

1. APPLICABILITY

These terms and conditions supersede all previously issued standard terms and conditions of purchase.

2. DEFINITIONS

In this document unless otherwise expressly provided: Reference to "CEM" means **CEM International Pty Ltd – ACN 004 933 135**, including all divisions and subsidiaries.

"**CEM's Goods**" means any plans, drawings, designs, dies, fixtures, moulds, patterns, plant and equipment and other materials or information provided to the Supplier by CEM to assist in or facilitate the production of the Goods or provision of the Services;

"**Confidential Information**" means trade secrets, inventions, manufacturing processes, formulae, designs, drawings, plans and specifications, copies of patents applications filed but not published, component lists, calculations, analyses and specifications in the Company's possession and which relates to its business including all of the foregoing things which are disclosed by one party to the other and marked "Confidential", "Proprietary" or "For Internal Use Only" or when contemporaneously or similarly described as such orally or in writing and whether written, graphic, oral or recorded or stored by electronic, magnetic, electromagnetic, optical or other retrievable means;

"**Goods**" means Goods to be supplied to CEM by the Supplier under the Purchase Order;

"**Improvement**" means any modification, adaptation or innovation or the production or design of anything, which could be applied to improve or enhance CEM's Goods;

"**Purchase Order**" or "**Order**" means the authorised written order issued by CEM to the Supplier requesting the supply of Goods and/or the provision of Services.

"**Services**" means services to be supplied to CEM by the Supplier under the Purchase Order.

"**Specifications**" means any technical specifications, standards and drawings relating to the Goods or Services that are set out in the Purchase Order;

"**Supplier**" means the party specified as the Supplier in the Purchase Order.

"**GST**" means the Goods and Services tax payable under the GST law.

"**GST Law**" has the same meaning as contained in the A New Tax System (Goods and Services Tax) Act 1999.

3. PRICE

- a) The purchase price for the Goods and Services will be that amount shown on the Order and will include all delivery costs and all taxes and charges unless otherwise specified.
- b) The purchase price will be paid after delivery of all of the Goods and provision of all Services.

4. SPECIFICATIONS

Goods and Services provided under these terms and conditions must strictly comply with the Specifications.

5. GST

- a) All prices charges taxes and expenses ("**the Amount**") payable by CEM to the Supplier do not include any GST.
- b) If any GST is incurred or payable by or collectable from the Supplier in respect of supplies by the Supplier to CEM, CEM must pay or reimburse the Supplier for any GST, in addition to the amounts.
- c) The Supplier must as soon as reasonably practicable after being requested by CEM, provide all documentation as may be required to enable CEM to claim any available input tax credit or similar rebate in respect of GST included in the calculation of payments made under these terms and conditions.
- d) The Supplier's right to payment of GST under this clause is subject to a valid tax invoice being delivered to CEM.

6. DELIVERY AND QUANTITIES

- a) The Supplier must deliver the Goods in the quantities and at the times specified in the Order ("**due date**").
- b) CEM may until the due date refuse to accept delivery of the Goods.
- c) If Goods are not delivered by the due date CEM may cancel the Order.

7. DELIVERY INSPECTION AND REJECTION

- a) CEM may inspect the Goods at the Supplier's premises. If CEM notifies the Supplier of any discrepancy or defect in the quantity or quality of the Goods, CEM will not be required to purchase such Goods.
- b) In addition, within seven days of delivery of Goods to CEM, CEM may return the Goods the subject of a Purchase Order to the Supplier if the Goods do not comply with the Specifications as set out in an Order. Without limiting any other clause of these terms and conditions or any other remedy that CEM may have, within seven (7) days of the return of Goods the Supplier must supply CEM with Goods of suitable quality and standard and in accordance with the Specifications at no additional cost to CEM unless CEM directs it to do otherwise.
- c) CEM's inspection or testing of the Goods does not relieve the Supplier of any obligations under the Contract and the Supplier will remain liable and will not be released from any liability in relation to the manufacture and supply of the Goods.

8. RISK AND TITLE

Risk and title in the Goods shall pass to CEM upon delivery.

9. WORK AT CEM PREMISES

The Supplier hereby indemnifies and will keep CEM indemnified against all losses, damages, claims, demand and suits arising out of use by CEM of the Goods, any Supplier's equipment and any loss or damage arising from the provision of Services and the conduct of its personnel at CEM's premises. In support of the said indemnity, the Supplier must procure and maintain adequate product and public liability insurance.

10. CONFIDENTIALITY

Each party covenants not to disclose any confidential information to any third party and undertakes to the other that the confidential information will be kept secret and will only be used for the purposes of or in connection with these terms and conditions.

