

PURCHASE ORDER STANDARD TERMS & CONDITIONS

By accepting this Purchase Order, the Supplier agrees to supply to Phoenix Engineering Systems Pty Ltd (PES) on the following terms and conditions:

1. Definitions

The following interpretation of terms shall apply except where the context otherwise indicates:

"**New Materials**" means any material manufactured or supplied by the Supplier to PES in accordance with the Order.

"**Order**" or "**Purchase Order**" means this purchase order and these terms and conditions and includes all information provided by PES to the Supplier with or supplementary to the Order and any variation in writing agreed to by the parties.

"**Proprietary Information**" means all information, documents, data, materials, electromagnetic reproductions, samples and/or models in whatever form, whether or not produced under this Order, disclosed or to be disclosed by PES to the Supplier pursuant to this Order including, but not limited to, pictures, plans, specifications, blueprints, performance details, performance requirements, sub-assembly and general assembly drawings, components lists, items lists, price lists, process instructions, reports, instruction sheets, know-how, trade secrets, manufacturing data, software, models and other intellectual or industrial property.

"**Price**" means the price to be paid to the Supplier by PES for the Supplies as noted on the Order. The price stated is fixed unless otherwise stated and includes the cost of packaging and delivery.

"**Supplier**" means the person, partnership, joint venture, firm, company, government or entity described on the face of the Order and includes their personal representatives, survivors and permitted assigns.

"**Supplies**" means all goods, services, articles, products, materials, items, parts, components, assemblies, Tools, dies, information, Technical Data Packages or any other item(s) described on the face of the Order including but not limited to New Materials, raw materials, incomplete or unfinished items, appurtenances and spare parts.

"**PES**" means Phoenix Engineering Systems Pty Ltd (ABN 13 120 021 034), an Australian company having its registered office at Unit 6 / 7 Salisbury Road Castle Hill , in the State of New South Wales.

"**Tools**" includes tools, designs, drawings, special tools, gauges, patterns, jigs, fixtures, dies and other accessories paid for or supplied by PES to the Supplier.

2. Interpretation

2.1 The singular includes the plural and vice-versa unless the contrary intention appears.

2.2 Words importing a gender include every other gender.

2.3 A reference to a person includes a body politic or corporate and/or a partnership.

2.4 Unless otherwise stated, reference to "dollar" or "\$" means the monetary unit or unit of currency of Australia.

3. Contract

3.1 Subject to Clause 4, the Order constitutes and embodies the entire understanding and agreement of the parties and shall be varied only in writing executed by the parties. The Supplier acknowledges that on acceptance of the Order it will be bound by the Order and that any condition or offer in the Supplier's acknowledgment, acceptance or other document created or issued in response to the Order which is at variance with or additional to the Order is rejected and not binding on PES. Subsequent to its acceptance of the Order, the Supplier shall not cancel, rescind, or terminate the Order.

4. Acceptance

4.1 The Supplier shall accept the Order within 10 working days of the date of the Order by: (a) signing and returning the attached copy of the Order; (b) signing and returning any tear off acknowledgment slip; or (c) otherwise acknowledging the Order or signifying its acceptance in some other way.

4.2 For the purpose of these terms and conditions the Supplier will be deemed to have accepted the Order if no notice is received within the specified time period.

5. Warranties

5.1 For a period of 12 months from the date of delivery of the Supplies, the Supplier warrants that:

(a) notwithstanding any inspection or delivery of the Supplies, the Supplies are of merchantable quality, conform to the requirements of the Order, are fit for the purposes for which the Supplies are intended to be used by PES, are free from all defects (including latent defects) and deficiencies whether in design, performance, materials or workmanship, comply with all technical and operational requirements of PES, and correspond to any samples supplied by the Supplier to PES. The Supplier is deemed to know the purposes for which the Supplies are to be used by PES and is deemed to be aware that PES is relying on the Supplier's judgment that the Supplies are reasonably fit for those purposes;

(b) the use, manufacture or sale of the Supplies or their incorporation in other things does not infringe any copyright, patent or other intellectual, industrial or other property right under any legal system anywhere in the world;

(c) the Supplies, their design, construction, ingredients, quality and packaging comply in all respects with all relevant requirements of all statutes in force at the places of manufacture, shipment and delivery;

(d) the Supplier shall, in the performance of this Order, comply with the laws from time to time in force in the State, Territory or other jurisdictions in which the Order, or a part thereof, is or is to be carried out, including all applicable health and safety legislation, relevant Australian Standards and all lawful requirements of public and other authorities in any way affecting or applicable to the Supplies.

