

Silliker Australia Pty Ltd ACN 006 462 335

Purchase Order Terms and Conditions

- A. These internet Purchase Order Terms and Conditions are incorporated into any agreement that Silliker Australia Pty Ltd ("**We**", "**Us**") enters into by issuing a purchase order ("a **Purchase Order**") to a nominated supplier ("**You**"), whether as an offer or an acceptance of an offer. You acknowledge and agree that by accepting a Purchase Order from Us, You have notice of these Purchase Order Terms and Conditions and We are entitled to assume that You have read them in full and agree to be bound by them.
- B. In these terms and conditions "Supplies" means any goods or services supplied under a Purchase Order as the context requires.
- C. You agree to check these internet Purchase Order Terms and Conditions from time to time. We reserve the right to change the Purchase Order Terms and Conditions without reference to You and We are entitled to assume that You have read the new terms and conditions and agree to them.

1. Acceptance

- 1.1 You are deemed to have accepted a Purchase Order and the Purchase Order Terms and Conditions on the earliest to occur of:
 - 1.1.1 Your delivery of the Supplies that are the subject of the Purchase Order;
 - 1.1.2 Your written acceptance of the Purchase Order; or
 - 1.1.3 2 days after You receive the Purchase Order.
- 1.2 We object to and reject any addition or other modification in the terms of a Purchase Order or in quantities, prices, or form or time for delivery which is contained in any acknowledgment, invoice, or other form of communication from You unless agreed to in writing by Us, notwithstanding We accept delivery of, or payment for, the Supplies.

2. Prevailing Terms

- 2.1 Purchase Order and the Purchase Order Terms and Conditions are the only terms and conditions which apply between You and Us and override any previous agreement, understanding or arrangement between the parties as to the terms and conditions of supply and override any terms and conditions that You may supply to Us on receipt, confirmation or acceptance of a Purchase Order, and override Your standard terms and conditions.
- 2.2 To the extent that Your terms and conditions are provided with the Supplies (including as printed on consignment notes or other Supplier documents), those terms and conditions will be of no legal effect and will not constitute part of a Purchase Order (even if Our representative signs those terms and conditions or annexes the terms and conditions to a Purchase Order).

3. Changes

- 3.1 We may at any time before delivery request changes in drawings, designs, specifications, materials, packaging, time and place of delivery, method of transportation, or other terms of a Purchase Order.
- 3.2 You must implement the changes unless You advise Us in writing within 2 days of the date of receiving the request for a change that You cannot supply on the changed terms. In this case, the parties must use best endeavours to reach agreement on the variation and performance of the Purchase Order. If no agreement is reached, We may immediately terminate the Purchase Order in accordance with clause 9.
- 3.3 If any such change causes an increase or decrease in the cost, or the time required for the performance, an equitable adjustment in price shall be made and the Purchase Order shall be accordingly modified in writing.

4. Price

- 4.1 You must invoice Us at the price stated in the Purchase Order (the "Price") or in any document referred to in the Purchase Order.
- 4.2 Unless otherwise specified, the Price must include all charges for packing, delivery and storage.
- 4.3 All taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of a Purchase Order must be borne by You, except taxes which You are required by law to collect from Us, such as the goods and services tax (GST) in accordance with A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Act).
- 4.4 You agree that any price reduction made with respect to the Supplies covered by a Purchase Order subsequent to its placement, but prior to payment, will be applied to the Purchase Order and the Price for the benefit of Us.

5. Tax Invoice

- 5.1 You must supply Us with a valid tax invoice, as that term is defined in the GST Act.
- 5.2 Subject to clause 5.1, if GST is payable in respect of a supply, We will pay to You an amount equal to the GST payable on the supply at the same time and in the same manner as the payment for the supply is to be provided.

6. Payment

- 6.1 Payment terms shall be, subject always to the acceptance of the Supplies, net 45 days from the end of the month that We receive a valid tax invoice, unless otherwise stated in a Purchase Order.
- 6.2 In addition to the requirements of a valid tax invoice, the invoice must describe the products or services, state the Purchase Order number and be attached to the original consignment note, bill of lading or other shipping receipt.

