

GENERAL TERMS AND CONDITIONS OF PURCHASING

1. GENERAL

1.1 The following terms shall have the following meanings when used in these general terms and conditions:

- "The Company" refers to each DSI Group Company, which purchases Goods from a Supplier.
- "DSI Group Company" means DYWIDAG-Systems International Pty Limited (ABN 84093424349) (DSI) and any of its "Related Bodies Corporate" (as defined in the Corporations Law).
- "Goods" means any goods, products, materials or services.
- "Order" means a purchase order issued by the Company on the Supplier for the supply of Goods.
- "Supplier" means any person, firm, company, association or other body, which supplies Goods to the Company pursuant to an Order.
- "Valid Tax Invoice" means a Tax Invoice within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*.

1.2 The following general terms and conditions of purchase ("General Terms") shall be incorporated into all Orders entered into by the Company and the Supplier for the supply of Goods to the Company.

Where there is any inconsistency between these General Terms and any special terms and conditions, which are agreed to by the Company and Supplier in writing, the special terms, and conditions shall, to the extent of the inconsistency, prevail.

2. COMPANY PURCHASE ORDER

2.1 An Order when accepted by the Supplier shall constitute the only basis, which will be recognised by the Company as authority for accepting Goods.

2.2 Either the Supplier's acknowledgment of an Order or the delivery of any Goods or commencement of performance pursuant to an Order, (whichever first occurs), shall constitute acceptance of the Order.

2.3 In performance of an Order the Supplier shall observe these General Terms. Subject to Clause 1.2 and, notwithstanding any oral or written statement made by the Supplier, no contrary or additional terms or conditions shall apply.

2.4 The contents of an Order shall remain confidential between the Company and the Supplier.

2.5 Time shall be of the essence of every Order.

3. VARIATIONS

3.1 No variations shall be made to an Order without the prior written consent of both the Company and the Supplier. All Order variations are subject to these General Terms.

3.2 Claims for extra costs for variations will not be recognised by the Company unless authorised by the Company in writing before delivery of the Goods or performance of an order commences.

4. CANCELLATION

4.1 In addition to its rights under Clause 14, the Company may at its option at any time and without cause cancel all or any part of an Order by notice in writing to the Supplier, in relation to any undelivered Goods.

4.2 If the Order relates to any standard stock Goods, the Company shall be under no obligation whatsoever to the Supplier in the event of such cancellation except in relation to any Goods delivered and accepted in accordance with the Order prior to cancellation, which the Company shall pay for.

4.3 If the Order relates to any Goods to be manufactured or fabricated to the Company's specifications or special requirements then upon receipt of the notice of cancellation, the Supplier shall cease performance of the Order in accordance with and to the extent specified in the notice and shall immediately do everything possible to mitigate any cost incurred by it consequent upon such cancellation. In relation to such Goods, provided that the Supplier is not in default, the Company shall pay to the Supplier in full and final satisfaction of its rights against the Company the reasonable actual and direct costs incurred by the Supplier in connection with fulfilling the order prior to the date of cancellation of the Order. The Company shall not be liable to pay the Supplier for any indirect or consequential costs, such as loss of profits.

5. WARRANTIES

5.1 The Supplier warrants to the Company that the Goods: -

- shall conform in all respects with the specifications, drawings, samples or other descriptions furnished by or accepted by the Company and any other requirements of an Order;
- shall be fit for the purpose made known to the Supplier by the Company or which ought to be reasonably known to the Supplier;
- shall be of merchantable quality, free from defects in materials, workmanship and design;
- shall be new unless otherwise specified in the Order;
- shall be free of all charges, liens and encumbrances and that the Supplier has a good and marketable title to them; and
- have been manufactured in accordance with all applicable legislative requirements.

5.2 Unless the Purchase Order states otherwise, the warranty period shall expire twelve (12) months after the date of first placing the Goods into service or twenty-four (24) months after Order delivery, whichever is the later. This does not diminish any responsibilities of the supplier in the Sales of Goods Act.

5.3 During the warranty period the Supplier shall, at its sole expense, repair or replace defective Goods. If a defect is not repaired or replaced within a reasonable time frame, the Company may carry out the repair or replacement at the Supplier's expense.

5.4 In the event that the Supplier replaces any defective Goods and does not at the same time arrange for the return of the defective Goods, no responsibility for the defective Goods shall rest upon the Company and it may dispose of them after a reasonable time, however it sees fit.

5.5 The Supplier further warrants that the sale or use of the Goods or any part thereof does not infringe or contribute to the infringement of any third party's Australian or foreign country patent, trademark, copyright, design or other proprietary right. The Supplier shall indemnify the Company against any loss or damage (including legal fees and other costs associated with defending an action) arising from a breach of this warranty.

