

# Terms and Conditions for Purchase of Goods and/or Services by Schenck Process Australia Version 0 Effective July 2011

## 1. Agreement to Sell Goods and/or Services

The Vendor agrees to sell and the Company agrees to buy the Goods and/or the Vendor agrees to provide the Services which the Company agrees to accept, on and subject to these terms and conditions.

## 2. Delivery, Acceptance and Title - Goods

- 2.1 The Vendor must deliver the Goods to the Delivery Point by the Delivery Means on the Delivery Date (or earlier with the Company's prior written consent).
- 2.2 Each delivery must be accompanied by delivery dockets marked with the Order number, product description and the quantity of Goods.
- 2.3 Title to and risk in the Goods will pass from the Vendor to the Company on Delivery of the Goods.
- 2.4 Prior to accepting the Goods, the Company may reject the Goods if the Company (acting reasonably) considers any of the Warranties are untrue or have been breached or the Goods do not otherwise comply with the terms of the Order. The Company accepts the Goods if:
  - (a) The Company advises the Vendor in writing that the Goods have been accepted (but signing for delivery does not constitute acceptance);
  - (b) The Company has not rejected the Goods within 30 (calendar) days from the date of receipt at the relevant Company Site;
  - (c) The Company uses the Goods in a manner that materially changes their condition.
- 2.5 The Company's acceptance of the Goods will not preclude or prejudice any rights, powers or remedies the Company may have as a result of a breach of any of the Warranties or any other provision of these terms and conditions.

## 3. Performance of Services

- 3.1 The Vendor must perform all Services in accordance with the Order and these terms and conditions by the Completion Date referable to them.
- 3.2 The Company may in writing instruct the Vendor to vary the scope (but not the general nature) of the Services. The Vendor must comply with that instruction and a reasonable adjustment will be made by the Company to the Purchase Price.

## 4. Purchase Price and Invoicing

- 4.1 The Purchase Price includes:
  - (a) for Goods, all freight costs up to the Delivery Point, transit insurance and all other charges payable in connection with the sale of the Goods; and
  - (b) for Services, all costs and expenses associated with the provision of the Services, and all taxes (except GST), duties, imposts and levies payable under the laws of any relevant jurisdiction.
- 4.2 The Vendor may only issue tax invoices for Goods after Delivery of those Goods and for Services after completion of those Services (in all cases in accordance with the Order) and must only send one copy of each tax invoice to the Company. All such tax invoices must be issued to the Accounts Payable address nominated by the Company in the Order (or as otherwise notified by the Company) and include at least the Order number, description of the Goods and/or Services, the quantity of Goods and date of Delivery of the Goods or performance of the Services and be dated the date the invoice is sent to the Company.
- 4.3 Subject to Clause 4.5, the Company must pay the Purchase Price by cheque or electronic funds transfer to the Vendor within 30 days after the end of the month in which the Vendor's invoice issued in accordance with clause 4.2 is received by the Company.
- 4.4 The Company is not obliged to pay GST in respect of Goods and/or Services unless a valid tax invoice has been issued.
- 4.5 If the Purchase Price falls due for payment on a day that is not a Business Day, payment must be made on the next Business Day.
- 4.6 The Company is not obliged to pay any invoice which is received by the Company more than 90 days after the date of Delivery of the Goods and/or completion of performance of the Services.

## 5. Vendor Obligations - Goods

The Vendor must:

- 5.1 properly carry out all testing and quality assurance procedures, and provide to the Company all test certificates, required by the Order or as otherwise requested by the Company;
- 5.2 properly pack and protect the Goods to prevent damage during transit and upon Delivery;
- 5.3 ensure that all packaging and protective coatings are safe and will not in any way affect the condition of the Goods;
- 5.4 ensure that all packaging, labelling and transport of the Goods complies with all laws of any relevant jurisdiction, and where applicable, with relevant Australian and other recognised standards;
- 5.5 ensure that the Goods (and each sub-package of the Goods) are clearly addressed to the Delivery Point and that each sub-package is marked with the product description and quantity of the Goods contained in it;
- 5.6 enclose one copy of the packing list within each package of the Goods;
- 5.7 clearly state whether any Goods contain asbestos or other hazardous substances and, prior to delivery of any such goods, provide Material Safety Data Sheets in respect of such goods in the form required by the Company from time to time; and

- 5.8 on reasonable notice provide and procure for the Company (and its representatives) full access to all premises and locations to allow the Company to inspect the Goods at any time prior to their Delivery.

