

Procurement

Purchase Order Terms & Conditions



The following standard terms apply where Bis Industries ABN 13 125 202 253 purchases Deliverables from a Supplier.

1 Definitions

In these terms:

Agreement means these terms, the Purchase Order, the Specifications and the Special Conditions;

Business Day means any day which is not a Saturday, Sunday or public holiday in Sydney, New South Wales and the place where the Deliverables are delivered;

Defective Deliverables means Deliverables that are:

- (a) *not in conformity with this Agreement;*
- (b) *defective in design, performance or workmanship;*
or
- (c) *the subject of a product recall.*

Deliverables means goods and/or services supplied by the Supplier to Bis Industries;

GST Act means A New Tax System (Goods and Services Tax) Act 1999;

Insolvent means in respect of a party, that party:

- (a) *being a natural person, the person becomes bankrupt; or*
- (b) *being a corporation, takes or has taken against it any action for the winding up of the corporation or the placing of the corporation under external administration or has an administrator or controller appointed over any of its assets;*

Intellectual Property Rights includes:

- (a) *any copyright (including future copyright), patent, trade mark (whether registered or not), registered design or other design right and any right to apply for the grant or registration of the same; and*
- (b) *any rights in respect of an invention, discovery, novel design, trade secret, confidential information, know-how, concept, idea, information, data or formula;*

Loss means all actions, claims, costs (including legal costs on an indemnity basis), damages, expenses, interest, liabilities and losses;

Price means the price for the supply of the Deliverables specified in the Purchase Order;

Purchase Order means a purchase order issued by Bis Industries setting out details of the Deliverables to be supplied and includes any Special Conditions or Specifications;

Representatives means the officers, employees, agents, contractors and subcontractors of any party (but excluding the other party to this Agreement and that other party's officers, employees, agents, contractors and subcontractors);

Site means the site specified in the Purchase Order at which the Deliverables are to be supplied;

Special Conditions means any special conditions of supply

endorsed on or attached to the Purchase Order by Bis Industries;

Specifications mean any specifications relating to the Deliverables attached to the Purchase Order by Bis Industries;

Supplier means the person or entity who is supplying the Deliverables to Bis Industries, the details of which are set out in the Purchase Order;

Tax means any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding which is assessed, levied, imposed or collected by any government agency and includes any interest, fine, penalty, charge, fee or other amount imposed in respect of any of the above (but excludes income tax and capital gains tax); and

Tax Invoice has the meaning given to it in the GST Act.

2 Agreement

2.1 This Agreement applies to all Deliverables supplied by the Supplier and overrides any quotes, invoices or other documentation exchanged between the parties whether or not such documents expressly provide that they override this Agreement.

2.2 To the extent of any inconsistency between these terms and any Special Conditions, the Special Conditions prevail.

2.3 The Purchase Order is the only form recognised by Bis Industries as authority for ordering the Deliverables.

3 Supplier's obligations

3.1 The Supplier must supply the Deliverables to Bis Industries in accordance with this Agreement in consideration of the payment of the Price by Bis Industries to the Supplier.

3.2 The Supplier must supply the Deliverables:

- (a) *with due care and skill using that standard of diligence that would reasonably be expected from a prudent, expert and experienced provider of deliverables which are similar to the Deliverables in Australia;*
- (b) *using appropriately qualified and trained Representatives; and*
- (c) *in compliance with:*
 - (1) this Agreement;
 - (2) all applicable laws, regulations, Australian Standards and industry practice;
 - (3) any policies or procedures of Bis Industries or the controller of the Site as notified to the Supplier from time to time; and
 - (4) the reasonable directions of Bis Industries or the controller of the Site.

3.3 Bis Industries is not obliged to buy a minimum

Procurement

Purchase Order Terms & Conditions



- quantity of Deliverables or maintain or exceed any quantities forecast by Bis Industries.
- 3.4 The Supplier must fulfil all Purchase Orders submitted by Bis Industries.
- 3.5 The Supplier acknowledges that time is of the essence in this Agreement.

4 Non-exclusivity

Bis Industries reserves the right to purchase similar deliverables to the Deliverables from any other supplier.

5 Supplier's Representatives

- 5.1 If Bis Industries gives notice to the Supplier that a Supplier's Representative has ceased to be acceptable to Bis Industries for any reason, the Supplier must take immediate steps to remove that Representative and provide an alternative Representative acceptable to Bis Industries at no cost to Bis Industries.
- 5.2 Bis Industries has no responsibility to the Supplier or to the Supplier's Representatives in respect of any remuneration, taxation instalments, worker's compensation, superannuation, annual leave, sick leave, long service leave, public holidays, redundancy payments or any other similar benefits under any industrial agreement or law.

