

Purchase Order Terms and Conditions

1. APPLICATION

These terms and conditions govern all purchase orders issued by Hastings Deering (Australia) Limited and its subsidiaries (with such issuer named on the purchase order being “**the Buyer**”) to the exclusion of all other terms, including the Seller’s terms (if any), unless specifically agreed in writing.

2. GOODS AND SERVICES PURCHASED

- (a) The Seller warrants that from delivery of the goods and/or services and for the duration of the warranty period specified in the purchase order (or to the extent not specified, in the case of goods, for at least 12 months from the later of the date of acceptance and the date of first use of the goods, and in the case of services, for at least 3 months from the date of acceptance of the services):
 - (i) the goods will be of merchantable quality, new and free from any encumbrance, security interest, charge or lien in favour of a third party at the time of delivery to the Buyer;
 - (ii) the goods and/or services will be fit for their intended purposes and free from defects in design, materials and workmanship;
 - (iii) in the performance of the services, the Seller will exercise reasonable skill, care and diligence, use properly skilled, qualified and experienced personnel and hold all relevant approvals and licences required for the performance of the services;
 - (iv) the goods and/or services will comply with all Australian laws and standards;
- (b) Unless otherwise agreed to in writing by the parties, the Seller warrants that the goods and/or services will conform to any specifications given and to any drawings, samples or other descriptions furnished or adopted by the Buyer.
- (c) The Seller must procure and supply for the benefit of the Buyer any applicable supplier or manufacturer warranty for the goods and/or services supplied, and must assist the Buyer with any claim under such warranties.

3. DELIVERY

- (a) The Seller will deliver the goods and/or services in accordance with the terms

specified in the purchase order and at the time or times nominated by the Buyer.

- (b) The Seller will unload the goods and/or services at the delivery point nominated by the Buyer.
- (c) The Seller will immediately advise the Buyer in writing of any circumstances that may cause delay in delivery, the action taken to avoid or minimise the delay and the estimated period of delay.
- (d) The Seller will ensure that, in delivering the goods, it will:
 - (i) if any goods are delivered to or services performed at the Buyer’s site, comply with all site safety policies, procedures and directions of the Buyer;
 - (ii) comply with all mass, dimension and load restraint requirements for vehicles or the carriage of goods;
 - (iii) comply with all relevant requirements in relation to container weight declarations;
 - (iv) manage all transport and journey documentation, including consignment notes, declarations, manifests and log books;
 - (v) provide the Buyer, upon request, with all information and documentation reasonably required by the Buyer (or a relevant government authority or agency) to monitor or audit compliance with this clause (including permitting inspections of transport and journey documentation and vehicles); and
 - (vi) notify the Buyer upon becoming aware of any breach by the Seller or its personnel of this clause.
- (e) The Seller will ensure that prior to the delivery or use of any dangerous goods or hazardous substance (together known as “**Hazardous Substance**”), the Seller:
 - (i) applies appropriate labelling;
 - (ii) provides the Buyer with a copy of the current Material Safety Data Sheet for such Hazardous Substance that complies with the National Code of Practice for the Preparation of Material Safety Data Sheets; and
 - (iii) provides the Buyer with a completed risk assessment if Services include the use of such Hazardous Substances.

4. INSPECTION

- (a) All goods and/or services may be subject to inspection and testing at reasonable times and places nominated by the Buyer, including the period of manufacture.

- (b) The Seller, without additional charge, will arrange industry standard testing of all goods and/or services and, if requested by the Buyer, will provide evidence thereof to the Buyer prior to delivery.
- (c) The Seller will provide all reasonable facilities and assistance for the safety and convenience of the Buyer's inspectors to allow them to conduct additional inspections.
- (d) All goods and/or services are also subject to final inspection and acceptance at the Buyer's premises notwithstanding any payments or other prior inspections. Such final inspection will be made within a reasonable time after delivery.

5. DEFECTIVE GOODS AND/OR SERVICES

- (d) The Buyer may, at its option, either return for credit or refund or require prompt correction or replacement of the defective or nonconforming goods and/or services or part thereof.
- (e) Return to the Seller of any defective or nonconforming goods and/or services and delivery to the Buyer of any corrected or replaced goods and/or services will be at Seller's expense. If the Seller fails to promptly remedy any defective or nonconforming goods and/or services, of if the Buyer determines that an urgent or other situation so justifies, the Buyer may carry out, or procure the carrying out of, anything required to remedy the defect at the Seller's expense.