## 6. Vendor Obligations - Services

- 6.1 The Vendor must:
  - (a) perform the Services:
    - (i) at the Services Location;
    - (ii) in a competent, proper and workmanlike manner in accordance with good industry practice;
    - (iii) exercising a reasonable standard of skill, diligence, knowledge, judgement and care;
    - (iv) in a manner that is safe to both people and the environment assessed against the higher of industry best practice and legislative requirements;
    - (v) using its best endeavours so as not to interfere with any activities of any other person at any Company premises or the Services Location; and
    - (vi) so as to minimise delays in the performance of the Services;
  - (b) supply and maintain, at its own cost, everything the Vendor requires in order to provide the Services in accordance with the Order including all personnel, goods, materials and authorisations;
  - (c) where the Vendor provides the Services through its employees, agents or permitted sub-contractors, ensure that such personnel are suitably qualified and competent;
  - (d) ensure that all equipment used by the Vendor in performing the Services is maintained in a reasonable condition and complies with and is used in accordance with all relevant laws, regulations and other governmental requirements; and
  - (e) pay all of the Vendor's employees and subcontractors on time.
- 6.2 The Vendor must notify the Company of completion within 24-hours of completion of the Services.

## 7. Vendor Obligations - General

- 7.1 The Vendor must (and must ensure that its officers, employees, agents and contractors), in relation to the provision of the Services and the supply of Goods, at the Vendor's cost:
  - (a) provide the Company with all reasonably requested information;
  - (b) comply with all the Company safety, health and environmental policies made available to the Vendor from time to time;
  - (c) comply with all applicable laws, regulations and other governmental requirements;
  - (d) comply with all reasonable directions and requirements of the Company (including all site conditions made available by the Company);
  - (e) remedy any environmental damage or degradation resulting from the Vendor's actions or omissions;
  - (f) take reasonable care to protect against damage or loss to all property on the Services Location or the Company premises and comply with the Company's reasonable requirements relating to the protection of such property;
  - (g) maintain and make available to the Company sufficient records to enable the Company to verify all invoices; and
  - (h) ensure that the Warranties are and remain true and correct at all times.
- 7.2 The Vendor is responsible for all acts or omissions of the Vendor's officers, employees, agents and contractors in relation to the provision of the Services and supply of the Goods.

## 8. Warranties and Remedies

- 8.1 The Vendor warrants that:
  - (a) the Vendor is the legal and beneficial owner of the Goods and has the right to sell the Goods to the Company free from all mortgages, charges, encumbrances, liens and other third party rights and claims;
  - (b) the delivery of the Goods and performance of the Services complies with all applicable laws, regulations and other governmental requirements;
  - (c) the Goods are new, free from defects, of merchantable quality and fit for the purposes for which the Goods would ordinarily be used and any other purposes notified by the Company to the Vendor;
  - (d) the Goods conform with any specifications provided by the Company and the Services comply with the Company's specified requirements; and
  - (e) the Services are fit for the purposes for which they would ordinarily be required and any other purposes notified by the Company to the Vendor and will achieve any performance levels and/or results specified in the Order;
  - (f) if the Vendor is not the manufacturer, the Goods conform with the manufacturer's specifications;
  - (g) there are no terms, conditions or restrictions which will become binding on the Company as a result of the sale of the Goods to the Company or the use of the Goods by the Company or the resale of the Goods by the Company; and
  - (h) all information about the Goods given to the Company by or on behalf of the Vendor is true and correct in all material respects and is not misleading in any respect.
- 8.2 If, the Vendor breaches any Warranties or the Company rejects any Goods under clause 2.4 then at the Company's discretion and upon demand from the Company the Vendor must (as applicable) at the Vendor's cost and expense:
  - (a) repair or modify the Goods to the Company's reasonable satisfaction;
  - (b) replace the Goods;
  - (c) re-perform part or all of the Services; and/or

- (d) refund any amount paid by the Company to the Vendor in relation to the Goods and/or Services.  
The Vendor's obligations under this clause 8.2 shall continue for at least 24 months after the Goods are first received at the Company Site.

## 9. Insurance

- 9.1 Without limiting the Vendor's liability under the Order, the Vendor must obtain and maintain, from solvent and reputable insurers, the following insurance policies:
  - (a) public and products liability insurance in the amount of A\$20 million for any one loss or occurrence (from the date of the Order until the time when the Vendor has complied with all of its obligations under the Order);
  - (b) where Services are being provided, professional liability insurance in the amount of A\$5 million for any one loss or occurrence (from the date of the Order and for a period of 5 years after the Vendor has complied with all of its obligations under the Order); and
  - (c) where Goods are to be delivered to the Company's premises, third party motor vehicle insurance in the amount of A\$10 million for any one loss or occurrence (from the date of the Order until the time when the Vendor has complied with all of its obligations under the Order).

