

# Purchase Order Terms and Conditions – Goods and Services

These terms and conditions apply in respect of any Goods or Services provided or to be provided to **Stolway Pty Limited** (ACN 059 064 676) or **Refrigeration Engineering Pty Limited** (ACN 094 681 795) or **RE Environmental Pty Limited** (ACN 137 510 948) (**we** or **us**) by you.

## 1 SUPPLY

You agree to supply us with the Goods and Services in accordance with these terms and conditions and any Purchase Order executed by the parties.

## 2 PURCHASE ORDER

The Charges, Goods and Services set out in the Purchase Order must not be varied without our written consent. If you purport to vary the Goods or Services or increase the Charges we reserve the right to cancel the Purchase Order.

## 3 TERM

This Agreement commences on the date we receive a copy of our Purchase Order executed by you, and terminates when you have completed providing the Goods and Services to us and we have paid the Charges.

## 4 GOODS AND SERVICES

- 4.1 You must use reasonable skill and care in providing the Goods and Services to us.
- 4.2 You must provide the Goods and Services within any agreed time frame. You agree that:
- (a) we may cancel an order or withhold any payment due to late delivery; and
  - (b) you will be liable for any Loss suffered or incurred by us in connection with any failure to provide the Goods or Services within any agreed time frame.
- 4.3 If you deliver the Goods to us:
- (a) your responsibility ceases with delivery to the location specified in the Purchase Order;
- 4.4 You agree to comply with all applicable laws, regulations, rules and standards in connection with this Agreement.

## 5 DELIVERY AND INSPECTION

- 5.1 We will:
- (a) provide you with the information, documents and access to equipment, systems and premises that you reasonably require to provide the Goods and Services; and

- (b) arrange access for your employees, agents and contractors where applicable.

- 5.2 We will inspect the Goods as soon as practicable after delivery and provide notice to you in writing of any claim that the Goods (or, if relevant, Services) are not in accordance with this Agreement.
- 5.3 Delivery will be in accordance with Incoterms 2010 as noted on the Purchase Order.

## 6 LOSS OR DAMAGE IN TRANSIT

- 6.1 We will not be liable for any Loss suffered or incurred by you or any other person in connection with any loss or damage to the Goods in transit.
- 6.2 Where you deliver or arrange for the delivery of the Goods to us, you must obtain appropriate insurance in respect of the transit and delivery of the Goods.

## 7 CHARGES

- 7.1 We agree to pay the Charges that are set out in the Purchase Order;
- 7.2 You must provide us with a valid tax invoice us for the Charges and any other amounts payable. We will pay the valid tax invoice within 30 days of the end of the month in which the invoice is received, provided that it is correct.
- 7.3 All payments under or in connection with this Agreement will be made in Australian currency.
- 7.4 If GST is payable on any supply under this Agreement, then unless otherwise stated, consideration payable for any such supply will be increased by an amount equal to the GST payable in respect of that supply.

## 8 TITLE AND RISK

Title to the Goods will pass to us when we pay your invoice as set out in clause 7. Risk in the Goods will pass to us when we receive the Goods.

## 9 WARRANTY

- 9.1 You warrant to us that:
- (a) You have title to the Goods;

- (b) You have the requisite insurances in relation to the supply of the Goods and Services (including, without limitation, product liability);
- (c) The Goods and Services are of merchantable quality, fit for purpose and comply with their description and any specifications required under this agreement or at law;
- (d) The Goods and Services do not infringe another party's intellectual property; and
- (e) You grant to us a non exclusive, perpetual royalty free licence to exploit the Goods and Services.

9.2 Except for a breach of warranty in clause 9.1, your liability arising under or in connection with this Agreement is limited, at our option, to:

- (a) in the case of Goods:
  - (A) the replacement of the Goods or the supply of equivalent goods;
  - (B) the repair of the Goods;
  - (C) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
  - (D) the payment of the cost of having the Goods repaired; and
- (b) in the case of Services:
  - (A) the supply of the Services again; or
  - (B) the payment of the cost of having the Services supplied again.

9.3 To the extent permitted by law, the parties will not be liable, whether under contract, tort (including negligence), statute or otherwise for any:

- (a) indirect or consequential loss or damage; or
- (b) loss of profits, reputation, business, goodwill, customers or labour costs, arising under or in connection with this Agreement.

## 10 TERMINATION

10.1 If a party is in material breach of any of its obligations under this Agreement and does not rectify the breach within 30 days after receiving notice in writing from the other party to do so, then the non-defaulting party may terminate this Agreement by giving written notice of termination to the defaulting party, which will be effective immediately unless otherwise stated in the notice.

10.2 We may terminate this Agreement without cause upon giving 10 days notice in writing to you.

10.3 Clauses 7, 8, and 9 will survive termination of this Agreement.

## 11 DISPUTES

The parties will use reasonable efforts to resolve any dispute which arises between them under this Agreement, by mediation or any of the other recognised methods of alternative dispute resolution, before commencing court proceedings to resolve that dispute. This clause does not prevent a party from seeking urgent interlocutory relief in connection with any dispute.

## 12 ASSIGNMENT

12.1 You may not assign this Agreement or any part of it without our prior written consent.

12.2 We may assign this Agreement or any part of it upon providing notice in writing to you.

## 13 SUBCONTRACTORS

You must not subcontract the performance of all or any part of your obligations under this Agreement without our prior written consent.

## 14 ENTIRE AGREEMENT

This Agreement records the entire Agreement between the parties and supersedes all previous negotiations, understandings, representations and agreements in relation to its subject matter.

## 15 VARIATION

No provision of this Agreement nor a right conferred by it can be varied except in writing signed by the parties.

## 16 INCONSISTENCY

If there is any inconsistency between this Agreement and any:

- (a) Additional Terms, the Additional Terms will prevail to the extent of the inconsistency; or
- (b) order form or other document executed by the parties in connection with the Goods or Services, this agreement will prevail to the extent of the inconsistency.

## 17 RELATIONSHIP OF PARTIES

Except as expressly provided:

- (a) nothing in this Agreement constitutes a partnership between the parties or makes a party an agent of the other party for any purpose; and
- (b) neither party can in any way or for any purpose bind the other party or undertake or accept any obligation or benefit on behalf of or in the name of the other party.

## 18 GOVERNING LAW

This Agreement is governed by the laws of New South Wales. The parties submit to the jurisdiction of the courts of New South Wales.

## 19 DEFINITIONS

**Additional Terms** means any additional terms and conditions set out in any Purchase Order.

**Agreement** means the Purchase Order, these terms and conditions and any Additional Terms.

**Charges** means any price, fee, tax or discount payable by us for the Goods and Services.

**Goods** means any goods you have agreed to provide to us under the Purchase Order.

**Loss** includes, in each case whether of a direct, indirect or consequential nature, any liability, damage, loss, cost (including, reasonable legal costs on a solicitor and own client basis) and other outgoing, and any diminution in value of, or deficiency of any kind in, any thing.

**Purchase Order** means the Purchase Order accompanying or referenced in these standard terms and conditions, containing:

- (a) details of the Goods, Services, Charges and estimated time frames; and
- (b) any Additional Terms.

**Services** means any services you have agreed to provide to us under the Purchase Order.

**You** and **your** means the party addressed in our Purchase Order.