6. EXTRAS

- (a) No charges will be allowed for transportation packing or returnable containers unless stated.
- (b) All shipments must be packaged and must conform with the Buyer's packaging specifications referred to elsewhere in this order if any, and so as to permit efficient handling and to provide protection in shipment.
- (c) If tendered to a common carrier for delivery, packaging must also conform to the packaging requirements applicable to such carrier, and acts of the common carrier will be deemed to be acts of the Seller.
- (d) Damage to any goods resulting from improper packaging will be charged to Seller.

7. CHANGES

- (a) The Buyer may at any time by a written notice make changes in the specifications, designs or drawings, samples or other description to which the goods and/or services are to conform in methods of

shipment and packaging or place of delivery.

- (b) If any such change causes an increase or decrease in the cost of or time required for the performance of any part of the work under this order, a proportionate adjustment will be made in the price or delivery schedule or both and the purchase order modified in writing accordingly.
- (c) Any claim by the Seller for an adjustment must be made in writing within five (5) days of the receipt of purchase order. If the Buyer accepts such adjustment, it will issue an amendment purchase order which will reflect the adjusted price.
- (d) Nothing in this clause excuses the Seller from proceeding without delay to perform the purchase order as changed.

8. PRICE AND PAYMENT

- (a) Prices are, unless otherwise specified, fixed (as per the amount specified in the purchase order) and not subject to variation except as permitted under the purchase order.
- (b) Subject to the purchase order, prices in a purchase order include all Government taxes and charges.
- (c) The Seller must submit a valid tax invoice specifying:
 - (i) the purchase order number;
 - (ii) for parts or goods used in the supply of goods and/or services, a detailed description of the part or good which specifies the number of units, and the price per unit;
 - (iii) for services charged on a time basis, a detailed description of the services supplied which details the hours and the rate per hour, supported by records of time spent by personnel on the services;
 - (iv) the date of the supply of the goods and/or services; and
 - (v) other relevant details required by the Buyer.
- (d) Subject to any contrary term of the purchase order, payment will be made for undisputed amounts on the last day of the month following the month in which the Seller's invoice is received.
- (e) If the Seller's invoice is not received within fourteen (14) days of receipt of the goods and/or services, the Buyer may, in its full discretion and at any time, pay the Seller the price in the purchase order. The Seller must then, within (5) days of payment, provide the Buyer with a valid tax invoice. The Seller will have no subsequent right to claim for a variation to the price.
- (f) The Buyer may set off any amount that may become payable by it to the Seller

against any amount that is or may become payable by the Seller to the Buyer.

9. TAXES AND DUTIES

- (a) The Seller assumes liability under all laws that impose taxes or duties on the manufacture or sale of the goods and/or services or any component part thereof, and to pay any and all such taxes or duties except those that the Buyer specifically agrees or is by law required to pay.
- (b) Any taxes to be paid by the Buyer will be separately stated on the invoice.
- (c) Prices will not include any taxes for which the Buyer has furnished a valid exemption certificate.
- (d) Notwithstanding the above, all prices are GST exclusive unless otherwise specified. All invoices issued by the Seller must be GST compliant tax invoices.

10. PASSING OF RISK AND TITLE

- (a) The risk in the goods and/or services remains with the Seller until completion of delivery and acceptance by the Buyer.
- (b) Except if title has passed to the Buyer or the Buyer's customers under other provisions of this purchase order, title to the goods will pass to the Buyer upon completion of unloading of the goods at the delivery point.

11. INTELLECTUAL PROPERTY

- (a) To the extent that any Seller background Intellectual Property Rights are vested in or used in the goods and/or performance of services, or vested in any goods, materials or data provided by or on behalf of the Seller, the Seller grants to the Buyer a world-wide, irrevocable, perpetual, assignable, non-exclusive, royalty free licence for the Buyer to use, reproduce and modify all such Intellectual Property Rights for any purpose in connection with this Agreement, the goods and/or services or the Buyer's business.
- (b) To the extent that any Intellectual Property Rights are created or contributed to by the Seller or any person by or on behalf of the Seller in the delivery of goods, materials or data and/or performance of services, ownership of those Intellectual Property Rights (excluding background Intellectual Property Rights) vests in the Buyer. The Seller must notify the Buyer of the creation or contribution of such Intellectual Property Rights and do all things necessary to ensure the Buyer owns the Intellectual Property Rights.
- (c) The Seller indemnifies the Buyer, its successors, assignee, agents, customers and users, of the goods and/or services

against loss damage or liability (including costs and expenses) which may be incurred on account of a claim, judgment or demand involving infringement or alleged infringement of any intellectual property rights (including, but not limited to patents, copyright, trade secrets or trademarks) in the manufacture, use or disposition of any goods and/or services supplied.

