

Purchase Order Terms and Conditions - Goods

1. DEFINITIONS

In this Agreement:

Acceptance means acceptance of the Goods in accordance with clause 4.

Agreement means this agreement and the Purchase Order (including any Purchase Order special conditions and any annexure or schedule).

Deliver or **Delivery** means packaging, transporting and unloading the Goods at the Delivery Point.

Delivery Date means the date for Delivery of the Goods stated in the Purchase Order.

Delivery Point means the place for Delivery of the Goods stated in the Purchase Order.

ERS System means the "Evaluated Receipt Settlement System", under which MMG automatically creates an invoice at the time that a claim for payment is made using the Supplier's payment claim number as the invoice number, and then making payment to the Supplier against the ERS System invoice based on the payment terms.

Goods means the goods stated in the Purchase Order.

GST/VAT means any tax imposed under any GST/VAT Law and includes GST/VAT within the meaning of the applicable law, regulation or similar provision governing the operation of the law.

GST/VAT Law means the GST/VAT laws of the jurisdiction which apply to this Agreement.

Input Tax Credit means a credit a taxpayer is entitled to claim to offset its GST/VAT liability in accordance with the relevant GST/VAT Law of the applicable jurisdiction.

Legislative Requirements includes any:

- (a) federal, state or local acts, ordinances, regulations, by-laws, orders, awards, proclamations; and
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the supply of the Goods.

MMG Policies and Procedures includes any policy, standard, procedure, publication or guideline which MMG is subject to (as amended from time to time) and that is:

- (a) publicly available and relevant to this Agreement; or
- (b) notified by MMG to the Supplier from time to time.

Price means the price for the Goods stated in the Purchase Order.

Purchase Order means an order issued from the SAP System by MMG to the Supplier for the supply of Goods.

RCTI means a "Recipient Created Tax Invoice", being a Tax Invoice created by MMG, which is delivered to the Supplier when payments are processed by the ERS System.

SAP System means any computer software ordering, logistics and sales invoicing system programs owned or licensed by MMG or its related bodies corporate.

Specification means the specification for the Goods together with any measurements, performance data, plans, drawings or other information provided by the Supplier to MMG or contained in any catalogues brochures or descriptive literature produced by the Supplier.

Supplier Event of Default means each of the following:

- (a) the Supplier failing to Deliver the Goods in accordance with the requirements under this Agreement, including by providing defective Goods;
- (b) any representation or warranty made by the Supplier under clause 9 being untrue or misleading in any material respect; and
- (c) the Supplier being in breach of any of its obligations under this Agreement.

Taxes means all forms of taxes, duties, imposts, charges, withholdings, rates, levies and any other governmental impositions of whatever nature and by whatever authority imposed, assessed or charged together with all costs, charges, interest, penalties, fines, expenses and other additional statutory charges, incidental or related to the imposition.

Tax Invoice means an invoice which entitles the recipient of goods or services for GST/VAT purposes to a tax credit in compliance with the provisions of the relevant GST/VAT Law.

Warranty Period means the period stated in the Purchase Order, commencing from Acceptance.

2. SUPPLY AND DELIVERY

- (a) The Supplier must Deliver the Goods to the Delivery Point by the Delivery Date.

- (b) Unless otherwise agreed between the parties in writing, the Supplier must Deliver the Goods free of carriage and handling charges to the Delivery Point.

- (c) The Goods must be accompanied by a delivery docket detailing the Goods, all relevant manufacturer's or supplier's instructions concerning the use of the Goods and all relevant manufacturer's or supplier's warranties in respect of the Goods.

- (d) Delivery is not complete until the Goods have been Accepted in accordance with clause 4.

3. HAZARDOUS MATERIALS

- (a) The Supplier must transport and store all hazardous materials and dangerous Goods in accordance with all Legislative Requirements and must provide MMG with the relevant materials safety data sheet (**MSDS**) for all chemicals, chemical substances and other hazardous goods on Delivery of such Goods.

- (b) No hazardous Goods may be Delivered until the relevant MSDS has been provided to MMG.

4. ACCEPTANCE OF GOODS

- (a) MMG may require the Supplier to provide evidence, acceptable to MMG, that the Goods are in accordance with this Agreement and the Supplier must provide such evidence within the time prescribed in the request or such longer time as may be agreed.

- (b) The Goods will be deemed to be accepted by MMG when a representative of MMG completes the "Goods Receipt Entry (Transaction MIGO)" in the SAP System.