7. Delivery

- 7.1 The Supplies must be packed with the type, quality and quantity of packaging material necessary to ensure their safe delivery. Environmentally friendly packaging material must be used where practicable.
- 7.2 Subject to clause 7.3, delivery of the Supplies must be made with due care and skill at the place, on the date, and in the manner specified in the Purchase Order. TIME IS OF THE ESSENCE with respect to Your obligation to supply.
- 7.3 We may specify in writing a later date for delivery and this will be the new date for delivery.
- 7.4 You are liable for any cost variation due to failure to comply with the advised time for delivery or transport mode specified in a Purchase Order.
- 7.5 If delivery of the Supplies is not completed by the time stated in a Purchase Order, We reserve the right, in addition to Our other rights, to return the Supplies or terminate all or part of a Purchase Order and to charge You with all costs, expenses, and damages associated with such return or termination.

8. Inspection/testing

- 8.1 Receipt of the Supplies does not constitute acceptance of the Supplies by Us. Neither any inspection, testing, delivery, nor payment for the Supplies delivered by You shall constitute acceptance of the Supplies.
- 8.2 The Supplies must be:
- 8.2.1 free from any defects in material and workmanship;
 - 8.2.2 of acceptable quality;
 - 8.2.3 fit for purpose; and
 - 8.2.4 conform with all relevant standards.
- 8.3 We may inspect the Supplies at any time prior to acceptance and reject any Supplies that are not in accordance with the Contract.
- 8.4 After acceptance, We may reject Supplies for any non-conformity with the Contract which could not have been discovered by reasonable inspection prior to acceptance.
- 8.5 We will not be liable for any rejected Supplies or for any damage done to, or costs arising from, inspecting or rejecting the Supplies.
- 8.6 If We reject any Supplies, You must, without prejudice to Our rights otherwise arising under a Purchase Order, the *Trade Practices Act 1974 (Cth)*(as amended from time-to-time) any other statute and the general law, comply with Our requirement, at Our sole option, to:
- 8.6.1 replace the rejected Supplies with other supplies in all respects in accordance with the Purchase Order without cost to Us;
 - 8.6.2 refund any payment for the rejected Supplies; or

- 8.6.3 repair the Supplies, on site or otherwise to the satisfaction of Us, and, in the case of (a) or (b), You must remove the rejected Supplies, at Your expense, if the Supplies are goods.

9. Termination

- 9.1 We may at any time terminate a Purchase Order or any part of a Purchase Order at Our sole convenience by notice in writing to You. In the event of such termination, You shall immediately stop all work and shall immediately cause Your suppliers or subcontractors to cease such work.
- 9.2 We will not be liable for any work performed after receipt of the termination notice, except that necessary to effect termination, nor for any termination costs incurred which reasonably could have been avoided.
- 9.3 We may also terminate a Purchase Order for cause if You fail to comply with any of the terms of a Purchase Order, suffer an insolvency event, or are otherwise in default under a Purchase Order. In such an event, We shall not incur any liability for termination, and without prejudice to any other remedy We may have, You shall be liable to Us for any and all damages sustained by reason of the default.

10. Insurance

You shall obtain and maintain during the term of a Purchase Order and for 7 years thereafter the following insurance from companies acceptable to Us: Worker's Compensation Insurance as required by law; Commercial General Liability Insurance in the amount of \$2,000,000 each occurrence (combined single limit for bodily injury and property damage liabilities) and \$10,000,000 general aggregate; and \$10,000,000 product liability insurance, or such other limits as We may specify in a Purchase Order or from time to time in writing. Upon request, You shall provide US with satisfactory evidence that such insurance is in effect

11. Subcontractor

If a Supply under the Purchase Order relates to a subcontract of Our services to Our customers (**Services**), You agree that You will provide such Services in a professional manner, using a degree of care and skill consistent with applicable practices, laws and regulations, and fit for the purpose that We have made known to You.

