

Purchasing - Terms and Conditions of Trade

1. DEFINITIONS AND INTERPRETATIONS

- 1.1 "Agreement" means this agreement incorporating, the Purchase Order, these terms and conditions, any schedule to this agreement and includes any written variation to this agreement.
- 1.2 "Customer" means Oreflow Australia Pty Ltd its successors and assigns or any person acting on behalf of and with the authority to purchase goods and / or services on behalf of Oreflow Australia Pty Ltd.
- 1.3 "OFA" means Oreflow Australia Pty Ltd and shall be, for the purposes of these terms and conditions agreement, where relevant, be interchangeable with "Customer".
- 1.4 "Supplier" means the party identified as such in any Purchase Order or other documentation, its successors and assigns or any person acting on behalf of and with the authority to supply goods and / or services to Oreflow Australia Pty Ltd – "OFA".
- 1.5 "Supply Delivery Document" means a delivery document, dispatch note, time sheet, claim form or other such document which evidences the delivery of Goods and / or performance of Services.
- 1.6 "Supplier Management Policy" means OFA's commitment and strategy to Suppliers including values and performance delivery expectations OFA has of Suppliers, which we expect Suppliers to commit to, and also relationship aspects we also expect Suppliers to adhere to, a copy of which is available on the OFA website.
- 1.7 "Purchase Order / Order" means an offer from the Customer to acquire products and / or services from the Supplier subject to these terms and conditions and includes amongst other things a description of the goods and / or services and expected delivery date.
- 1.8 "Order Number" means a specific digit number, which appears on all valid OFA **purchase** orders.
- 1.9 "Quote / Quotation" means a document that a Supplier submits to OFA with a proposed price for the Supplier's goods and / or services based on certain conditions.
- 1.10 "Goods and Services" means all Goods (including but not limited to, any supplementary aftermarket accessories and/or consumables) or Services requested by OFA from the Supplier at OFA's request from time to time and as described in the Purchase Order or appropriate order documentation (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.11 "Delivery Address" means the place for delivery as specified on the Order.
- 1.12 "Delivery Date" means the delivery date specified on the Order, or a date subsequently notified in writing by OFA to the Supplier.
- 1.13 "Dispute" means any dispute or issue arising between OFA and Supplier pursuant to which OFA considers that they should not pay the Supplier or pursuant to which either OFA or Supplier considers they have a claim against the other party.
- 1.14 "Defective" means Goods and / or Services (or any aspect of them) which are not in accordance with the order or which are damaged, deficient, faulty, inadequate or incomplete.
- 1.15 "Due Date for Payment" means, unless otherwise stated on the front of this agreement, or as specifically agreed separately, either fifteen (15) or thirty (30) days from either the date of the Purchase Order or the receipt of goods / provision of the services as the case may be.
- 1.16 "Price" means the Price **payable from the Customer to the Supplier**, including all other costs and charges (plus any GST where applicable) for the Goods as agreed between the Supplier and the Customer in accordance with clause 8 below.
- 1.17 "Force Majeure" means unforeseen circumstances that prevent someone or a party to this contract from fulfilling a contract clause, which may relieve a party from performing its contract obligations, due to an event outside the reasonable control of the affected party. The effect of force majeure is that it may enable the non-performing party to escape liability for failing to perform as a result of the force. It is not limited to events in Australia and includes all forms of international contracts with Customers. Examples of Force Majeure for the terms of this agreement include, but are not limited to:
- (a) Natural disasters
 - (b) Government intervention
 - (c) Epidemics
 - (d) Pandemics
- 1.18 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.19 "ACL" means the Australian Consumer Law, which is contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth).
- 1.20 "Law" means:
- (a) Federal, State, and local government legislation including regulations, by-laws, orders, awards and proclamations.
 - (b) Common law and equity.
 - (c) Authority requirements and consents, certificates, licenses, permits and approvals (including conditions in respect of those consents, certificates, licenses, permits and approvals).
 - (d) Guidelines of Authorities with which the Supplier is legally required to comply.
- 1.21 "Website" means <http://www.oreflow.com.au>

Purchasing - Terms and Conditions of Trade

2. ACCEPTANCE

- 2.1 Every Purchase Order ("Order") we issue is an offer to acquire goods and / or services from the Supplier subject to these terms and conditions and / or any special conditions we include with our order. Where you as a Supplier accept our Order, acceptance of this is deemed to be a contract on this basis. Any terms and conditions in the Supplier's quote, offer document, order acceptance or any other documents you supply are excluded.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Supplier.
- 2.3 Electronic signatures shall be deemed to be accepted by either party.
- 2.4 Email confirmations are also deemed to be acceptance by either party.

