified in the Order unless an additional amount has been expressly agreed by the Purchaser in writing.

4.3.2. The Purchaser may return any excess quantities of Goods supplied to the Supplier at the Suppliers expense.

4.3.3. Where the quantity of Goods is less than the quantity specified in the Purchase Order, the Purchaser is only required to pay that portion of the Purchase Order price in relation to the Goods actually supplied.

4.4. Testing and Inspection

4.4.1. The Goods must be tested in accordance with the requirements of the Specification. Unless otherwise set out elsewhere in the Purchase Order, any tests and the costs thereof shall be the responsibility of the Supplier. The results of tests shall be promptly supplied to the Purchaser in writing.

4.4.2. The Purchaser shall have the right to inspect, expedite and monitor the Goods prior to delivery and the Supplier shall give the Purchaser access to the Supplier's premises for such purpose during its normal working hours. The Goods will not be accepted by the Purchaser until inspected and approved by the Purchaser. Any inspection by the Purchaser shall not relieve the Supplier from its obligations to comply with the requirements of the Purchase Order and shall in no way impair the Purchaser's right to require subsequent correction of non-conforming Goods.

4.5. Quality Standards

The Supplier shall comply with the standards of quality specified in the Purchase Order. If no standards are specified the Supplier shall comply with the best quality standards applicable to the Goods concerned.

4.6. Defects and Warranty

4.6.1. The Supplier warrants that the Goods shall:

- i) Be free from liens, charges, encumbrances, mortgages or other defects in title.
- ii) Be free from defects in design, materials and workmanship.
- iii) Conform to the conditions and specifications of the Purchase Order.
- iv) Conform to all applicable laws and regulations to which the Goods are subject.
- v) Be new and made to the specified quality.

4.6.2. The warranties noted in Clause 4.6.1 are in addition to any statutory warranties applicable to the Goods.

- 4.6.3. During the Warranty Period, the Purchaser shall give written notice to the Supplier of any failure or defect in the Goods. The Supplier shall without delay and at no cost to the Purchaser, correct any defect or failure in the Goods covered by the warranty, by way of repair, replacement, modification or other means acceptable to the Purchaser.
- 4.6.4. If the Supplier fails to correct any defects and failures, of which it has been notified by the Purchaser, within the time specified in the notice (which shall not be unreasonable), the Purchaser shall have the right to rectify the Goods itself or have the rectification undertaken by a third party. All costs so incurred shall be a debt due and payable by the Supplier or deducted from monies otherwise owing to the Supplier.
- 4.6.5. Any Goods repaired under warranty may be subject to a further full Warranty Period, if required by the Purchaser, commencing on the date of completion of any such repair.

5. DELIVERY

- 5.1. Unless otherwise specified in the Purchase Order, the Goods shall be delivered FIS (Free into store), adequately packaged and protected to ensure safe delivery, to the delivery point stated on and by the delivery date(s) specified in the Purchase Order. The Goods shall be accompanied by a delivery docket displaying RPC Purchase Order and RPC Goods part number which shall be signed by a duly authorised representative of the Purchaser at the point of delivery.
- 5.2. The Supplier is responsible for any freight charges that arise as a result of its failure to follow any transport instructions in the Purchase Order or properly describe the Goods transported.
- 5.3. The Goods shall become the property of the Purchaser upon delivery of the Goods to the Purchaser, as evidenced by the signature on the delivery docket by the duly authorised representative of the Purchaser. Notwithstanding that the Purchaser has taken delivery of the Goods, the Supplier shall remain responsible for any loss or damage to the Goods, which may have occurred prior to delivery, and for any non-compliance of the Goods with the requirements of the Purchase Order.
- 5.4. The Supplier shall take all reasonable steps to minimise and prevent any delay to the delivery of the Goods. The Purchaser may grant an extension of time to the nominated delivery date provided:
- i) the delay is caused by any reason completely beyond the control of the Supplier, including Statewide or National industrial disputes, acts of God, war, riot, fire, storm or flood.
 - ii) the Supplier has notified the Purchaser in writing within fourteen (14) days of the delay occurring (or such other time as may be specified in the Purchase Order) of its claim for an extension of time. The Purchaser shall not be liable for any extension of time claim that is not lodged in writing with the Purchaser within fourteen (14) days of the delay occurring.
- 5.5. If the Supplier fails to deliver the Goods by the specified delivery date(s), the Purchaser shall be entitled to terminate the Purchase Order for default, either in whole or in part, in accordance with the provisions of Clause 7.2 and/or deduct from monies due to the Supplier as liquidated damages, representing a genuine pre-estimate of the Purchaser's damages and not as a penalty, the amount specified in the Purchase Order Form, for each week or part thereof by which delivery exceeds the specified delivery date.
- 5.6. It shall be the responsibility of the Supplier to ensure all details (MSDS) relating to the health and safety effect on handlers and users, and environmental issues on disposal, are communicated to the Purchaser upon the initial purchase of the Goods, or where there are any changes to the properties of the Goods.
- 5.7. Production batches shall be delivered in the following form and packaging unless stated otherwise in the Purchase Order.
- i) Packed and palletised so the shipment is forkliftable. Parts must be packaged to minimise risk of transport damage.
 - ii) Delivery dockets and invoices must cross reference each other.

