

## Standard Purchase Terms and Conditions

These are the Standard Purchase Terms referred to in the Purchase Order between Firmins Lane Engineering Pty Limited or any of its wholly owned subsidiaries (**Firmins Lane Engineering**) and the Supplier named on the Purchase Order (**Supplier**) (**the Purchase Order**).

Valid from 1<sup>st</sup> February 2016

### 1 Agreement

Unless otherwise agreed in writing, the agreement between the parties (**Agreement**) consists of the Purchase Order, these Standard Purchase Terms and any agreement in writing between the parties (which has priority over these Standard Purchase Terms to the extent of any inconsistency), but excluding any terms and conditions expressed in any document of the Supplier, unless Firmins Lane Engineering has expressly accepted those terms and conditions in writing.

### 2 Acceptance

(a) The Supplier is deemed to have accepted the Agreement upon acknowledgement of a Purchase Order or upon any supply pursuant to a Purchase Order, whichever occurs first.

(b) In the case of any inconsistencies between these Standard Purchase Terms and a Purchase Order, the Purchase Order will prevail.

### 3 Price and Payment

#### 3.1 Price

(a) Each Purchase Order is placed on a firm price basis in accordance with the price(s) of the goods (**Goods**) and/or services specified in the Purchase Order (**Goods or Services**) and is not subject to any increase in price without the prior written agreement of Firmins Lane Engineering.

(b) The price(s) must include all costs payable by Firmins Lane Engineering for the Goods or Services, including (where applicable):

(c) delivery charges to the destination stated on the Purchase Order (Destination), if delivery is specified on the Purchase Order;

(d) the unloading of the Goods by the Supplier at the Destination, if delivery is specified on the Purchase Order;

(e) any applicable taxes, duties, and fees payable;

(f) insurance;

(i) packaging; and

(ii) the use or supply of pallets and containers.

#### 3.2 Payment

(a) The Supplier must provide monthly statements of account to Firmins Lane Engineering and invoice Firmins Lane Engineering promptly in respect of each delivery. Firmins Lane Engineering will pay each invoice within 60 days after the end of the month in which the tax invoice is dated unless it notifies the Supplier of an error or a dispute in relation to the invoice or the Goods or Services supplied.

(b) The tax invoice must comply with Australian Tax Office requirements and identify:

(c) the Supplier's Australian Business Number; and

(d) the GST for each component of the Goods or Services supplied pursuant to the Purchase Order.

#### 3.3 Deductions

Without prejudice to other rights under the Agreement, Firmins Lane Engineering may deduct from any amount which may be or become payable to the Supplier under the Agreement any amount due from the Supplier to Firmins Lane Engineering.

#### **4 Shipment and delivery**

- (a) The Goods must be appropriately packed for shipment and shipped to the address specified on the Purchase Order in accordance with any shipping instructions issued by Firmins Lane Engineering in conjunction with the Purchase Order.
- (b) All of the Goods specified in the Purchase Order must be delivered:
- (c) in accordance with the Purchase Order;
- (d) on or before the delivery date specified on the Purchase Order;
- (e) to the delivery destination specified on the Purchase Order;
- (f) accompanied by a delivery note stating the date of issue, Supplier's details, the Goods delivered and the Purchase Order details;
- (g) in good condition and without damage; and
- (h) with copies of all relevant engineering details, designs, evidence of compliance with applicable standards and other documentation reasonably requested by Firmins Lane Engineering.
- (i) Quantities received in excess of the amount ordered may be returned at Firmins Lane Engineering's option and at the Supplier's expense.
- (j) Delivery of Goods will not have occurred for the purposes of the Agreement, unless Firmins Lane Engineering has acknowledged receipt of any Goods which are delivered.

#### **5 Inspection and rejection**

- (a) Firmins Lane Engineering or its nominee may from time to time inspect all work in progress associated with the supply of Goods or Services.
- (b) The purchase of the Goods is subject to inspection and approval by Firmins Lane Engineering or its authorised representative within a reasonable time after delivery, and Firmins Lane Engineering reserves the right to either require correction of or reject and return any Goods found not to be in accordance with the Agreement.
- (c) Goods rejected will be held by Firmins Lane Engineering at the Supplier's risk and cost, for no more than 60 days pending the Supplier's instructions (after which Firmins Lane Engineering may return the defective Goods at the Supplier's cost).
- (d) The Supplier must pay the cost to Firmins Lane Engineering of rejecting and removing or returning any defective Goods to the Supplier.

#### **6 Title and risk**

The Goods are at the Supplier's risk until risk passes to Firmins Lane Engineering in accordance with the Agreement.

#### **7 Insurance**

- (a) The Supplier must take out and maintain at its own expense:
- (b) a workers' compensation insurance policy;
- (c) a public liability insurance policy for not less than \$20 million in aggregate;
- (d) a product liability insurance policy for not less than \$10 million in aggregate (if Goods are supplied by the Supplier); and
- (e) if Services are supplied by the Supplier, a professional indemnity insurance policy for not less than \$5 million in aggregate.
- (f) All insurance must be current during the period in which Goods or Services are supplied.