5.2 The Supplier shall, without delay and at no additional cost to PES, repair or replace the Supplies or any defective parts with new Supplies or parts in the event that any breach of Clause 4.1 occurs, and do so in a manner and a time requested by PES and so as to cause as little inconvenience to PES as possible.

5.3 The rights and remedies provided in this Clause 5 are in addition to and do not limit any other rights of PES under the Order or otherwise.

6. Delivery, Risk and Property

6.1 Where the Order provides for progress or other payments prior to delivery, then all finished and unfinished Supplies and all things acquired or appropriated for the Order irrespective of their incorporation in the Supplies or their location shall vest in and become and remain the absolute property of PES and shall not be within the disposition of the Supplier.

6.2 The Supplier shall establish and maintain an inventory control system for the purposes of Clause 5.1 and shall mark all such Supplies and things acquired or appropriated for the Order with identification numbers as used in that inventory control system together with marks, brands or single inscriptions of ownership to identify readily all those Supplies and things as the property of PES.

6.3 The Supplier shall require all of its subcontractors to comply with the provisions of this Clause 6 and shall ensure that no subcontractor nor any other person shall have a lien, mortgage, charge or other security over any of the Supplies whether finished or unfinished or over any of the things acquired for or appropriated to the Order.

6.4 The Supplier shall deliver the Supplies in accordance with the terms specified in the Order and at the time or times nominated by PES. PES may at any time amend the times and manner of delivery of the Supplies.

6.5 Subject to Clause 6.1, ownership and property in the Supplies shall pass to PES upon completion of delivery to PES. Risk in the Supplies shall pass to PES upon completion of delivery to PES. Delivery of the Supplies shall be completed when the Supplies are within the store or other place nominated by PES on the Order or in writing as the place of delivery, and a person authorized by PES has signed a delivery docket in duplicate acknowledging receipt of the Supplies and a copy of that docket is left with that person. The Supplier shall at all times insure and keep insured any such Supplies and things for their full replacement value with a reputable insurer and provide PES with a copy of the Certificate of Currency upon request.

7. Invoicing

7.1 During the term of the Order, and for a period of at least two years thereafter, PES shall have the right to query any invoice presented by the Supplier and to require correction of any error therein irrespective of the fact that the invoice may relate to a payment which has already been made or may specify a period of time in which queries are to be raised. Without limiting the rights of PES under any other provision of the Order, all moneys which may be owing by the Supplier to PES on any account whatsoever may be deducted by PES from any moneys due or to become due by PES to the Supplier.

8. Time

8.1 Time shall be of the essence in the performance of the Supplier's obligations in the Order.

9. Packing

9.1 The Supplier shall pack the Supplies in a manner sufficiently robust to prevent damage to or deterioration of the Supplies in the course of loading, transit and unloading, and shall comply with all packing instructions issued or given by PES from time to time. Each package shall have endorsed in a clear and prominent place the number of the Order. Packing slips or advice notes shall accompany all deliveries of the Supplies.

9.2 The Supplier shall comply with all applicable customs, export, import, quarantine and other laws and requirements relating to packaging and labeling including, where appropriate, the dispatch of hazardous cargo.

10. Rejection

10.1 For a period of 12 months after delivery of the Supplies and without prejudice to any other rights available to it, PES may at any time reject all or any of the Supplies (including Supplies with latent defects) which do not comply in all respects with the Order and return those rejected Supplies to the Supplier at the Supplier's risk and expense.

10.2 Without prejudice to any other rights available to it, PES may require the Supplier to replace immediately any of the rejected Supplies with Supplies complying in all respects with the Order and the Supplier shall meet that requirement without being entitled to additional payment.

10.3 Where PES does not require the Supplier to replace any rejected Supplies then the Supplier shall pay immediately to PES any money paid by PES in respect of those rejected Supplies together with all damages, losses, costs and expenses relating to, arising out of, or as a consequence of that rejection including consequential loss and loss of profits and costs incurred by PES in obtaining other goods as replacements for the rejected Supplies.