6 Bis Industries equipment

- 6.1 If any plant, equipment, tools or appliances (Equipment) is provided by Bis Industries to the Supplier, such Equipment remains the property of Bis Industries and must only be used by the Supplier for the purposes of fulfilling its obligations under this Agreement. The Supplier releases Bis Industries in respect of any Loss arising from the use of the Equipment by the Supplier.
- 6.2 The Supplier must keep the Equipment in good condition and must compensate Bis Industries for any Loss suffered in connection with the Supplier's use of the Equipment.

7 Title and Risk

- 7.1 Title to and risk in the Deliverables passes to Bis Industries upon delivery to the Site.
- 7.2 None of the following constitutes acknowledgement by Bis Industries as to the condition of the Deliverables or that the Deliverables comply with the terms of this Agreement:
- (a) *transfer of title in the Deliverables to Bis Industries;*
 - (b) *delivery of the Deliverables at the Site (including signing delivery receipts); or*
 - (c) *payment for the Deliverables by Bis Industries.*

8 Warranties

- 8.1 The Supplier represents, undertakes and warrants to

Bis Industries that:

- (a) *the Deliverables comply with this Agreement;*
- (b) *the Deliverables are fit for the purpose for which deliverables of the same kind are commonly supplied and for any other purpose which Bis Industries made known to the Supplier before entering into this Agreement or the Purchase Order;*
- (c) *without limiting clause 8.1(b), where a warranty period is set out in the Purchase Order as being applicable to the Deliverables, the Deliverables are fit for their purpose for that warranty period;*
- (d) *the Deliverables are free of defects and are of merchantable quality;*
- (e) *the Deliverables comply with all relevant statutes, regulations, by-laws, laws, codes, Australian Standards and best industry practices;*
- (f) *the supply of the Deliverables, and the subsequent use or on-sale of the Deliverables, will not infringe the Intellectual Property Rights of any third person;*
- (g) *the Supplier has complete ownership of the Deliverables free of any encumbrances and supplies the Deliverables to Bis Industries on that basis;*
- (h) *it and its Representatives who supply the Deliverables have the requisite knowledge, skill and expertise to supply the Deliverables; and*
- (i) *it and its Representatives will act in a safe manner, in compliance with all applicable statutes, regulations, by-laws, laws, codes, Australian Standards and best industry practices, including without limitation, those relating to occupational health and safety and the environment.*

8.2 This Agreement contains all warranties, terms and conditions that Bis Industries would be entitled to if Bis Industries were a "consumer" within the meaning of the Trade Practices Act 1974.

8.3 The warranties given in this clause 8 survive the expiry or termination of this Agreement.

9 Defective Deliverables

- 9.1 If Bis Industries determines that any of the Deliverables are Defective Deliverables, Bis Industries may at its option, reject the Defective Deliverables by notifying the Supplier that it is rejecting them or by returning them to the Supplier at the Supplier's cost and request the Supplier to either:
- (a) *refund to Bis Industries any payments made by Bis Industries in respect of any Defective*

Procurement

Purchase Order Terms & Conditions



Deliverables that it rejects;

- (b) *re-perform or make good, at no cost to Bis Industries, any Defective Deliverables that Bis Industries rejects; or*
 - (c) *reimburse Bis Industries for any expenses Bis Industries incurs in performing or making good any Defective Deliverables on behalf of the Supplier.*
- 9.2 The Supplier acknowledges that Bis Industries is not required to conduct any inspection or testing of the Deliverables. If Bis Industries does inspect or test some or all of the Deliverables, this does not:
- (a) *change or affect the Supplier's obligations under this Agreement; or*
 - (b) *affect Bis Industries' rights to claim for any Loss it may suffer because of the Supplier's breach of this Agreement.*

10 Price and invoicing

- 10.1 Unless otherwise specified in the Purchase Order, the Price is fixed and inclusive of all costs including, without limitation, costs for freight, packaging, packing, wrapping, cartons, storage, handling, insurance, delivery and Taxes other than GST.
- 10.2 The Supplier must provide Bis Industries with a Tax Invoice on or within 14 days after delivery of the Deliverables.
- 10.3 Subject to clause 10.4, Bis Industries must pay all Tax Invoices received from the Supplier under clause 10.2, within 30 days from the end of the month in which the Tax Invoice is received by Bis Industries.
- 10.4 Bis Industries may set off from any amounts it owes to the Supplier, any amounts the Supplier owes to Bis Industries.

11 GST

- 11.1 Any reference in this clause 11 to a term defined or used in the GST Act is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- 11.2 To the extent that any supply made under or in connection with this Agreement is a taxable supply, the recipient must pay, in addition to the consideration to be provided under this Agreement for that supply (unless it expressly includes GST) an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply, provided that the supplier has first issued to the recipient a Tax Invoice in respect of that taxable supply.