3. SUPPLY OF GOODS AND / OR SERVICES

- 3.1 The Supplier agrees to sell and the OFA agrees to buy the Goods and / or Services on and subject to the Order and these Purchase Order Terms and Conditions ("The Terms").
- 3.2 These terms constitute the entire agreement and supersede any other agreement or understanding between the parties. If the Supplier's terms are supplied with the Goods and Services, those terms will be of no legal effect (even if any representative of OFA signs those terms or annexes / addendums to the terms and conditions of any order).
- 3.3 The Supplier must, in supplying the Goods or performing the Services, comply with the OFA Supplier Management Policy as detailed on the OFA website.
- 3.4 On request by OFA, the Supplier must provide any information and assistance reasonably required by OFA on any matters relating to the Goods and / or Services.

4. DELIVERY

- 4.1 The Supplier must supply goods and / or services as, where and when specified in our order or otherwise directed by OFA in writing.
- 4.2 The Supplier must deliver the goods and / or services to the delivery address by the agreed delivery date.
- 4.3 The Supplier must keep OFA informed of any delays or other matters which may affect the delivery of the goods / services.
- 4.4 The Supplier must ensure that the goods are suitably packed to avoid damage in transit or in storage.
- 4.5 The Supplier must ensure packages / shipments are marked with the order number, item number, destination, contents, quantity, date and where appropriate, method of dispatch and weight of each package / shipment.
- 4.6 On reasonable notice, the Supplier must provide and procure for OFA (and its representatives) full access to premises and locations to allow OFA to inspect the goods at any time prior to delivery.

5. CANCELLATIONS

- 5.1 OFA may cancel an order by written notice to the Supplier at any time prior to supply; or
- 5.2 After supply, if the goods are not in accordance with the order, (including where wrong quantities / components are delivered); or
- 5.3 If you as the Supplier, otherwise breach this contract / order.

6. QUALITY

- 6.1 The Supplier warrants that all goods / services supplied, strictly comply with all applicable laws, regulations, codes, Australian and (where appropriate) International Standards, including any performance criteria specified and agreed to.
- 6.2 The Supplier warrants that all goods / services match the description referred to in the order, and conform to all relevant specifications, drawings, samples and / or other descriptions.
- 6.3 The Supplier warrants that all goods are fit for OFA's intended purpose, free from damage and defects in workmanship and materials and are of merchantable quality and, unless specified in the in the order are new.
- 6.4 The Supplier services must be performed in a thorough, professional and competent, professional manner using the standard of care, skill, expertise and diligence that would reasonably be expected by appropriately trained and qualified personnel providing similar services in Australia and, where appropriate, internationally.
- 6.5 The Supplier warrants that the goods are free of all liens and the Supplier has good title to them.
- 6.6 The Supplier warrants that its employees, contractors, and agents will at all times hold all licences required by Law for the supply of goods and / or the performance of the services.
- 6.7 The Supplier warrants that there are no terms, conditions or restrictions that will become binding on OFA as a result of use of and subsequent sale of the goods by OFA.
- 6.8 OFA may reject goods which do not comply with our Order or our terms and conditions, even if we have previously inspected or accepted them. Where this occurs, the Supplier must within 10 days (or as otherwise agreed and documented), replace, repair or re-supply the goods at the Supplier's expense.

Purchasing - Terms and Conditions of Trade

7. DEFECTIVE GOODS AND SERVICES

- 7.1 If any of the goods / services are found to be defective, OFA may at the Supplier's cost:
- (a) Return the defective goods to the Supplier.
 - (b) Reject the defective services.
 - (c) Repair or make good the defective goods.
 - (d) Re-perform or make good the defective services and / or
- 7.2 The Supplier must at their cost, if requested by OFA to do so:
- (a) Repair or replace the defective goods.
 - (b) Re-perform or make good the defective services.
 - (c) Reimburse OFA for any expenses incurred in repairing, re-performing or making good (as the case may be) and defective goods / services.