- (c) Title to and property and risk in the Goods passes to MMG upon Acceptance.

5. REJECTION

MMG may, at any time and despite Acceptance of the Goods, reject the Goods if it reasonably determines that:

- (a) the Goods do not comply with this Agreement;
- (b) the Supplier has breached any term of this Agreement; or
- (c) the Goods Delivered are in excess of the quantities stated in the Purchase Order.

MMG may, at the Supplier's cost, sell or dispose of the rejected Goods if the Supplier does not repossess the Goods within 30 days of being notified of the rejection.

6. RETURN OF GOODS

MMG may return any Goods that have been incorrectly ordered by MMG. MMG must pay all freight costs and handling charges associated with the return of such Goods.

7. MMG NOT BOUND TO ORDER

This Agreement is not evidence of, nor does it create an exclusive relationship between MMG and the Supplier in respect of the Goods. The Supplier acknowledges that MMG may purchase Goods or goods similar to the Goods from any supplier at all times during the term of this Agreement.

8. WARRANTY PERIOD

- (a) At any time during the term of this Agreement and the Warranty Period, MMG may notify the Supplier if it determines that the Goods are defective or not compliant with this Agreement.

- (b) Upon receipt of notice from MMG pursuant to clause 8(a), the Supplier must remedy such defect at its cost by either repairing or replacing the Goods. If the Supplier fails to repair or replace those Goods, MMG may engage others to repair or replace those Goods at the Supplier's cost.

- (c) Where the Specification so provides, the Supplier must obtain for MMG the benefit of any manufacturer's warranty in respect of the Goods.

9. SUPPLIER'S WARRANTIES

The Supplier warrants that:

- (a) it has the right to sell and transfer unencumbered title to the Goods to MMG;

- (b) the Goods will be new, free from defects and of merchantable quality when Delivered to MMG and will be fit for the purpose stated in the Specification, or if no purpose is stated, the purpose for which the Goods would ordinarily be used and will conform to the description, model number and the sample (if any) provided by the Supplier;

- (c) the Goods comply with all relevant Legislative Requirements;
- (d) it will pay all Taxes in connection with the Goods under this Agreement;

- (e) it will effect and maintain all relevant insurances during the term of this Agreement in relation to the supply of goods; and
- (f) it has not suffered an insolvency event.

The Supplier acknowledges that MMG has relied upon such warranties in entering into this Agreement.

10. SUPPLIER TO COMPLY

The Supplier must, in carrying out this Agreement, comply with:

- (a) all relevant Legislative Requirements, including but not limited to:
 - (i) those Legislative Requirements in relation to the transport and storage of hazardous materials; and
 - (ii) anti-bribery and corruption and anti-money laundering laws; and
- (b) all MMG Policies and Procedures.

11. INDEMNITY BY SUPPLIER

To the maximum extent permitted by law, the Supplier indemnifies MMG against all actions, claims, costs, charges, damages, expenses, liabilities, losses or damages (including legal costs on an indemnity basis whether incurred by or awarded against MMG) that MMG may incur or sustain arising out of or in relation to the performance or non-performance by the Supplier of its obligations under this Agreement including the provision of the Goods.

12. PRICE

MMG must pay the Supplier the Price for the supply of the Goods. The Price is inclusive of all costs and expenses of the Supplier whether foreseen or unforeseen, including all insurances and Taxes (other than GST) (if any) which must be paid by the Supplier.