- iii) All deliveries must be accompanied by written delivery advice showing clearly the following:
 - 1) RPC Purchase Order number
 - 2) RPC part number
 - 3) Quantity delivered
 - 4) Description of goods delivered.

6. VARIATIONS

- 6.1. The Purchaser may vary the work under the Purchase Order or any condition thereof and the Supplier shall carry out any such variation as directed by the Purchaser. The Supplier's price (addition or reduction) for any variation and any effect on the delivery date(s) of the Goods shall preferably be agreed between the Purchaser and Supplier prior to the Supplier carrying out any such variation. However, if agreement cannot be reached, the Purchaser shall determine the price for the variation and its effect on the delivery date(s) of the Goods.
- 6.2. The Supplier shall not vary the work under the Purchase Order or any condition thereof, except as directed and approved by the Purchaser in writing. No variation shall invalidate the Purchase Order.

7. SUSPENSION/TERMINATION

7.1. Suspension

The Purchaser may, at any time by written notice, suspend all or part of the Purchase Order for any reason whatsoever. Upon receipt of a notice of suspension, the Supplier shall cease work in accordance with the directions of the notice.

The Supplier shall recommence the work under the Purchase Order within forty eight (48) hours of being directed to do so by the Purchaser.

7.2. Termination by Default

In the event of a substantial breach by the Supplier of any of the terms and conditions of the Purchase Order, which in the opinion of the Purchaser may significantly delay the completion of the Purchase Order and which is not remedied within seven (7) days of the Purchaser notifying the Supplier in writing of any such breach, the Purchaser may terminate the Purchase Order in whole or part.

7.3. Termination for Insolvency

If, in the opinion of the Purchaser, the Supplier is unable to effectively perform its obligations under the Purchase Order due to an Insolvency Event, bankruptcy or related reasons, the Purchaser shall be entitled to terminate the Purchase Order.

7.4. Termination at Purchaser's Option

Notwithstanding any other provisions of the Purchase Order, the Purchaser may terminate the Purchase Order by giving fourteen (14) days written notice to the Supplier.

7.5. Suppliers action on termination at Purchaser's Option

Upon receipt of written notice of termination by the Purchaser, the Supplier shall:

- i) immediately discontinue work
- ii) place no further orders for materials that are not necessary for portions of the work which have not been terminated.
- iii) **make all reasonable efforts to either cancel orders with suppliers or assign the Goods obtained under those orders to the Purchaser.**

7.6. Supplier's Rights and Obligations on Suspension/Termination

- 7.6.1. In the event of suspension of the Purchase Order, the Supplier shall not be entitled to payment by the Purchaser for any costs it may incur as a result of any such suspension.
- 7.6.2. In the event of insolvency of the Supplier or its default under Clause 7.2, the Purchaser shall immediately suspend any further payment to the Supplier. Any additional monies required by the Purchaser to complete the Purchase Order in excess of what the Purchaser would have paid under the Purchase Order shall be a debt due and payable by the Supplier to the Purchaser.
- 7.6.3. In the event of termination by the Purchaser, under Clause 7.4 and provided the Supplier is not in default, the Purchaser shall pay the Supplier for the work carried out prior to termination and all reasonable costs associated with the cancellation of any orders placed by the Supplier prior to termination. The Purchaser shall not be liable for any costs of the Supplier in respect of termination, which cannot be fully substantiated.