11. IMPROVEMENTS

If the Supplier makes or discovers any improvement to CEM's Goods, then that improvement shall be the property of CEM.

12. LABELLING AND DOCUMENTATION

The Supplier will label or mark Goods in accordance with the instructions of CEM.

13. SUB-CONTRACTING

The Supplier must not sub-contract the production, manufacture or supply of the whole or any part of the Goods or Services without CEM's prior written consent.

14. INDEMNITY

Notwithstanding any other clause of these terms and conditions the Supplier indemnifies and will keep indemnified CEM, its employees, officers and agents (**Indemnified Parties**) from and against any liability, claim (including any action, suit, proceeding or demand of any kind), loss or damage including any liquidated damages claimed against CEM by a third party, and any costs and expenses of whatever nature, incurred by or for which the Indemnified Parties become liable, at any time whether or not contemplated by the parties, in connection with or arising directly or indirectly from:

- i. any breach (including any breach of warranty) or non performance of these terms and conditions or any term of the Purchase Order by the Supplier (or any officer, employee or agent of the Supplier);
- ii. any act by or omission of the Supplier or any officer, employee or agent of the Supplier; or
- iii. any claim, action, demand or proceeding by a third party against the Indemnified Parties caused by or contributed to by the Supplier or the Supplier's failure to perform its obligations in accordance with these terms and conditions and the Purchase Order.

Each indemnity in this clause is a continuing obligation separate and independent from any other obligations and survives termination of the Contract.

15. LIMITATION OF LIABILITY

In no event shall CEM be liable for any special, incidental, indirect or consequential damages suffered by the Supplier.

16. TERMINATION

The occurrence of any of the following events shall entitle CEM to immediately terminate the provision of Goods and/or Services by the Supplier to CEM:

- a) if the Supplier breaches any of the material provisions of these terms and conditions;
- b) if the Supplier:
 - i. enters into liquidation, winding-up or dissolution;
 - ii. becomes insolvent or is deemed to be insolvent under any legislation;
 - iii. has a receiver, receiver and manager, administrator, liquidator, provisional liquidator appointed.

17. WARRANTY

- a) The Supplier warrants to CEM:
 - i. to immediately notify CEM in writing of any emerging defects and quality issues discovered by the Supplier during the manufacture of the Goods;
 - ii. not to conceal any defects or quality issues and not to proceed with the manufacture without prior written notification of any defects or quality issues and CEM's written consent to proceed;
 - iii. that the Goods are brand new;
 - iv. that the Goods will utilise the latest available technology and comprise the most recent model, design or version of the Goods that is available at the time of supply;
 - v. that the Goods are fit for the purpose stated in the Specifications or Order (if no purpose is stated, for the purpose for which the Goods would ordinarily be used);
 - vi. that the Goods conform in all respects with the requirements of the Order including the Specifications;
 - vii. that the Goods are of highest quality and free from defects including defects in installation and are of merchantable quality and comply with all applicable laws and standards; and
 - viii. to make good, free of charge, all defects in Goods (including in materials, workmanship or design) within a period of 24 months after delivery.
- b) Without limiting any other clause of these terms and conditions, the Supplier will be liable for (and will indemnify and keep indemnified CEM against) all losses, damages, costs and expenses incurred by CEM as a result of or arising from any defects in the Goods or from breach of any warranty by the Supplier, including cost of all CEM raw materials, manufacturing costs, labor costs and any damages or other amounts paid by CEM to a third party resulting from any demand or claim against CEM by the third party.

18. PPSA

Notices or documents required or permitted to be given to CEM for the purposes of the *Personal Property Securities Act 2009 (Cth)* ("**PPSA**") must be given by the Supplier in accordance with the PPSA.

19. GENERAL

- a) Time is of the essence in the Supplier's performance of the Contract.
- b) The Parties acknowledge and agree that no other terms or conditions will apply to a Purchase Order (including any of the Supplier's standard terms and terms printed on or contained within any invoice, delivery document or other business document of the Supplier) unless they have been expressly agreed to in writing by CEM. For avoidance of doubt, any other terms and conditions will not operate to affect the rights and obligations of the parties or modify, amend or vary the Contract unless, and to the extent that, they have been expressly agreed to in writing by CEM.
- c) These terms and conditions shall be governed by and construed in accordance with the laws of the State of Victoria.
- d) Any special conditions set out in the Purchase Order will form part of these terms and conditions and, to the extent that there is any inconsistency between those special conditions and these terms and conditions, the special conditions shall prevail to the extent of the inconsistency.