13. GOODS & SERVICES TAX ("GST") / VALUE ADDED TAX ("VAT")

- (a) Words or expressions used in this clause 13 which are defined in the applicable GST/VAT Law have the same meaning in this clause 13.
- (b) The Supplier warrants that the Supplier is registered for GST/VAT when the Supplier enters into this Agreement; and will notify MMG if it ceases at any time to be registered for GST/VAT.
- (c) MMG warrants that MMG is registered for GST/VAT when MMG enters into this Agreement; and will notify the Supplier if it ceases to be registered for GST/VAT.
- (d) Any consideration to be paid or provided to the Supplier for the provision of Goods made by the Supplier under or in connection with this Agreement, unless otherwise stated, is exclusive of GST/VAT.
- (e) Despite any other provision in this Agreement, if a party (**Supplying Party**) makes a taxable supply or transaction under or in connection with this Agreement on which GST/VAT is imposed:
 - (i) the consideration payable or to be provided for that supply or transaction under this Agreement but for the application of this clause 13(e) (**GST/VAT Exclusive Consideration**) is increased by, and the recipient of that supply (**Receiving Party**) must pay to the Supplying Party, an amount equal to the GST/VAT payable by the Supplying Party to the tax authorities on that supply; and
 - (ii) the amount by which the GST/VAT Exclusive Consideration is increased must be paid to the Supplying Party by the Receiving Party without set off, deduction or requirement for demand, at the same time as the GST/VAT Exclusive Consideration is payable or to be provided, but not before a Tax Invoice is issued by the Supplying Party.
- (f) Provided the Receiving Party is registered for GST/VAT, the gross up amount for GST/VAT in clause 13(e) is only payable to the Supplying Party if the Supplying Party issues a Tax Invoice for that supply or transaction within the time limits set out in the GST Law that will allow the Receiving Party to claim an Input Tax Credit.
- (g) To the extent that it is permitted under the GST/VAT Law, MMG reserves the right to create and issue a Tax Invoice in relation to Goods provided under this Agreement.
- (h) If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any Input Tax Credit to which that party is entitled for that loss, cost or expense.

14. WITHHOLDING FOR PAYMENT AND TAXES

- (a) MMG may, in relation to any payment it is required to make to the Supplier, withhold from that payment any amount it is required to withhold as Tax under a Legislative Requirement.

- (b) If any consideration paid to the Supplier by MMG under or in connection with this Agreement is paid free of withholding Tax, and at any time after such payment, MMG becomes aware (either by notification from a regulatory authority or otherwise), that an amount of Tax should have been withheld from such payment, MMG will be entitled to recover from the Supplier that amount of Tax and any subsequent amount MMG may be required to pay to a regulatory authority for failing to withhold (including any amounts required to be withheld). Such payments must be paid to MMG within 30 days of receipt of notice from MMG.

15. ERS SYSTEM

- (a) If the Purchase Order states that the ERS System is to apply, MMG and the Supplier agree that in relation to the taxable supplies the Supplier makes:
 - (iii) MMG will issue a RCTI in respect of those taxable supplies; and
 - (iv) the Supplier will not issue a Tax Invoice in respect of those taxable supplies.
- (b) If the Purchase Order states that the ERS System is not to apply, the Supplier must submit Tax Invoices to MMG. MMG will have no obligation to pay any other amount due under this Agreement until it receives a Tax Invoice for the relevant amount.

16. TERMS OF PAYMENT

- (a) All payments of a RCTI will be made at the end of the month following the month in which Acceptance of the Goods occurs.
- (b) Where a Tax Invoice is required to be delivered by the Supplier, payment will not be made until the end of the month following the month in which the Tax Invoice is delivered.
- (c) Payment of a Tax Invoice or RCTI will not be construed as evidence or an admission that the Goods have been supplied in accordance with this Agreement but is a payment on account only.

17. CONFIDENTIALITY

- (a) The Supplier must not disclose or use any information relating to MMG or its related bodies corporate (including the terms of this Agreement and the fact of its existence) which is not in the public domain and comes into the Supplier's possession during the term of this Agreement (**Confidential Information**).
- (b) The Supplier may only disclose Confidential Information either with MMG's prior written consent or if required by Legislative Requirements.

18. TERMINATION

- (a) MMG may without cause and at any time, by giving 7 days' written notice to the Supplier, terminate this Agreement (in whole or in part) prior to Delivery of the Goods.
- (b) Upon termination under clause 18(a), MMG will pay the Supplier any costs reasonably and necessarily incurred by the Supplier:
 - (i) prior to the date of the termination notice; or
 - (ii) which the Supplier is legally bound to pay,
 in relation to the manufacture or supply of the Goods after deducting any amount which the Supplier receives for the sale of those Goods to any third party. The Supplier must use its best endeavours to sell those Goods to a third party.
- (c) Upon termination, MMG may engage alternate suppliers to supply the Goods.
- (d) If a Supplier Event of Default occurs, MMG may give the Supplier a notice requiring the relevant failure, misrepresentation or breach to be remedied within a specified time not less than 5 business days.
- (e) If the Supplier fails to remedy the relevant failure, misrepresentation or breach or, if the relevant failure, misrepresentation or breach is not capable of remedy, MMG may, by written notice to the Supplier, terminate this Agreement.

19. SURVIVAL

Clauses 1, 8, 11, 17, and 18 survive the termination or expiration of this Agreement.

20. GOVERNING LAW

This Agreement is governed by and must be construed according to the applicable jurisdiction stated in the Purchase Order and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.