12. EXCUSABLE DELAY

- (a) Neither party will be liable for damages for delay in delivery arising out of causes beyond its reasonable control and without its fault or negligence (including but not limited to acts of God, fires, floods, epidemics, quarantine restrictions, and unusually severe weather).
- (b) This clause will not apply to any industrial action by the Seller's employees or contractors, design errors, manufacturing errors or equipment failure in any circumstances.
- (c) The Seller will notify the Buyer in writing within 10 days after the beginning of any such cause in reliance of clause 12(a).
- (d) The Buyer may terminate the purchase order at no charge if the delay under this clause continues for more than 45 days.

13. CONFIDENTIAL INFORMATION AND PRIVACY

- (a) Any information including drawings, data design, inventions and other technical or commercially sensitive information supplied by the Buyer remain the Buyer's property and will be held in confidence by the Seller and its officers, employees, contractors and agents.
- (b) Such information will not be reproduced, used or disclosed to others by the Seller without the Buyer's prior written consent and will be returned to the Buyer upon completion by the Seller of its obligations under this purchase order or upon demand.
- (c) Any information which the Seller may disclose to the Buyer relevant to the use or maintenance of the goods and/or services may be used by the Buyer for those purposes.
- (d) The Seller must comply, and must ensure that its directors, officers, employees, agents, consultants, contractors or representatives comply, with all applicable privacy laws.

14. ANTI-BRIBERY AND ANTI-CORRUPTION LAWS

The Seller represents and warrants that it will not, either directly or indirectly, promise, offer, give or receive anything of value, bribe or an improper

advantage (whether financial or otherwise) to any individual employee, agent or representative of the Buyer or the Buyer's Related Entities (which includes but is not limited to Sime Darby) as an inducement, incentive, reward, gift or bonus to be selected and/or for any other purpose connected with the Business Transaction or the purchase order contrary to applicable anti-corruption law.

15. MODERN SLAVERY

- (a) The Seller must ensure that it and its subcontractors (and to the extent practicable, its supplier and business partners) comply with all Laws, statutes, regulations in force and the Buyer's policies pertaining to modern slavery.
- (b) The Seller represents and warrants that neither it nor its personnel has been convicted or the subject of any investigation into any offence or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with modern slavery.
- (c) On request by the Buyer, the Seller must provide all reasonable assistance (including the provision of information and access to documents and the Seller's personnel as the Buyer may require) to the Buyer to enable the Buyer to comply with its obligations under modern slavery laws. The Seller grants the Buyer, or any third party nominated by the Buyer, the ability to audit the Seller and its Subcontractors in relation to its obligations under this clause.

16. BUYER APPROVALS AND REVIEWS

The review or approval by the Buyer of any work or of any designs, drawings, specifications or other documents prepared for the purpose of the purchase order will not:

- (a) relieve the Seller of any of its obligations under the purchase order;
- (b) excuse or constitute a waiver of any defects or nonconformities in any goods and/or services furnished under the purchase order; or
- (c) change, modify or otherwise affect any of the provisions of the purchase order, including but not limited to the prices and delivery schedules.

17. ASSIGNMENT

- (a) The Seller will not without the prior written consent of the Buyer (which may be withheld in Buyer's absolute discretion) assign or sub-contract the purchase order or any part of it, or the supply of goods and/or services which are not manufactured or provided by the Seller.

- (b) Where the Seller does sub-contract any work, all acts of sub-contracts are deemed to be acts of the Seller.

18. TERMINATION

- (a) The Buyer may terminate this order if the Seller:
 - (i) fails to comply with any of the provisions of these terms and conditions;
 - (ii) is insolvent; or
 - (iii) if the Seller becomes the subject of administration, liquidation, a proceeding for relief of debtors or makes an assignment for the benefit of creditors.
- (b) Without affecting its right to terminate this order under paragraph (a), the Buyer may for its convenience terminate this order in whole or from time to time in part provided that the Seller is paid reasonable compensation (calculated on the same basis as purchase order pricing) for work started but not completed. The Seller will provide auditable details of its proposal for such compensation within 7 days of receiving a notice under this clause, and at any other time at the request of the Buyer.
- (c) The Buyer may withdraw a notice within 14 days of receiving the Seller's compensation proposal. If the parties do not agree on compensation, and the notice is not withdrawn, either party may refer the matter to the disputes process.