8. PRICE AND PAYMENT

- 8.1. Unless otherwise stated in the Purchase Order, prices shall be fixed and not subject to any variation, including but not limited to variations in the cost of labour, material or exchange rates.
- 8.2. The quote for the Goods to be supplied under the Purchase Order shall be exclusive of GST calculated in accordance with the GST Act unless otherwise specifically stated in writing. The Supplier must in relation to the consideration for any Supply:
- (a) maximise its own claims for input credits on all creditable acquisitions made by its enterprise in connection with the agreement; and
 - (b) pass on to the Purchaser by way of a reduction in the net consideration for any such Taxable Supply the benefit of any cost savings it achieves relevant to this agreement in connection with the abolition or reduction of those other indirect taxes (including without limitation wholesale sales tax) that occur through the introduction of "A New Tax System" by the Commonwealth Government".
- 8.3. The Supplier must in any such case issue to the recipient at the time of claiming payment a valid tax invoice (in accordance with the Act) for the purpose of obtaining an input tax credit for any GST so paid.
- 8.4. If there is an Adjustment Event in relation to a Taxable Supply which results in the amount of GST on a Taxable Supply being different from the amount recovered by the Supplier, the Supplier shall issue the relevant Adjustment Note and, as appropriate the Supplier:
- (a) may in the case of an increasing adjustment, recover from the recipient and the recipient shall pay the amount by which the amount of GST on the Taxable Supply exceeds the amount recovered; or
 - (b) must, in the case of a decreasing adjustment, refund to the recipient the amount by which the amount recovered exceeds the amount of GST on the Taxable Supply.
- 8.5. Unless otherwise specified in the Purchase Order, invoices for payment shall be submitted to the Purchaser for payment following delivery of the Goods and payment of the approved amount shall be made by the Purchaser no later than thirty (30) days from the first day of the month after the month in which the invoice was received.
- 8.6. Unless otherwise provided in these Terms and Conditions or the Purchase Order the Supplier shall be responsible for the payment of all relevant Australian (Federal, State and Local Government) and overseas taxes, duties and charges payable with respect to the Goods. The Purchase Order price shall be deemed to be inclusive of all such taxes, duties and charges.

9. DISPUTES

- 9.1. Disputes or differences arising between the Purchaser and the Supplier shall preferably be settled quickly and by negotiation.
- 9.2. In the event of any unresolved dispute between the Purchaser and the Supplier, the Supplier shall ensure that the progress of the work under the Purchase Order is continued without any effect on the specified delivery date.
- 9.3. The preferred method of determination of unresolved disputes shall be by amicable agreement at the senior management level of the Purchaser and the Supplier.
- 9.4. Failing such agreement, the parties agree that the dispute shall be resolved by mediation conducted in accordance with the Australian Commercial Disputes Centre ('ACDC') mediation procedures.
- 9.5. In the event that the dispute has not been settled within six (6) weeks (or such other period as may be agreed to in writing between the parties) after the appointment of the mediator, the dispute shall be referred by either party to arbitration in accordance with the provisions of the Commercial Arbitration Act in force in the State or Territory in which the Purchase Order is issued. In any arbitration both parties shall be entitled to be legally represented. Unless the parties agree upon an Arbitrator, the Arbitrator shall be appointed by the President, for the time being, of the Australian Institute of Arbitrators.

10. APPLICABLE LAW

Unless otherwise specified, the Purchase Order shall be governed and construed in accordance with the laws of Australia in place in the State or Territory in which the Purchase Order is issued. The Purchaser and the Supplier shall submit to the jurisdiction of the courts of the said State or Territory.