11. Termination

11.1 Without prejudice to any of its rights, powers or remedies, PES may terminate the Order immediately without PES incurring any liability to the Supplier whatsoever if: (a) the Supplies or any portion thereof are not delivered within the time or times nominated or agreed by PES; (b) there is any other breach of the Order; or (c) the Supplier becomes insolvent, bankrupt, goes into liquidation or receivership, is made subject to any petition or proceedings taken for the Supplier's compulsory winding up, is made subject to the supervision of a court, or enters into a scheme or arrangement with its creditors.

11.2 On termination PES may: (a) refuse to accept any undelivered Supplies; (b) return to the Supplier at the Supplier's risk and expense any of the delivered Supplies and recover from the Supplier any moneys paid by PES in respect of those Supplies; (c) enter into any premises and take away all finished and unfinished Supplies, materials and things in which PES has property and recover all moneys paid by PES in respect of those Supplies; or (d) institute proceedings including but not limited to claiming compensation by way of damages in respect of any loss or damage suffered or sustained directly or indirectly by PES including consequential loss and loss of profits.

12. Indemnity

12.1 The Supplier shall indemnify and hold harmless PES in respect of all actions, suits, proceedings, claims, demands, losses, costs, charges and expenses (including consequential loss and loss of profits and the cost of settling any pending or threatened proceedings) arising from or incurred by reason of: (a) any breach of the Order; (b) any loss or damage to property or injury or death to persons caused or contributed to directly or indirectly by defective Supplies or by the use, resale or incorporation in other things of the Supplies; (c) any actual or alleged infringement or breach of any intellectual or industrial property right anywhere in the world arising out of or resulting from the sale or use of the Supplies or their incorporation in other things; and (d) any claim made against PES by any third party arising directly or indirectly from or as a result of the Supplier's failure to deliver the Supplies in accordance with the requirements of the Order.

13. Assignment

13.1 The Supplier shall not without the prior written consent of PES assign or transfer its obligations under the Order.

13. Law and Arbitration

13.1 The Order shall be governed by the laws of the State of New South Wales and the parties hereby submit to the exclusive jurisdiction of the Courts of the State of New South Wales.

13.2 In the event of a dispute in relation to the Order, the parties agree to make a genuine effort to resolve such dispute within 30 days. If a dispute cannot be resolved, then either party may refer the matter on which they are unable to reach agreement to mediation in a form to be agreed between the parties, and failing the resolution of a dispute at mediation, the parties may then resort to arbitration or litigation.

14. Proprietary Information

14.1 The Supplier shall not without the prior written consent of PES (which PES, at its absolute discretion may withhold) reveal, copy, publish, reproduce, or in any way use any Proprietary Information (or any part of it) supplied to the Supplier by PES for any purpose other than that of performing the Supplier's obligations under the Order and shall return to PES on demand all such Proprietary Information including copies thereof and destroy all notes, written reports and other records containing references to the Proprietary Information, as well as ensuring that all of its personnel and subcontractors fulfill all of the requirements of this Clause 14.1.

15. Waiver

15.1 PES shall not be deemed by any present or future act or omission to have waived any of its rights or to have consented to any failure by the Supplier to perform or observe any of its duties and obligations, except by a written waiver or consent signed by PES and any such waiver or consent shall be effective only in the specific instance to which it relates and for the specific purpose for which it is given.

16. Tools

16.1 The Tools shall be, and remain, the property of PES and shall not, without the prior written approval of PES, be modified, altered in any way, removed from the Supplier's premises or used for any purposes other than for the fulfillment of the Order.

16.2 PES may at all reasonable times remove the Tools from the Supplier's premises and until removed the Supplier shall be responsible for their safe custody and maintenance in accordance with approved engineering practices.

16. Payments

17.1 The Price is a firm price and is not subject to rise and fall.

17.2 PES shall not be required to pay for the Supplies until after the expiry of thirty days from the completion of their delivery and receipt of a correctly rendered invoice. Where applicable, a valid tax invoice in accordance with the *A New Tax System (Goods & Services Tax) Act 1999 (Cth)* must be provided.

17.3 The Price is inclusive of any GST, excise, consumption or other tax or duty applicable. The Supplier shall pay all stamp duties assessed or applicable on or in relation to the Order.