

## PURCHASE TERMS & CONDITIONS – MINOR SUPPLY

### 1. DEFINITIONS:

In the Purchase Order, of which by reference these Purchase Conditions form part:

"Purchaser" means McConnell Dowell whether acting as agent for a client or on its own behalf. Whenever McConnell Dowell is not the ultimate consumer of the Goods, all rights, benefits, remedies and obligations conferred upon Purchaser by the Purchase Order shall accrue, be available for and shall bind the client of McConnell Dowell for which the Goods are purchased.

"Order" means the Purchase Order and all documents including these Purchase Conditions incorporated therein.

"Seller" means the Supplier named in the Purchase Order.

"Goods" means the machinery, plant, equipment, materials, vendor data and other items of all kinds to be supplied under the "Purchase Order" and includes any and all parts thereof.

"Delivery Point" means the place specified in the Purchase Order to which the Goods are to be delivered by the Seller.

### 2. COMPLETE AGREEMENT:

The Order constitutes the entire agreement between the parties hereto and supersedes all previous communications between the parties oral or written relating to the subject matter hereof. No subsequent representations or agreements by the Purchaser or any of its agents or employees shall be binding on Purchaser, unless reduced to writing by means of a Change Order.

### 3. CHANGES:

Purchaser may by written Change Order make any changes, including additions to or deletions from, the quantities originally ordered, or in the specification or drawings. If any such change affects the amount due or the time of performance hereunder, an equitable adjustment shall be made.

### 4. PRICE AND PAYMENT:

All prices and terms of payment shown on the Order shall be firm unless specifically otherwise stated. All applicable GST and any other taxes and duties shall be separately stated and itemised as part of the amount billed and unless same are as stated, none shall be billable by Seller. The price shall include all charges for packing, loading and crating. All invoices shall be rendered within ONE (1) month of the date when the Goods are delivered. Provided the Goods comply with terms and conditions of the Order, payment shall be made by or on behalf of Purchaser within FORTY-FIVE (45) days from the end of the month of receipt of Seller's invoice. The time for payment of invoices, or accepting any discounts offered, shall run only from the date correct invoices are received by McConnell Dowell.

Property in the Goods shall pass to the Purchaser upon, and to the extent, that payment has been made to the Seller.

### 5. INVOICE INSTRUCTIONS:

A correctly rendered invoice must at least contain the following information:

- McConnell Dowell Purchase Order Number (one per invoice).
- Item description as per Order.
- Quantity delivered and unit price.
- Extended amount per item.
- Total invoice amount.

- Delivery point, date and Delivery Docket Number.

All invoices and correspondence regarding payments should be forwarded to the Accounts Supervisor at the postal address identified on the Order.

### 6. EXPEDITING:

Goods furnished under the Order shall be subject to expedition by Purchaser or its representatives. Purchaser's personnel shall be allowed access to Seller's plant and those of his Sub-suppliers for expediting purposes. As required by Purchaser, Seller shall supply schedules and progress reports for Purchaser's use in expediting.

### 7. INSPECTION:

Purchaser or its representatives shall have the right to inspect and to test the Goods at any time during manufacture and prior to shipment, and to perform final inspection within a reasonable time after arrival at their ultimate destination. If as a result of any inspection or test the Purchaser determines that any Goods are defective or otherwise non-conforming, the Purchaser may reject such goods and shall notify the Seller immediately. The notice shall state the Purchaser's objections with reasons. The Seller shall then with all speed make good the nonconformity to ensure that any rejected Goods comply with the Order and conduct the necessary testing. Such Goods shall not be deemed accepted until after such final inspection and issue of a Certificate of Acceptance. No such inspection or testing, or lack of it, shall release the Seller from any obligations under the Purchase Order.

If Purchaser so requires, certificates of test shall be furnished by Seller to Purchaser. Seller shall provide without charge, all necessary supplies and facilities to enable tests and inspections to be carried out.

Purchaser has the right to witness all tests and Seller shall notify Purchaser SEVEN (7) days in advance of test commencement.

### 8. WARRANTIES - GUARANTEES:

Seller warrants that the Goods shall be new and of merchantable quality, free from defects in design, material, workmanship, and title, and shall conform in all respects to the terms of the Order and shall be of the best quality, if no quality is specified.

If it appears within ONE (1) year of putting Goods into service for the purpose for which they are purchased (which purpose includes, without limitation, the date of practical completion under the Purchaser's head contract for the works in which the Goods are incorporated), or within EIGHTEEN (18) months of date of shipment, whichever is the later, that the Goods or any part thereof do not conform to these warranties and Purchaser so notifies Seller within a reasonable time after such discovery, Seller shall thereupon promptly correct such non-conformity at its sole expense. Repairs and replacements shall themselves be subject to the foregoing obligations for a period of twelve months from the date of delivery re-installation or passing of tests.

