

TERMS AND CONDITIONS OF PURCHASE – CHUBB NEW ZEALAND LTD

1 INTERPRETATION

In these terms and conditions unless the context otherwise so requires:

- (a) "Purchase Order" means the order form on the face hereof together with these terms and conditions and any special terms and conditions agreed to in writing between the Purchaser and the Supplier.
- (b) "Purchaser" means that company name on the face hereof that is purchasing the goods, its successors or assigns.
- (c) "Supplier" means that person, firm, partnership, company or body (however constituted) from whom the Goods described in the Purchase Order shall have been requested.
- (d) "This Agreement" means the agreement constituted by acceptance of this Purchase Order.
- (e) "Goods" includes parts and materials.
- (f) "Services" includes delivery, installation, manufacture and repair of any goods.
- (g) The singular includes the plural and vice versa the use of one gender includes each other gender and headings are inserted as a matter of convenience and in no way affect the interpretation of this agreement.

2 ACCEPTANCE

- (a) Acceptance of this Purchase Order entails acceptance by the Supplier of all the terms and conditions contained herein and any special terms and conditions, to the exclusion of any conditions of supply used or imposed by the Supplier.
- (b) In the event of any conflict between any special terms and conditions and these terms and conditions the special terms and conditions shall prevail.
- (c) Any terms and conditions contained in the Supplier's acceptance shall not constitute a counter offer and in the event of any inconsistency with this Purchase Order this Purchase Order shall prevail.

3 PAYMENT

- (a) The Supplier shall supply and deliver to the Purchaser all Goods specified in this Purchase Order for the price stated and within the time stipulated on the face hereof unless such Goods, price or time shall have been varied with the consent of the Purchaser in writing. Variation in time by the Purchaser shall not form the basis for a claim for extra costs and has no other effect on this Purchase Order.
- (b) Payment shall be made in the manner set out on the face hereof.
- (c) Unless this Purchase Order expressly states to the contrary where any price is to be calculated at a rate such rate shall be on a fixed price basis and shall not be varied due to rise or fall in the cost of labour and or materials and or any costs or expenses incurred or to be incurred by the Supplier.
- (d) The Purchaser may deduct from the price stated herein:
 - (i) any monies owed by the Supplier to the Purchaser and,
 - (ii) any amount reasonable representing the cost of remedying defects and omissions (if any).
- (e) Any reduction in the Supplier's costs from those in force at the date hereon is to be paid to or allowed to the Purchaser by the Supplier in reduction of the price stated herein.
- (f) All Goods supplied are for the use or re-sale by the Purchaser or its associated companies and may be incorporated in the Purchaser's products in which event the Supplier is not entitled to royalties or other additional compensation.

4 PROPERTY OF SUPPLIER

The Supplier warrants that the Goods to be supplied in connection with this Purchase Order shall, upon delivery, be the sole and absolute property of the Purchaser and that none of the Goods shall be subject to any mortgage, lien or encumbrance whatsoever.

5 INSPECTION

The Purchaser shall have the right to inspect the Goods and all materials and equipment used during the process of manufacture or installation of the Goods. Where such inspection is carried out the Supplier shall not be relieved of responsibility for any defects in the Goods nor released from any warranty. In addition to any inspection which may be carried out before the Goods are delivered all Goods the subject of this Purchase Order, whether paid for or not, may be inspected by the Purchaser after delivery and where such Goods or any part of them do not conform with the provisions of the Purchase Order and/or where any implied condition or warranty as set out in applicable statutes is breached by the Supplier, the Purchaser without prejudice to any of its rights under this Agreement or under law may reject any such Goods or part thereof and the Supplier shall be liable for any loss or damage suffered or incurred by the Purchaser as a consequence of such rejection. The Purchaser may notify the Supplier of any such rejection and the Goods so rejected shall be collected by the Supplier at its own cost and until collection shall be the Supplier's risk. The provisions of this clause shall mutatis mutandis apply to Goods found defective at a time later than the time of inspection aforesaid where such defect is of a nature that it was not apparent upon reasonable examination after delivery.