12 Term

This Agreement commences on the earlier of the date of acknowledgement of receipt of the Purchase Order by the Supplier and the date the Supplier commences supply of the Deliverables and remains in force,

unless terminated earlier in accordance with this Agreement, until the completion by the Supplier of all its obligations under this Agreement.

13 Termination

- 13.1 Either party (Terminating Party) may immediately terminate this Agreement by written notice to the other party if the other party (Defaulting Party):
- (a) *breaches this Agreement in a material respect and, in the reasonable opinion of the Terminating Party, the breach:*
 - (1) cannot be remedied; or
 - (2) can be remedied, but is not remedied by the Defaulting Party within 5 Business Days after the Terminating Party gives the Defaulting Party notice of the breach; or
 - (b) *becomes Insolvent.*
- 13.2 Bis Industries may, at its option, terminate all or any part of this Agreement at any time and for any reason by giving 30 days written notice to the Supplier.
- 13.3 On termination or expiry of this Agreement:
- (a) *the Supplier must stop working on any incomplete or undelivered Deliverables;*
 - (b) *if requested by Bis Industries, deliver to Bis Industries all completed Deliverables which conform in quality to this Agreement;*
 - (c) *return to Bis Industries, all Bis Industries equipment referred to in clause 6.1;*
 - (d) *the accrued rights and remedies of each party are not affected; and*
 - (e) *the Supplier's sole and exclusive right in respect of the termination is limited to the payment of the Price for any Deliverables which have been completed in accordance with this Agreement and delivered to Bis Industries up to the date of termination or in accordance with clause 13.3(b).*

14 Indemnity

- 14.1 The Supplier is liable for, and must indemnify Bis Industries and Bis Industries' Representatives against any Loss suffered or incurred in connection with the Deliverables including, without limitation, a breach of this Agreement by the Supplier.
- 14.2 The indemnity in clause 14.1 will not apply to the extent that any Loss is directly caused by the negligent act or omission of Bis Industries or any of Bis Industries' Representatives.
- 14.3 Bis Industries holds the benefit of the indemnity in clause 14.1 on trust for itself and its Representatives.

15 Insurance

- 15.1 The Supplier must, at its own cost, take out and maintain with a reputable insurer:

Procurement

Purchase Order Terms & Conditions



- (a) *workers compensation insurance, as required by law;*
 - (b) *public liability insurance in each case for a minimum cover of \$10 million for each claim, unless varied with the written consent of Bis Industries; and*
 - (c) *product liability insurance in each case for a minimum cover of \$10 million in aggregate in any one policy year, unless varied with the written consent of Bis Industries.*
- 15.2 The Supplier must ensure that its Representatives are similarly insured in respect to clause 15.
- 15.3 At Bis Industries' request, the Supplier must provide Bis Industries with certificates of currency for any relevant insurance policy and any other documentation necessary to satisfy Bis Industries that the Supplier is complying with its obligations under this clause 15.
- 15.4 Any public liability insurance policy taken out under clause 15.1(b) must:
- (a) *include Bis Industries as an additional insured; and*
 - (b) *provide a waiver by the insurer of all rights of subrogation, action or relief against any of the insured parties.*
- 15.5 Insurance policies taken out under this clause 15 must:
- (a) *provide that the policy will not be cancelled, altered or amended without the prior written consent of Bis Industries; and*
 - (b) *provide that a failure by any insured party to observe and fulfil the terms and conditions of the policy does not prejudice the rights of any other insured party.*

17 General

- 17.1 These terms are governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of that State and courts entitled to hear appeals from those courts.
- 17.2 This Agreement supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the parties in respect of its subject matter.
- 17.3 A waiver of any right arising under this Agreement must be in writing and signed by the party granting the waiver. Any variation of this Agreement must be in writing and signed by the parties.
- 17.4 The Supplier and Bis Industries are independent contracting parties and nothing in this Agreement shall make either party the agent or legal representative of the other or grant either party any authority to assume or create an obligation on behalf of the other.

16 Australian Customs Duty

- 16.1. Bis Industries may make applications for import duty concessions relating to items of capital equipment, components and materials procured for use in its business operations.
- 16.2. The Contractor (including any sub-contractors used) will provide whatever assistance and/or information in a timely manner to assist in such applications as requested by Bis Industries.
- 16.3. Where Bis Industries is granted a concession **prior** to the importation of goods, the Contractor (including any sub-contractors used) will customs clear the goods quoting the concessional instrument (i.e. duty free), and will pass on any duty savings to Bis Industries.
- 16.4. Where Bis Industries is granted a concession **after** the importation of goods, the Contractor (including any sub-contractors used) will obtain duty refunds and remit the proceeds to Bis Industries.