6. PACKING AND MARKING

6.1 The Supplier shall, at its own cost properly pack and protect the Goods to prevent damage during transit and ensure safe arrival at the delivery point specified in the Order and where the Goods are to be transported to another destination having regard to the storage and transportation conditions advised by the Company.

6.2 Packaging and labelling of the Goods shall comply with all legislative requirements, and where applicable, with Australian Standard AS1216 - Classification, Hazard Identification and Information Systems for Dangerous Goods.

6.3 The Supplier shall ensure that each individual bundle, package, crate or pallet is clearly marked to the destination(s) on the Purchase Order. Each sub-package shall be marked with the product description and quantity of the Goods contained therein.

6.4 The Supplier shall enclose one copy of the packing list within each package, crate or pallet and affix a second copy to the outside.

6.5 The packing, marking and documentation within and outside the packages shall comply strictly with any special requirements in the Purchase Order or in any subsequent instructions.

6.6 The Company may request the supplier to affix DSI's own labelling by agreement.

7. DELIVERY AND RISK

7.1 Goods shall be delivered in accordance with the delivery terms specified in the Order.

7.2 The risk of loss or damage to the Goods the subject of an Order shall remain with the Supplier until the Goods are delivered to the delivery point specified in the Order and a Company officer or representative at that delivery point signs for receipt of the Goods.

7.3 The Company shall accept no liability for Goods delivered to destination(s) other than that specified in an Order. The Supplier shall be liable for any difference in freight charges or other costs arising from the failure to follow any delivery instructions in the Order.

7.4 The Supplier warrants that it will transfer to the Company full-unencumbered title to the Goods. Title shall pass to the Company at the time when the Goods are ordered, identified solely for use in the Purchase Order, or delivered. Such Goods shall be appropriately marked as being the property of the Company. The Goods remain at the risk of the Supplier until delivered to the Company in accordance with the Purchase Order.

7.5 If, due to circumstances beyond the Suppliers control, the Order cannot be supplied by the due date the Supplier shall advise the Company in writing to this effect and take all possible action to provide the required items with minimum delay. The Company may however, under these circumstances, elect to cancel the Purchase Order and use any other source available to secure the delayed items. In which case the Supplier shall be liable to pay the Company the extra costs incurred in securing alternative supply.

8. ACCESS AND INSPECTION

8.1 All Goods, which are the subject of an Order, shall be subject to inspection and/or test by the Company within a reasonable time after arrival at the delivery point specified in the Order. The Company shall also be permitted to enter any workshop or premises during normal working hours for the purpose of inspecting the Goods at any stage of their manufacture. Where the Supplier does not occupy the workshop or premises, the Supplier will procure entry.

8.2 The Company may reject any Goods supplied by the Supplier, which are not in accordance with the Order. Without prejudice to any other remedies available to the Company, the Supplier shall, in respect of any Goods so rejected, at the option of the Company either:

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- Refund any amount paid by the Company on account of the purchase price of the Goods; or Repair, modify or replace (at the Supplier's expense) the rejected Goods; and compensate the Company for all costs incurred by the Company as a result of the supply of the nonconforming Goods.
- 9. INDEMNITY AND INSURANCE**
- 9.1 In addition to its other obligations under this Clause the Supplier shall procure and maintain such insurances in connection with the performance of an Order as the Company shall specify. The effecting of such insurances shall not in any way affect the liability or obligations of the Supplier under the Order or at common law or otherwise.
- 9.2 Where the Company has made any payments on account of the Goods prior to delivery of the Goods then the Supplier shall insure and keep insured in the joint names of the Supplier and the Company the Goods for their full value:
- against all insurable risks while such Goods are on the Suppliers premises, against all risks of loss or damage from time of leaving the Supplier's premises during transit and until delivered to the delivery point nominated by the Company.
- 9.3 If the Supplier as principal or by agent or employee enters upon the Company's property the Supplier shall indemnify, save and hold harmless the Company from and against all liability, actions, claims and demands on account of personal injuries including death or property loss or damage suffered by any person arising out of or in connection with such entry.
- 9.4 The Supplier agrees to pay and discharge all valid taxes, lienable claims, charges or other impositions now or hereafter imposed by law on the Supplier, arising out of, in connection with, or resulting from the performance of an Order. The Supplier agrees to indemnify the Company against any liability for any such taxes, lienable claims, charges or impositions, other than those taxes that the Company has specifically agreed to pay for.
- 10. HAZARDOUS SUBSTANCES**
- 10.1 The Supplier shall clearly state whether any Goods being offered for sale to the Company or which are the subject of an Order contain any asbestos or other hazardous substances and shall provide full details of the extent of such content.
- 10.2 Prior to delivery of any hazardous Goods as prescribed in Worksafe Australia List of Designated Hazardous Substances NOHSC:10005(1994) to premises occupied by or on behalf of the Company, the Supplier shall supply Material Safety Data Sheets containing information required for the safe handling, storage and application of the Goods. Packaging, storage and conveyance of such Goods shall be in accordance with the provisions of the Dangerous Goods Act, the Australian Dangerous Goods Code (ADG Code) and AS 2931- Dangerous Goods, as appropriate.
- 10.3 Where performance of an Order involves materials classified as dangerous or hazardous goods the Supplier shall ensure that delivery dockets/notes, packing lists and the like are marked accordingly and that each individual container shall be packaged, labelled and handled in accordance with the relevant Australian Standards, including as 1216.1 - 1984 and AS 3780 - 1994.
- 11. SAFETY**
- 11.1 The Supplier's personnel shall work in accordance with the relevant acts and regulations relating to occupational health and safety applicable within the Australian State(s) within which an Order will be performed and as prescribed by the Company whilst the Supplier is engaged on the Company's property.
- Prior to entering the Company's property, the Supplier shall contact the relevant company officer(s) to arrange for site safety induction or to arrange for escort by a company officer for the duration of the visit.
- 11.2 Where equipment or materials have been specified by the Company as being required to conform to particular standards, the Supplier shall advise the Company prior to despatch, if the Supplier believes the equipment or materials does not conform to the standards specified. The Supplier shall also advise of any other matters of which it is aware, which may affect the safety of persons handling or using the equipment or materials.
- 11.3 Assemblies containing fuel, oil or other hazardous fluids or liquids shall be packed and transported in conformance to the provisions of AS2931 and the ADG Code.
- 12. USE OF SPECIFIC GOODS AND SERVICES**
- 12.1 In fulfilling any Purchase Order, the Supplier shall use and/or supply any specific goods or services that have been specified in the Purchase Order.**
- 13. PAYMENT**
- 13.1 The price stated in an Order is fixed and not subject to escalation, unless provided for by rise and fall criteria or by other means agreed to by the Company in writing.
- 13.2 All Order variations are to be made on a fixed price basis. Suppliers shall if required by the Company provide documentary evidence substantiating the amount charged or to be credited for any such variations.
- 13.3 For all Goods, the subject of an Order, unless the Company has entered into an agreement with the Supplier whereby the Company issues valid Recipient Created Tax Invoices for Goods received, the Supplier shall issue a valid Tax Invoice against each supply. The invoice shall detail the value of all Goods (exclusive of GST) covered by the invoice, with the total amount for Goods and Services Tax shown separately. The sum of the total value of all Goods (exclusive of GST), and the total amount for Goods and Services Tax, shall be the amount that the Company shall pay to the Supplier in respect of the Order.
- If the Supplier fails to provide an Australian Business Number (ABN) on Tax Invoices, Pay-as-you-go withholding tax at the applicable rate, will be deducted from the amount payable to the Supplier.
- 14. BREACH AND DEFAULT**
- 14.1 In the event of any breach by the Supplier of the terms and conditions of an Order (including a breach of these general terms), the Company may at its option, and without prejudice to any other rights hereunder or at law that it may have as a result of such a breach, terminate the Order by notification to the Supplier.
- 15. ASSIGNMENT**
- 15.1 The Supplier shall not without the Company's prior written consent assign or sub-let the whole or any part of an Order. Notwithstanding any consent given by the Company the Supplier shall be held responsible for compliance with the Order. The Company may assign the Order upon notice to the Supplier and shall have no further liability to the Supplier in respect of the subject Order.
- 16. SET-OFF**
- 16.1 All claims for moneys due or to become due from the Company to the Supplier shall be subject to deduction by the Company for any set off or counter claims arising out of the Order.
- 17. WAIVER**
- 17.1 No waiver by the Company of any breach or non observance by the Supplier of any of the terms relating to an Order (including these general terms) to be observed or performed shall be construed to be a general waiver and such shall relate only to the particular breach or non observance in respect of which it was made. In this regard no previous waiver or course of dealing shall affect the Company's rights to strict performance of other or future obligations.
- 18. GOVERNING LAW**
- 18.1 The Order shall be governed by the laws of the State of New South Wales and the parties agree to submit to the exclusive jurisdiction of the Courts of the State of New South Wales and the Commonwealth of Australia.
- 19. COMPLIANCE WITH APPLICABLE LAWS**
- 19.1 The Supplier shall comply with all Australian State, Federal and local laws, statutes, regulations or ordinance applicable to the performance of an Order.