6 DELIVERY & INSTALLATION

- (a) All Goods shall be delivered F.I.S. to the address stipulated in this Purchase Order or such other address as may be notified by the Purchaser to the Supplier and until the delivery, or where the Goods are to be installed by the Supplier, installation is acknowledged by the Purchaser all Goods shall be at the sole and absolute risk of the Supplier.
- (b) Without prejudice to the right of the Purchaser under any provision contained herein to cancel all or part of this Agreement, if delivery or, where any Goods are to be installed by the Supplier, installation is not made within the time or times stipulated in this Purchase Order, the Supplier shall pay to the Purchaser by way of liquidated and pre-ascertained damages and not as a penalty a sum equal to 1% of the price stated herein for each week that delivery or installation is delayed or pro-rata for part thereof until the Goods are delivered or installed, which amount is a genuine pre-estimate of loss or damage suffered by the Purchaser.
- (c) Time is of the essence in respect of deliveries and installation to be made hereunder and the Purchaser may at its option and without limitation of or prejudice to any of its rights cancel all or any part of this Agreement if deliveries or installation are not made within the time or times stipulated herein.
- (d) All Goods supplied must be accompanied by a delivery docket listing the Goods in sufficient detail to enable checking to take place at the time of delivery. No responsibility for payment will be accepted by the Purchaser unless a delivery docket has been signed by an accredited representative of the Purchaser or, where any Goods are to be installed by the Supplier, the Purchaser has acknowledged completion of installation. The signing of any delivery docket by or on behalf of the Purchaser or such acknowledgment of installation shall not imply that the Purchaser has accepted the Goods as regards their quality or quantity. The quantity of merchandise delivered by the Supplier to the Purchaser shall not be greater than the amount specified herein unless an additional amount is first ordered by the Purchaser in writing. In the event that the Goods are delivered in excess of the amount specified in this Purchase Order they may be returned by the Purchaser at the Supplier's expense.

7 PACKAGING

The Goods shall be adequately packaged protected and labelled and shall bear the number on the face of this Purchase Order and shall be marked clearly "Freight Prepaid" for transportation to the address referred to in clause 6(a) herein. No charge will be accepted by the Purchaser for packing unless expressly agreed to by the Purchaser.

8 INSURANCE OF GOODS IN TRANSIT

Insurance of Goods in transit to the address referred to in clause 6(a) hereof shall be the responsibility of the Supplier unless otherwise stated herein.

9 INVOICES

- (a) Invoices must be accompanied by signed documentary evidence of proof of delivery. Where Goods are purchased from overseas invoices they shall be accompanied by bills of lading, insurance receipts, ocean freight account and receipted warranty where applicable.
- (b) Any invoice not received by the Purchaser by the 28th day of the month to which it pertains shall be deemed to be dated the same day of the following month.

10 WARRANTIES

The following warranties are in addition to any statutory guarantee or warranty implied by law. The Supplier at all times warrants:

- (a) that the Goods supplied in connection with this Agreement are new (unless otherwise agreed), conform with the description and specifications in this Purchase Order, are of merchantable quality, are fit for the purpose for which they are acquired and free from defect in material and workmanship.
- (b) that the Services to be supplied in connection with this Agreement will be rendered with due care and skill.
- (c) at the Purchaser's option, and without in any way limiting the Purchaser's other rights, the Supplier will repair and/or replace and/or modify without delay in a proper and skilful manner all parts of the Goods supplied including spare parts which shall become defective within twelve (12) months from the date of delivery of the Goods and shall be liable for all expenses incurred in relation to, and any damage to any equipment or associated works caused by any defect or by such repair, replacement, or modification at such place and as specified by the Purchaser for a period of twelve (12) months after any such repair and/or replacement and/or modification.
- (d) that no registered design, patent, trade mark or copyright or other intellectual property right of a third party has been infringed by the manufacture or supply of the Goods to the Purchaser.

11 INDEMNITY AND INSURANCE

- (a) The Supplier shall be liable for and shall indemnify the Purchaser against any liability, loss, claim or proceedings in respect of injury, loss or damage whatsoever (whether by way of personal injury, or death, damage to any property real or personal) including financial and other consequential loss arising out of or concerning any Goods or Services supplied by the Supplier and/or any person it appoints, engages, employs or invites or any equipment provided by the Supplier used in connection with this Agreement and actual or alleged infringement of any registered design, patent, trademark, copyright or other third party intellectual property rights in any way connected with this Agreement.
- (b) If the Supplier either as principal or by any agent or employee enters upon any premises or property of or in the possession of the Purchaser, in order to perform any Services or any obligation hereunder, the Supplier shall effect and maintain at the Supplier's expense all necessary insurances including, but not limited to, employer's liability insurance and any other insurances required by law, or as are customary or which the Purchaser may require, including but not limited to product liability insurance.

