



## CONDITIONS OF PURCHASE ORDER

The following are the terms and conditions upon which the purchase order placed by Firefly International ("Firefly") to the supplier named on the purchase order (the "Supplier") for the supply of the goods and/or services described on the order placed by Firefly (the "goods and/or services"):

### 1. ENTIRE CONTRACT

(a) This Order constitutes an offer to purchase the goods and/or services from the Supplier on the terms and conditions set out below, on the order placed by Firefly and on any document that is attached to or incorporated by reference into this document (collectively called "these Conditions").

(b) Where the terms and conditions set out below are inconsistent with the terms and conditions on the order placed by Firefly or on any such attached or incorporated document those terms and conditions will take precedence over the terms and conditions set out below and be construed as varying them to the extent of any such inconsistency.

(c) **If the Supplier who purports to accept this Order does so subject to conditions he shall be deemed to have waived any conditions which are inconsistent with these Conditions.**

(d) The provisions of the United Nations' Convention on Contracts for the International Sale of Goods and of any statute or law enacting or giving force to all or any part of that Convention shall not apply to this Order unless otherwise agreed by Firefly in writing.

### 2. PRICES

Any prices specified in this Order are fixed, firm and not subject to escalation and include all extras (for example freight, cartage, insurance/packing, use or supply of pallets and containers, etc.). Unless otherwise specified in these Conditions no increase in prices will be allowed unless approved by Firefly in writing.

### 3. PAYMENTS AND INVOICES

(a) Subject to paragraph (b) of this Condition, unless otherwise specified on the order placed by Firefly or agreed in writing with the Supplier, all invoices for the goods and/or services will be paid within thirty (30) days of the end of the month in which delivery of the goods and/or performance of the services is completed or the invoice for the same is received by Firefly whichever is the later.

(b) In the event that Firefly agrees that delivery of the goods may be made by instalments or that progress payments may be claimed by the Supplier in respect of the goods and/or services:

(i) the Supplier may invoice each instalment or progress payment separately and each such invoice will be paid within thirty (30) days of the end of the month in which delivery of the relevant goods and/or performance of the relevant services is completed, or the relevant invoice is received by Firefly, whichever is the later; and

(ii) a failure by Supplier to deliver one instalment or to complete any stage or part of the supply of the goods and/or performance of the services on time shall entitle Firefly to terminate this Order (either as to the whole or only as to the undelivered or unperformed part).

(c) Unless otherwise specified in these Conditions or requested by Firefly, all invoices must be sent to the Firefly location issuing this Order.

### 4. TOOLAGE

(a) All patterns, dies, tools, jigs, gauges and fixtures ("toolage") supplied or paid for by Firefly shall remain the property of Firefly and shall be returned to Firefly on completion of the supply of the goods and/or services, unless otherwise agreed by Firefly in writing.

(b) Any toolage loaned to the Supplier by Firefly is loaned as an aid to manufacture of the goods and/or supply of the services and Firefly accepts no responsibility as to the accuracy or suitability or otherwise of such toolage.

(c) The Supplier shall keep in good order and repair any toolage referred to in paragraphs (a) or (b) of this Condition and in the event of loss, destruction or damage of such toolage shall, without prejudice to any other right or remedy available to Firefly in respect of the same, on demand by Firefly (and at Firefly's option) either replace or pay to Firefly the actual cost incurred by Firefly in replacing or repairing such toolage.

### 5. DELIVERY

- (a) The goods and/or services shall be delivered and/or performed in the manner and by the date specified in these Conditions. In this respect time shall be of the essence.
- (b) Unless otherwise specified in these Conditions or agreed in writing by Firefly, the goods may not be delivered by instalments and the Supplier shall not be entitled to progress payments in respect or on account of the supply of the goods and/or performance of the services.
- (c) All invoices, packing slips, delivery dockets and correspondence must show the order number shown on the order placed by Firefly . Failure to do so may result in delays in processing such documents, in inspection and acceptance of goods and payment and shall entitle Firefly in such circumstances to claim an extension of time for attending to the same.
- (d) The goods the subject of this Order shall be delivered free at the destination indicated on the order placed by Firefly , unless otherwise specified in these Conditions.
- (e) Firefly reserves the right to refuse to accept liability for any goods delivered in excess of the quantity ordered or not in accordance with any delivery schedule referred to in these Conditions.
- (f) All deliveries must be accompanied by a delivery docket and receipt of goods must be acknowledged in writing by an authorised representative of Firefly.