## 10. Intellectual Property

- 10.1 If the Vendor is manufacturing or procuring the manufacture of the Goods and the Goods are required to be manufactured or fabricated to the Company's specifications or special requirements (and are not goods of the type ordinarily manufactured by the Vendor or the Vendor's sub-contractors) the Company will be entitled to own all intellectual property rights of any kind that arise as a result of, or in the course of, the design or manufacture of the Goods.
- 10.2 If the Services are required to be performed to the Company's specifications or special requirements the Company will be entitled to all intellectual property rights of any kind that arise as a result of, or in the course of, the performance of the Services.
- 10.3 The Vendor warrants that the supply of the Services and Goods to the Company, the use of the Goods by the Company or any resale of the Goods by the Company will not infringe the intellectual property rights of any person and the Company will not have to pay any licence fee, royalty or other amount to any person in connection with the Services or Goods.

## 11. Cancellation and Suspension

- 11.1 The Company may cancel an Order by written notice given to the Vendor if the Vendor breaches any provision of the Order and such breach is incapable of remedy, or such breach is capable of remedy and the Vendor fails to remedy the breach within 14 days of receiving a notice from the Company requiring it to do so.
  - 11.2 In addition to its rights under clause 11.1, the Company may at its option and without cause:
    - (a) in relation to Goods, at any time up to 14 days prior to the Delivery Date cancel all or any part of an Order by notice in writing to the Vendor; and
    - (b) in relation to Services, cancel all or any part of the Order or suspend the performance of the Services (or any part of them) for up to 6 months by notice in writing to the Vendor;
- and upon such cancellation or suspension the Company has no obligations except for those set out in clause 11.3.
- 11.3 For the purposes of clause 11.2:
    - (a) in the case of a cancelled Order for Goods:
      - (i) if the Goods are goods ordinarily supplied by the Vendor, the Company will be under no obligation whatsoever to pay any money to the Vendor;
      - (ii) if the Goods have been manufactured or fabricated to the Company's specifications or special requirements (and are not goods ordinarily supplied by the Vendor), then upon receipt of the notice of cancellation under clause 11.2 the Vendor must:
        - (1) immediately cease manufacture or fabrication of the Goods (unless otherwise instructed by written notice from the Company at or after the time of receipt of the notice of cancellation); and
        - (2) do everything possible to mitigate any cost incurred by the Vendor upon such cancellation; and
      - (iii) where the Goods are of the type referred to in clause 11.3(a)(ii), the Company must pay to the Vendor, in full and final satisfaction of all of the Vendor's rights against the Company, the reasonable actual direct costs incurred by the Vendor in connection with the manufacture or fabrication of the Goods prior to the effective date of cancellation less any mitigated costs and resale proceeds;
    - (b) in the case of a cancelled Order for Services, the Company will pay the Vendor a fair and reasonable amount calculated by the Company for the Services performed up to receipt of the notice of cancellation, taking into account the actual direct costs reasonably incurred by the Vendor to that time and reasonable demobilisation costs.
  - 11.4 For the avoidance of doubt, the Company's only liability in relation to the cancellation of any Order under this clause 11 is as set out in clause 11.3 above and the Company is not liable to the Vendor for any indirect or consequential costs (including loss of profits or opportunity costs).

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11.5 Title to any Goods (and any raw materials and unfinished Goods) in respect of which the Company makes any payment under clause 11.3(a)(iii) passes to the Company on the making of that payment.

the Vendor's expense and in accordance with the Order. The reasonable cost of any additional testing requested by the Company shall be to the Company's account.

### 12. Miscellaneous

- 12.1 Unless this Order is placed pursuant to an existing contract between the parties which provides for the placing of purchase orders, the Order comprises, the whole contract between the parties about its subject matter and prevails over any terms and conditions put forward by the Vendor at any time.
- 12.2 No rule of construction applies to the disadvantage of a party because that party put forward the Order or any portion of it.
- 12.3 The Order is governed by the laws of the jurisdiction of the State or Territory of the Company's address specified in the Order. The courts of that jurisdiction (and the courts exercising appellate jurisdiction over them) have jurisdiction in connection with the Order. The parties submit to the jurisdiction of those courts.
- 12.4 No change or variation to the Order is effective unless confirmed in writing by the Company.
- 12.5 Except as set out in an Order, the Vendor must not permit or allow any person to exercise any of the Vendor's rights or perform any of the Vendor's obligations under the Order without the prior written consent of the Company (which consent must not be unreasonably withheld).
- 12.6 If any person is appointed by the Vendor to perform any of the Vendor's obligations under the Order (which appointment must be in accordance with clause 12.5), whether by sub-contract or otherwise, the Vendor is liable to the Company for all of the acts and omissions of such person.