19. INDEMNITY, LIABILITY AND INSURANCE

- (a) The Seller indemnifies the Buyer against any costs, losses, damages, liability or expense in connection with any claims by or on behalf of any person/s:
 - (i) arising out of negligence or other fault or breach of any responsibility owed to the Buyer or any person by the Seller including the Seller's employees, agents and subcontractors) in the performance of or noncompliance with the purchase order; and
 - (ii) pursuant to any statutory or other legal requirement relating in any way to the goods and/or services.
- (b) To the extent permitted by law, the Buyer's liability to the Seller in relation to the purchase order and whether in contract, tort (including negligence), statute or otherwise shall be limited to the price for any goods and/or services accepted by the Buyer under the purchase order and in no circumstances will the Buyer be liable to the

Seller for any indirect or consequential damage, cost or loss, however caused.

- (c) The Seller will effect and maintain at its own expense all necessary insurance cover, including but not limited to worker's compensation insurance, public liability insurance, insurance against loss, damage or destruction of the goods until delivery of the goods and/or services to the Buyer (including whilst in transit), insurance for the Seller's plant, equipment and vehicles, and any other insurance cover that the Buyer requests.

20. RIGHTS, REMEDIES AND WAIVERS

- (a) The rights and remedies provided to the Buyer under this purchase order are cumulative and in addition to any other rights and remedies provided by law or equity.
- (b) A waiver of a breach of any provision does not constitute a waiver of any other breach.
- (c) The laws of Queensland will apply to this purchase order, and the Seller submits to the jurisdiction of the courts of that State.
- (d) A provision of, or the application of a provision of, this Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of:
 - (i) that provision in any other jurisdiction; or
 - (ii) the remaining provisions in that or any other jurisdiction.
- (e) Where a clause in this Agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this Agreement.

21. DISPUTES

- (a) In the event of a dispute, either party may deliver a written notice to the other party which:
 - (i) states that it is a notice of dispute under this clause and identifies the dispute;
 - (ii) states the alleged relevant facts that are relied on; and
 - (iii) states the terms on which it is alleged the Dispute should be resolved.
- (iv) If, within 14 days of delivery of a notice of dispute, the dispute has not been wholly resolved:
- (v) either party may give the other party not less than 7 days and not more than 14 days written notice of the time (which must be within normal business hours) and place (which must be at or reasonably proximate to the place of the business of the Buyer or at a place reasonably convenient to

both parties) for a without prejudice meeting; and

- (vi) representatives of the parties who have authority to resolve the dispute must meet and use their best endeavours to resolve the dispute.
- (b) Communications between the parties during a dispute meeting, whether oral or in writing, will not be admissible as evidence in any legal process unless in writing and signed by both parties.
- (c) Despite the existence of a dispute, the Seller must continue to perform its obligations under the purchase order.
- (d) Neither party may commence proceedings in court in relation to a dispute unless:
 - (i) a notice of dispute has been delivered in relation to that dispute and the party commencing proceedings has complied with its obligations under this clause; or
 - (ii) the only relief sought is urgent injunctive or urgent declaratory relief.

22. NOTICES

A notice or other communication required or permitted to be given by a party to another will be in writing and:

- (a) hand delivered; or
- (b) sent by post, postage prepaid, to that party's address set out in the order or subsequently notified to each party from time to time; or
- (c) sent by email addressed to the responsible manager of the party for whom those contact details have been given.

The Seller consents to the sending and receive of documents and the signatures thereto by electronic communication (as defined in the *Electronic Transactions Act 1999* (Cth) Act).

23. VARIATION OF PURCHASE ORDER TERMS AND CONDITIONS

- (a) The Buyer may, in its absolute discretion, vary these Purchase Order Terms and Conditions at any time by notice to the Seller by any of the following methods:
 - (i) by written notice;
 - (ii) by email notice;
 - (iii) by uploading the varied Purchase Order Terms and Conditions onto the public website of the Buyer.