## **6. PACKAGING**

All goods must be suitably packed or otherwise prepared for transportation in such a way as to avoid damage, to comply with earner's requirements and to secure minimum transportation costs and insurance rates.

## **7. INSPECTION AND TITLE**

- (a) All goods delivered to Firefly are subject to Firefly's inspection and the signing of a delivery docket does not constitute acceptance of them.
- (b) All goods shall, notwithstanding acceptance of delivery or the payment by Firefly of the whole or any part of the purchase price therefor, be subject to inspection and testing by Firefly after arrival and unpacking at the ultimate destination. If goods are to be incorporated into any plant or premises such inspection and testing may be carried out after installation or incorporation and under operating conditions. If the goods are found to be unsatisfactory, defective or of inferior quality or workmanship or not in accordance with these Conditions Firefly may, without prejudice to any other right or remedy available to it in respect of the same, reject the goods and return the same to the Supplier at the Supplier's cost and expense, whereupon the Supplier shall upon demand by Firefly reimburse Firefly for any amount paid by Firefly to the Supplier and for the costs and expenses incurred by Firefly in so returning the goods.
- (c) Firefly also reserves the right to inspect, and where practicable test, the goods whilst they are in the course of being produced or installed and may for this purpose enter upon the premises of the Supplier from time to time. Firefly may reject any work performed or being performed that does not conform to this Order, whereupon the work rejected shall be redone at no additional cost or expense to Firefly. Any such inspection shall not relieve the Supplier of any of its obligations under these Conditions.
- (d) Except in respect of goods rejected by Firefly, title to goods shall pass after delivery and after Firefly has had a reasonable time to inspect them.
- (e) In the event that any part payment has been made by Firefly in respect of goods and the same have been accepted by Firefly [whether delivered or not] title to the same shall pass to Firefly, but in the case of undelivered goods the risk shall remain with the Supplier.

## **8. WARRANTIES**

The Supplier warrants that:

- (a) the goods and/or services shall comply with specification and with any samples previously supplied by the Supplier and otherwise be in accordance with these Conditions;
- (b) the goods shall be of merchantable quality and free of defects in material and workmanship;
- (c) the goods and/or services shall be reasonably fit for the purpose or results for which they are required by Firefly and shall be of such a nature and quality that they might reasonably be expected to achieve that result;
- (d) services shall be rendered with due care and skill and any materials supplied in connection with those services will be reasonably fit for the purpose for which they are supplied;
- (e) goods shall, unless otherwise specified in these Conditions, be new; and
- (f) the Supplier has a right to sell the goods and the goods shall be free from all charges, liens or encumbrances whatsoever.

The foregoing warranties are in addition to any express warranties given by the Supplier and any warranties implied by law.

#### **9. CONFIDENTIAL INFORMATION**

Any specifications, engineering and other data, software, drawings, sketches, blueprints and other documents provided by Firefly (or any third party at the request of Firefly) to the Supplier for the purposes of this Order or produced by the Supplier specifically for Firefly for the purposes of or in the course of meeting this Order belong to Firefly and are confidential and thus the Supplier shall:

- (a) not use or copy them for any purpose other than the fulfilment of this Order;
- (b) not disclose them to any other person without the prior written consent of Firefly; and
- (c) return or hand the same (including, if so demanded by Firefly, all copies) to Firefly on completion of the delivery of the goods and/or performance of the services.

#### **10. PATENTS ETC.**

The Supplier warrants that the manufacture, supply or use of the goods and/or the services will not infringe upon the rights of any third party (whether copyright, registered design, patent, trade mark, confidential information or otherwise) or violate any applicable law. The Supplier shall indemnify and keep Firefly indemnified from and against any loss, liability, claim, suit and costs arising from breach of this warranty.

#### **11. NON ASSIGNMENT**

This Order and any contract resulting therefrom is personal to the Supplier and may not be assigned, mortgaged, charged or dealt with in any way. Without limiting this, the Supplier may not, except with the prior agreement in writing of Firefly, subcontract the whole or any part of its obligations under these Conditions.

#### **12. CANCELLATION**

(a) Firefly may at any time prior to delivery of the goods and/or full performance of the services cancel all or part of this Order.