12. Indemnification

You must defend, indemnify, and hold Us harmless against all damages, claims, costs, and expenses (including legal costs on a full indemnity basis) whatsoever arising out of or resulting from the Supplies, or from any act or omission of You, Your agents, employees, or subcontractors or which otherwise arises as a result of the Your performance or breach of a Purchase Order or these Purchase Order Terms and Conditions including, without limitation, liability for personal injury or death to Your employees, agents, or subcontractors arising out of or resulting from providing such Supplies, or from infringement of any intellectual property right.

13. Proprietary Information; Confidentiality; Advertising

- 13.1 All information furnished by Us or any other person acting on behalf of Us and all information learned or observed about Us or Our operations through performing a Purchase Order is confidential.
- 13.2 You must not disclose any such information to any other person, or use such information for any purpose other than performing a Purchase Order without Our express written consent.
- 13.3 All intellectual property relating to a Purchase Order, including drawings, engineering data, design information, samples, technical data and other information provided in connection with the Purchase Order belongs to or is licensed to Us, and You must not use, copy, reproduce, distribute, publish or communicate it to any third party without Our prior written consent.
- 13.4 All information in tangible form, including drawings, samples, models, specifications, or other documents provided by Us or prepared by You for Us must be returned to Us promptly upon request.
- 13.5 You must not publicize the fact that We have contracted to purchase goods or services from You, nor may any information relating to a Purchase Order be disclosed without Our written consent.

14. Warranties

- 14.1 You warrant that the Supplies will:
 - 14.1.1 conform to applicable specifications, instructions, drawings, data and samples which We may specify or identify in a Purchase Order;
 - 14.1.2 be of merchantable and acceptable quality, of good material and workmanship, free from defects;
 - 14.1.3 be fit for the purpose intended and for which Supplies of that kind are commonly supplied;
 - 14.1.4 be new and of first quality;
 - 14.1.5 be free from liens and encumbrances with good title conveyed upon payment of the purchase price;
 - 14.1.6 conform with the requirements of all applicable statutory standards, industry standards and other standards or specifications; and
 - 14.1.7 have had all hazards and dangers associated with the Supplies made known to Us in writing.
- 14.2 You warrant that You shall obtain and assign or otherwise provide to Us the benefits of warranties and guarantees provided by manufacturers or suppliers of materials or equipment incorporated into the goods or services.
- 14.3 You agree that any undertaking assertion or representation that is given by You or Your agent in connection with quality, state, condition, performance or characteristics of the Supplies, the supply of parts or the provisions of services in relation to Supplies, or in connection with the promotion by any means of the Supplies is an express warranty ("Express Warranty").

14.4 The foregoing warranties and remedies are in addition to any warranties or remedies provided by law and shall survive inspection, test, acceptance, and payment.

15. Entire Agreement

The Order, and any documents referred to in a Purchase Order, and any written or unwritten Express Warranty given by You to Us, constitute the entire agreement between the parties superseding all previous negotiations or agreements relating to the Purchase Order. You shall promptly notify Us of any discrepancies or conflicts appearing in a Purchase Order and these Purchase Order Terms and Conditions.

16. Assignment

You may not assign a Purchase Order or amounts due under these Purchase Terms and Conditions without Our written consent.

17. Waiver

A single or partial exercise or waiver of a right relating to a Purchase Order or these Purchase Order Terms and Conditions does not prevent any other exercise of that right or the exercise of any other right. Neither You nor Us will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

18. Compliance with laws

You agree to fully observe and comply with all applicable Commonwealth, State and local laws, rules, regulations and orders pertaining to the production and sale of the Supplies, and, upon request, You shall furnish to Us a certificate of compliance with such laws, rules, regulations and orders.

19. Governing law

The validity, interpretation and performance of a Purchase Order shall be governed by the law of Victoria and subject to the jurisdiction of the courts of Victoria.

20. Equal opportunity

You agree to, in Your dealings with Your employees, have due regard to Commonwealth policies on employment including equal employment opportunity, access and equity, affirmative action, occupational health and safety, and workplace diversity.

21. Independent Contractor

You, Your subcontractors, and other suppliers, shall at all times be independent contractors and no express or implied representations to the contrary shall be made. You shall at all times retain exclusive liability for wages and all employment-related obligations due to Your employees and shall indemnify Us for any liability arising therefrom.