## **8 Warranties**

(a) The Supplier warrants that:

- (b) the Goods or Services are of merchantable quality and free from any defect of material or workmanship;
- (c) the Goods will comply with all specifications provided by Firmins Lane Engineering;
- (d) any services are provided with due care and skill;
- (e) the Goods or Services are fit for the purpose for which goods or services of the same kind are commonly supplied and for any other purpose made known to the Supplier;
- (f) where sold by sample, the Goods in bulk correspond with the sample in quality;
- (g) where sold by description, the Goods correspond with the description;
- (h) the Goods carry any applicable manufacturer's warranty, which passes to Firmins Lane Engineering or the customer of Firmins Lane Engineering without liability to Firmins Lane Engineering, and the Supplier will either assign to Firmins Lane Engineering, or hold on trust for Firmins Lane Engineering and Firmins Lane Engineering's customer, the benefit of any applicable warranty or guarantee that the Supplier has received from any supplier of the Supplier;
- (i) the Goods are free from lien, charge, or any other encumbrance or security interest;
- (j) the Goods or Services do not infringe any patent, trademark, trade name, copyright or other property right of any third party;
- (k) it has obtained and will maintain all necessary licences, permits and consents that may be required in connection with the supply of the Goods or Services; and
- (l) it is knowledgeable about, and will comply with, all anti-corruption, anti-bribery, anti-trust and anti-money laundering laws and other criminal laws, rules and regulations which may be applicable to the performance of the Agreement.
- (m) These warranties apply in addition to any warranties implied by law, and are not a waiver of any such implied warranties.
- (n) These warranties (express or implied) survive delivery, inspection, acceptance and payment by Firmins Lane Engineering.

## **9 Intellectual Property**

- (a) All specifications, drawings, and other intellectual property furnished by Firmins Lane Engineering to the Supplier or developed by the Supplier for the purpose of a Purchase Order are confidential, must not be disclosed or furnished to any third party without Firmins Lane Engineering's prior written consent, and remain the property of Firmins Lane Engineering.
- (b) Any equipment paid for by Firmins Lane Engineering for use in the fulfilment of a Purchase Order remains the property of Firmins Lane Engineering, must be clearly marked as the property of Firmins Lane Engineering, must be surrendered to Firmins Lane Engineering on demand, and must not be used for any purpose other than the fulfilment of a Purchase Order without the prior written consent of Firmins Lane Engineering.
- (c) The Supplier assigns to Firmins Lane Engineering all intellectual property rights the Supplier may have in Goods manufactured using property or intellectual property of Firmins Lane Engineering.
- (d) The Supplier must not, without the prior written consent of Firmins Lane Engineering, advertise or publish the fact that the Supplier has entered into, or is supplying Goods or Services under, this Agreement.
- (e) The Supplier agrees to take all reasonable steps to ensure that its officers, employees, contractors and agents comply with the obligations set out in this clause.

## **10 Confidentiality**

- (a) The Supplier acknowledges that it may obtain knowledge of or access to proprietary and confidential information of Firmins Lane Engineering, and agrees to keep such information strictly confidential and not to use that information for any purpose other than fulfilling a Purchase Order.
- (b) Clause 10 survives delivery, inspection, acceptance and payment by Firmins Lane Engineering.

## **11 Cancellation**

(a) Firmins Lane Engineering reserves the right to cancel a Purchase Order or any part thereof within a reasonable time if the full amount of all Goods or Services ordered is not delivered in accordance with the Agreement or if the Purchase Order is not fulfilled in any other particular.

(b) The Supplier releases Firmins Lane Engineering from any and all claims against it in relation to cancellation of a Purchase Order under this clause.

(c) The Supplier must pay the cost to Firmins Lane Engineering of removing or returning any Goods to the Supplier as a result of a cancellation under this clause.

## **12 Termination**

(a) Without limitation to its other rights and remedies set out in the Agreement, if the Supplier breaches or defaults in any of its obligations under the Agreement or becomes insolvent or if a receiver, administrator, or other controller is appointed to the Supplier, then Firmins Lane Engineering may cancel the Purchase Order and the Agreement in whole or in part and shall have no continuing obligation to the Supplier.

(b) On termination of the Agreement, Firmins Lane Engineering may remove, and the Supplier will give Firmins Lane Engineering reasonable access and assistance to remove, any property of Firmins Lane Engineering from the Supplier's facility.

## **13 Indemnities**

(a) The Supplier agrees to indemnify and hold harmless Firmins Lane Engineering in respect of all claims, losses and expenses in connection with the use of the Goods or Services by Firmins Lane Engineering or any of its customers, or any other acts or omissions of the Supplier in connection with its obligations under the Agreement. The Supplier's liability to indemnify Firmins Lane Engineering is reduced proportionally to the extent that Firmins Lane Engineering has contributed to the claims, losses or expenses.

(b) Clause 13 survives delivery, inspection, acceptance and payment by Firmins Lane Engineering.

## **14 Notices**

A communication under the Agreement is only effective if it is in writing, signed by or on behalf of the party giving it and it is received in full and legible form at the addressee's address or fax number.

## **15 General provisions**

(a) The Supplier may not assign, delegate or subcontract the Agreement or any part of it without the prior written consent of Firmins Lane Engineering.

(b) No waiver of a right or remedy under the Agreement is effective unless in writing and signed by Firmins Lane Engineering, and shall not constitute a waiver of any other right or remedy under, or condition of, the Agreement.

(c) The Agreement is governed by the laws of Victoria and the parties irrevocably and unconditionally submit to the jurisdiction of the courts of Victoria.

(d) The Agreement may not be modified except with the written agreement of Firmins Lane Engineering. No local, general, or other trade customs will be applied to alter the terms of the Agreement.

(e) The consent of Firmins Lane Engineering to anything under the Agreement may be withheld in Firmins Lane Engineering's absolute discretion.

(f) The Supplier must notify Firmins Lane Engineering within 7 days of any change of more than 50% in the beneficial ownership or control of the Supplier.

(g) Any term of the Agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of the Agreement is not affected.