(b) Without limiting paragraph (a) of this Condition, should default be made by the Supplier in complying with these Conditions, or should the Supplier be or become bankrupt, Firefly may forthwith terminate any contract resulting from this Order by notice in writing to the Supplier, without prejudice to any other right or remedy of Firefly under or in respect of these Conditions or such event. Firefly shall not be obliged to make any payment to the Supplier in respect of such termination. In this paragraph "bankrupt" means and includes the situation where the Supplier ceases or threatens to cease to carry on its business or where execution has been levied upon the whole or any part of its assets and, in respect of a Supplier who is an individual, the situation where he has committed an act of bankruptcy or is or becomes bankrupt or subject to any deed of assignment, arrangement or composition with his creditors in accordance with the bankruptcy laws, and in respect of a Supplier which is a corporation, the situation where the Supplier is the subject of the presentation of a petition or the making of an order or the proposing or passing of a resolution for its winding up, or has a receiver, receiver and manager, liquidator, provisional liquidator or insolvency administrator appointed in respect of itself or all or any part of its assets, or has a compromise or arrangement proposed between itself and its creditors or any class of them.

(c) Where a cancellation is not a termination of contract pursuant to paragraph (b) of this Condition Firefly shall:-

(i) give written notice to the Supplier whereupon the Supplier shall cease all work in relation to the goods and/or services;

(ii) (provided the Supplier is not in default under these Conditions) be liable, where goods are not yet completed for delivery or services not yet fully performed, only for:-

(1) costs actually incurred by the Supplier up to the date of cancellation,

(2) that part of the profit element of the price for the goods and/or services which is the same fraction of the total profit element as the stage reached in the completion of the goods and/or services at the date of cancellation is of the completion of the goods and/or services as a whole, and

(3) such winding down or disestablishment expenses as shall be agreed between Firefly and the Supplier; and

(iii) (provided the Supplier is not in default under these Conditions) be liable, where the goods are completed for delivery, for the cost thereof as specified in these Conditions only where the Supplier is not able readily to dispose of the goods elsewhere. In the event of any dispute regarding the

amount of Firefly's liability under this paragraph (c) such amount shall be determined by Firefly's auditors for the time being, who shall act as experts and not as arbitrators, and whose decision shall be final and binding on the parties. Upon payment of any such amounts title to any materials or goods, whether completed or not, intended for fulfilment of this Order shall pass to Firefly.

### **13. INSURANCE AND SAFETY PRECAUTIONS**

If any work necessary for the purposes of this Order is to be performed on any Firefly premises:

(a) the Supplier shall indemnify and keep Firefly fully indemnified from and against any loss, liability, claim, suit and costs which Firefly may suffer or sustain or incur or have made against it (including legal costs) as a result of or contributed to by the negligence of or the creation of some dangerous thing or state of affairs by the Supplier or its employees, agents or permitted sub-contractors. Prior to the commencement of any such work the Supplier shall produce to Firefly evidence that it and any permitted sub-contractors hold such insurances as Firefly may deem satisfactory to cover the liability of the Supplier under this Condition. Without limiting this, such insurances shall include workers compensation insurance or other equivalent cover or protection for or in respect of all employees or other persons for whom the Supplier, or any such sub-contractor as the case may be, is responsible in respect of such matters; and

(b) the Supplier shall at all times exercise all necessary precautions for the safety of persons who might be affected by such work, and without limiting this, shall at all times duly comply with the requirements of any applicable statute, regulation, ordinance or by-law, and of any authority or instrumentality having jurisdiction in the matter, and with any direction that may from time to time be given by any supervisor or other responsible employee of Firefly.

(c) Where the Supplier is providing services to Firefly the relationship between Firefly and the Supplier is that of principal and independent contractor and not employer and employee.

### **14. PRESCRIBED PAYMENTS**

Where payment for services provided against this Order constitutes a prescribed payment within the meaning of the Income Tax Assessment Act 1936 (as amended, consolidated or replaced from time to time), Firefly shall be entitled to deduct from such payment, such amount as is required under that Act unless, prior to payment, the Supplier submits satisfactory proof that he is the holder of the necessary deduction exemption certificate or deduction variation certificate.

### **15. WAIVER**

The failure by Firefly to enforce any of these Conditions or to take action in respect of any breach shall not be a waiver of any of these Conditions even if such failure or breach is continuing and habitual or repeated from time to time and no estoppel may be pleaded against Firefly either at law or in equity in any circumstances whatsoever.

### **16. GOVERNING LAW**

These Conditions shall be governed by and construed in accordance with the law of New South Wales.