12 DEFAULT & CANCELLATION

- (a) If the Supplier shall breach or be unable to comply with any condition of this Agreement the Purchaser may cancel this Agreement forthwith and recover from the Supplier any damages, costs, losses or expenses incurred by the Purchaser as a consequence of the breach and cancellation.
- (b) In addition to the rights of the Purchaser referred to elsewhere in this Purchase Order the Purchaser shall have the right to cancel this Agreement at any time before actual production of the Goods hereby ordered has commenced and in the event of such cancellation the Purchaser's liability shall be limited to actual expenditure incurred by the Supplier on this Purchase Order or the price of the Goods, whichever is lower.
- (c) The Purchaser shall also have the right to cancel this Agreement if the Supplier's rights or obligations hereunder are assigned without the prior written consent of the Purchaser or in the event that the Supplier becomes insolvent, commits an act of bankruptcy or makes an assignment for the benefit of creditors or being a company is wound up or has a liquidator or provisional liquidator appointed or makes any arrangement or compromise with its credits generally or is placed under official management or has a receiver appointed to the whole or any part of its assets or property or ceases to carry on business or appears likely in the reasonable opinion of the Purchaser to cease to carry on business or to be unable to pay its debts when they become due and payable.

13 OCCURRENCES BEYOND THE CONTROL OF THE PURCHASER

In addition to the rights referred to elsewhere in this Purchase Order in the event of any occurrence beyond the control of the Purchaser include, but not limited to acts of God, fire, war, government regulations, strikes, lock-outs and labour trouble, which may prevent or delay use of any Goods the subject of this Agreement by the Purchaser, the Purchaser shall have the right to suspend delivery or installation of such Goods and the payment therefor until the circumstances preventing or hindering the use of such Goods by the Purchaser has ceased or if in the Purchaser's reasonable opinion it appears unlikely that such circumstances shall cease the Purchaser has the right to cancel this Agreement and shall incur no liability hereunder.

14 CONFIDENTIAL INFORMATION

- (a) The Supplier shall during the course of this Agreement and at all times thereafter, treat and shall require that its employees, agents, representatives, advisers, associates, contractors and sub-contractors shall treat all technical and other information provided to it by the Purchaser in connection with this Agreement as confidential and shall not disclose any such information other than that available publicly without the prior written consent of the Purchaser to any person except as is necessary for the performance of this Agreement and on the condition that such person shall be required to take appropriate measures to safeguard such information.
- (b) The Supplier shall not without first obtaining the written consent of the Purchaser in any manner advertise or publish the fact that the Supplier has furnished or contracted to furnish to the Purchaser the Goods or Services here in specified. The Supplier shall not disclose any of the details connected with this Agreement to any other party except as herein specified.
- (c) The Supplier shall not use such information except in the performance of this Agreement without the written consent of the Purchaser.

15 GOVERNMENT TAXES AND CHARGES

- (a) The Supplier shall be liable for the payment of any taxes, duties, charges and fees to any person or government body for or in connection with any matter or thing including without limitation any invention patent, registered design, trade mark or copyright used in or relating to the performance of this Agreement except Goods and Services Tax or any other similar tax which shall be paid by the Purchaser.
- (b) The Supplier shall not use such information except in the performance of this Agreement without the written consent of the Purchaser.

16 PURCHASER'S PROPERTY, DRAWINGS AND DEVIATION

- (a) All equipment supplied by the Purchaser shall remain the property of the Purchaser and shall not be used otherwise than for the manufacture or supply of Goods to the Purchaser and shall be returned to the Purchaser, unless otherwise agreed to in writing by the Purchaser, upon completion or termination of this Agreement.
- (b) The Supplier shall be liable for the loss of or damage to any equipment provided by the Purchaser in relation to this Agreement.
- (c) Notwithstanding sub-clause (b) hereof, the Supplier shall notify the Purchaser in writing of any defect or unsuitability of any equipment supplied by the Purchaser before any repair work of such equipment is undertaken by the Supplier.
- (d) The Supplier shall have no claim to or rights to any drawings, data, designs, specifications or ideas furnished by the Purchaser or supplied by the Purchaser to the Supplier without the Purchaser's written consent. If any drawings, designs, specifications or instructions do not cover fully any materials, manufacturing or installation process necessary to execute this Purchase Order the Supplier must obtain the Purchaser's written instructions in relation thereto.

17 WAIVER

Waiver by the Purchaser of any specified fault or defaults by the Supplier or failure of the Purchaser to cancel this Agreement or any part thereof when a right to do so arises shall not constitute a waiver by the Purchaser of any of the terms and conditions of this Agreement save and except in respect of the actual defaults in respect of which such waiver is given.

18 ARBITRATION

In the event of any dispute arising hereunder the matter shall be resolved by negotiation between the parties, and if not resolved within 28 days of written notice of dispute shall be referred for resolution to an arbitrator mutually agreed or failing agreement, by an arbitrator nominated by the president of the Institution of Professional Engineers New Zealand, whose decision shall be conclusive and binding on both parties. Both parties may be legally represented at such arbitration.

19 GOVERNING LAW

This Agreement shall be governed by the law of New Zealand where this Purchase Order is executed by the Purchaser.

20 AMENDMENT

The terms and conditions of this Purchase Order may not be varied without the written consent of both parties.