### 13. Use and/or disclosure of Proprietary Information

- 13.1 The Vendor hereby undertakes that for a period of five (5) years from the Delivery Date, the Proprietary Information shall:
- be protected and kept in strict confidence and that the Vendor shall use the same degree of precaution and safeguards as it uses to protect its own confidential information of like importance, but in no case any less than reasonable care;
  - be only disclosed to and used by persons employed by the Vendor including its agents and/or sub-contractors;
  - Not be used in whole or in part for any purpose other than as set out in the Order;
  - Neither be disclosed nor caused to be disclosed whether directly or indirectly to any third party;
- 13.2 Prior to disclosing the Proprietary Information to employees, agents or sub-contractors, the Vendor shall inform such employees, agents or sub-contractors that such Proprietary Information is confidential and remains the property of the Company and in so far as reasonably possible require those employees, agents or sub-contractors not to use or disclose any such Intellectual Property during and/or after the termination of their employment with the Vendor.
- 13.3 Any Proprietary Information disclosed to the Vendor under the Order or derived from the Order shall remain the sole property of the Company during and after the term of the Order and cannot be used in any way by any person except as permitted under the Order.
- 13.4 The disclosure of such Proprietary Information by the Company to the Seller, its representatives or any person whether individually or corporate or otherwise shall not constitute a grant nor be construed as granting any rights thereto, whether express or implied, by license or otherwise, with respect to the matters, inventions or discoveries to which such Proprietary Information pertains or to the use of any patent, copyright, trademark or trade secret.
- 13.4 All rights and title to, or interest in all Intellectual Property rights created or made by the Vendor as a result of the Order shall be the sole and exclusive property of the Company and shall immediately upon creation (now as well as in the future) vest in and become the property of the Company and by the force of this Clause 13, assigned by the Vendor to the Company. The Company shall have the exclusive rights to apply for registration of any Intellectual Property of the Company in all countries of the World.
- 13.5 The Company shall have the exclusive right to manufacture any equipment, components, goods or supplies resulting from the Order, designed and developed using the Company's Proprietary Information, patents, copyright, trade secrets or to otherwise apply, use, reproduce, adapt or modify such Proprietary information.
- 13.6 The end or termination of the Order or delivery of the Goods shall not relieve the vendor of complying with the obligations of Clause 13.

### 14. Quality assurance and testing

- 14.1 The Vendor shall maintain effective control of the quality of the Goods, providing test facilities and performing all examinations and/or tests stated in the Order to demonstrate conformance of the Goods to the Order.
- 14.2 The Vendor is responsible for the provision of objective evidence that the controls and inspections applied by the Vendor are effective.
- 14.3 Unless otherwise provided for in the Order, testing of the materials, work or Goods shall be performed by the Vendor at

### 15. Tooling and equipment owned by the Company

- 15.1 Any tools or equipment, paid for by the Company, associated with the provision of the Goods or Services remain the property of the Company. Written consent from the Company shall be obtained prior to any modification, alteration or disposal of such tools, in whole or in part.
- 15.2 The Vendor shall keep custody of all materials, articles and/or equipment provided by the Company in connection with the Order such that they may be readily identified as the property of the Company at all times and the Vendor shall reimburse the Company for the cost of any materials, articles and/or equipment damaged, lost or destroyed whilst in the Vendor's possession.

### 16. Definitions

In the Order:

**"Business Day"** means a day on which the Company is ordinarily open for business in the jurisdiction that applies to the Order;

**"Company Site"** means the site owned or occupied by the Company which shall be the ultimate destination for the Goods;

**"Completion Date"** means the date for completion of the Services specified in the Order;

**"Delivery"** or **"Delivered"** means delivery or delivered to the Delivery Point by the Delivery Means;

**"Delivery Date"** means the date for delivery specified in the Order or, if not so specified, the last day of the applicable lead time period;

**"Delivery Means"** means instructions for delivery specified in the Order;

**"Delivery Point"** means the unloading point specified in the Order;

**"Goods"** are specified in the Order, or if not so specified means the goods referred to in the Order or any goods that may be supplied in the course of performing the Services;

**"The Company"** means the Company entity specified in the Order (or, where a business name is specified, the Company entity that carries on business under that business name) and, where more than one Company entity is party to the Order, includes all or any of them as appropriate;

**"Order"** means these terms and conditions and the purchase order to which these terms and conditions are attached or referred to in, together with any scope of services;

**"Purchase Price"** means the amount specified in or calculated in accordance with the Order;

**"Proprietary information"** means all information, pictures, data, specifications, software, know how or technology disclosed by the Company to the Vendor pursuant to the Order as well as all material produced under the Order including reports, technical information, plans, charts, drawings, calculations, tables, schedules and data either written or oral including without limitation any documents, electromagnetic reproductions, samples, models or any means of disclosing such Proprietary Information that the Company may elect to use for the purposes of the Order

**"Scope of Services"** means the scope attached to or referred to in the Order;

**"Services"** as specified in the Order or if not so specified means the services referred to in the Order;

**"Services Location"** means the location for performance of the Services;

**"Vendor"** means the Vendor of the Goods and provider of the Services; and

**"Warranties"** means the warranties provided by the Vendor to the Company under these terms and conditions together with any warranties implied by law.