### 9. PATENT INFRINGEMENT:

Seller shall defend all actions, suits or claims and shall indemnify and save harmless Purchaser from liability of any nature or kind, including costs and expenses, for or on account of any infringement of any patents registered designs, copyrights, trademarks, trade names or any other intellectual property rights at the place where the Purchaser is located as indicated on the Order or elsewhere, by reason of the nature, form or condition of any Goods supplied by Seller pursuant to the Order or by reason of the use or sale

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by Purchaser of any such Goods for the purpose intended or reasonably foreseeable by Seller.

### 10. PACKING AND TAGGING:

Subject to any additional requirements included in this Order;

- a) All goods shall be packed so they will not be damaged during transport by road, sea, air, storage, loading, unloading and erection. Large items or boxes shall be suitably lugged, battened or packed to allow loading and unloading with crane and slings. Miscellaneous small items shall be packed in containers suitable for ease of handling and storage.
- b) Exposed machine parts to be joined in the field shall be coated with a rust preventative which may be removed readily in the field but not during transport or storage.
- c) All items shall be clearly identified with equipment, part and purchase order numbers by use of stencils or metal tags.

### 11. CANCELLATION:

If the Goods covered by the Order are standard stock merchandise, Purchaser, at its option, may cancel at any time any unshipped portion of the Order without further obligation hereunder except to make payment, subject to other applicable terms hereof, for the Goods actually shipped prior to cancellation. If the Order covers Goods manufactured or fabricated to the specifications of Purchaser, then at any time prior to completion of the work to be performed hereunder Purchaser may, at its option, cancel the Order upon written notice to Seller. On the date of such cancellation stated in said notice Seller shall discontinue all work pertaining to this Order, shall place no additional orders, and shall preserve and protect materials on hand purchased for or committed to this Order, work in progress and completed work both in his own and in Sub-supplier's plant(s) pending Purchaser's instructions and shall dispose of same in accordance with Purchaser's instructions. Cancellation payment to Seller or refund to Purchaser, if any, shall be promptly mutually agreed to by Purchaser and Seller based on that portion of the work satisfactorily performed to the date of cancellation including reimbursement for reasonable overhead and profit on such work plus reasonable and necessary expenses resulting from the cancellation as substantiated by documentation satisfactory to and verified by Purchaser, less amounts previously paid by Purchaser. Seller shall not be entitled to any prospective profits or damages because of cancellation.

### 12. DELIVERY:

Subject to Condition 11 all Goods covered by the Order shall be supplied at the Delivery Point by the delivery date specified in the Order. A notice of shipment shall be sent by Seller to Purchaser at the time the Goods are shipped which shall state the Purchase Order Number, description of the Goods, Seller's name, method and date of dispatch, together with any other information required by this Order.

### 13. DELAYS:

Purchaser reserves the right to cancel this Order or any portion of same if delivery is not made when and as specified and to charge Seller for any loss entailed thereby. Seller shall not be liable for delays in delivery or failure to manufacture or delivery due to causes not reasonably foreseeable which are beyond its reasonable control, such as Acts of God, acts of civil or military authorities, Government priorities, fires, strikes, floods, epidemics, war or riot. In the event of any such delay, the date of delivery shall be

extended for the period equal to the time lost by reason of the delay.

In the event of rejection of non-conforming Goods, Seller shall have reasonable time to correct the non-conformance. Should Seller fail to do so within a reasonable time, Purchaser may cancel the order as to the non-conforming Goods and retain its rights as provided by law.

### 14. COMPLIANCE:

Seller warrants that all Goods sold hereunder have been produced, sold, delivered and furnished in strict compliance with all applicable laws and regulations to which the Goods are subject. Seller shall execute and deliver such documents as may be required to effect or to evidence compliance.

### 15. FOREIGN CURRENCY AND RATES OF EXCHANGE:

Arrangements for payment in foreign currencies (i.e. currencies other than the local currency) shall be as stated in the Purchase Order.

Where the Order provides for payment in foreign currency, the rates of exchange between the currencies shall be fixed for the purpose of the Order and shall be as stated in the Order. The rates to be used shall be those quoted by the Central Bank of the country whose currency is being sold, at the time of quotation by the Seller for the sale of the Goods.

### 16. GENERAL:

- a) No part of the Order shall be subject to change without Purchaser's written permission. Copies of all sub-orders shall be supplied to Purchaser upon request and Seller shall notify Purchaser when materials or such sub-orders are ready for inspection, where inspection is called for.
- b) A waiver of a breach of the Order shall not constitute a waiver or any other breach of such provision or of any other provision of the Order.
- c) The Contract shall be governed by and interpreted in accordance with the laws of the place where the Purchaser is located as indicated on the Order.

### 17. CODE COMPLIANCE (Australia only):

The National Code of Practice for the Construction Industry (the Code) and the Australian Government Industry Guidelines for the National Code of Practice for the Construction Industry (Industry Guidelines) are to be observed by the Seller in the conduct of its business. By entering into this Purchase Order, the Seller will be taken to have read, and agreed to comply with, the Code and Industry Guidelines

### 18. SPECIAL CONDITIONS:

If any special conditions are attached to this Order, these shall take precedence over these Purchase Terms & Conditions in the event of any conflict or ambiguity.