8. PRICE, PAYMENT & INVOICING

- 8.1 The price for goods and / or services is the price stated in the Purchase Order – this includes any rates and quantities as set out in the order.
- 8.2 Unless the order expressly states otherwise, it includes any applicable GST, packing, insurance, delivery, charges, taxes, duties and any other appropriate charges – Australian and International as appropriate.
- 8.3 The Supplier may only invoice OFA after all goods / services have been delivered or completed to our satisfaction. The Supplier invoice must:
- (a) Be correctly addressed.
 - (b) Identify the OFA Purchase Order number.
 - (c) Be a valid tax invoice for GST purposes and where OFA requests.
 - (d) Be accompanied by documentation substantiating the amount claimed eg timesheets, additional expenses.
- 8.4 OFA is not obliged to pay an invoice or part of an invoice that has not been submitted in accordance with these terms and conditions (including but not limited to invoices submitted with a Purchase Order number) or which relates to goods / services that have not been accepted by OFA and are subject to a dispute (as defined in clause 9.1).
- 8.5 Subject to clause 8.4 **and** clause 8.7, OFA will pay all correctly rendered and undisputed invoices within 30 days after receipt of the Supplier's invoice or as otherwise specifically agreed between both parties, except where OFA disputes the Supplier Delivery document or invoice, in which case:
- (a) OFA may withhold payment pending resolution of the Dispute; and
 - (b) If upon resolution it is determined that OFA must pay an amount to the Supplier OFA must pay the amount within 14 days of such resolution.
- 8.6 As well as any of OFA other rights, OFA may deduct from the Supplier's invoice any monies currently owing to OFA. OFA may reduce any payment due to the Supplier under these terms and conditions, by any amount which the Supplier must pay to OFA, including costs, charges, damages, expenses and any debts owed by the Supplier to OFA on any account whatsoever. This does not limit OFA's right to recover those amounts in any other way.
- 8.7 Where Force Majeure circumstances arise, OFA will work closely with the Supplier to agree on a mutually acceptable, commercial resolution. This can include but is not limited to considering:
- (a) All of the available options for completion of the contract including possible alternatives to mitigate any fallout.
 - (b) Whether the entire contract is affected, or whether there are parts of the contract than can still be completed.
 - (c) Whether there is only a temporary interruption to the performance of the contract, or completion will in fact be impossible

9. DISPUTE RESOLUTION

- 9.1 We sincerely hope this never has to happen, however, in the event of disputes the following applies to both parties:
- (a) If OFA disputes an invoice we will suspend payment to the Supplier till the dispute is resolved.
 - (b) The Supplier must provide OFA with any information or documentation we request in relation to the invoice or dispute to allow OFA best means to expedite a positive outcome and resolution between both parties.
 - (c) If a difference or dispute between the parties arises in connection with an invoice, or the subject matter or interpretation of the terms and conditions ("Dispute"), either party may give the other party, written notice of the dispute identifying and providing details of the dispute ("Dispute Notice").
 - (d) Within 7 business days of receipt of the Dispute Notice, representatives of the parties having authority to bind the parties shall discuss the dispute ("Dispute Meeting").
 - (e) Providing the provisions of this clause have been complied with, and the dispute has not been resolved within 10 days following the Dispute Meeting, either party may commence proceedings in court.

10. TITLE AND RISK

- 10.1 Title to and risk in the goods passes to OFA upon delivery.
- 10.2 The Supplier warrants that they have complete ownership of the goods free of any encumbrances.
- 10.3 OFA has clear and complete title to the goods free from any encumbrances.
- 10.4 There is no claim of infringements of moral rights will be brought against OFA by the Supplier's employees or agents.

Purchasing - Terms and Conditions of Trade

11. INTELLECTUAL PROPERTY

- 11.1 Any intellectual property rights created from the Supplier's performance of this contract and under these terms and conditions, vest in and are assigned to OFA on creation.
- 11.2 Any tools, patterns, designs, drawings or other material used in supplying or manufacturing goods that are paid for by OFA or supplied by OFA is the property of OFA.
- 11.3 Any OFA supplied materials or drawings provided to the Supplier as part of any contract that are in the Supplier's possession for whatever period are subject to the following conditions:
 - (a) The Supplier holds them solely as a bailee of OFA.
 - (b) The Supplier must store them securely and maintain them in good repair / order.
 - (c) The Supplier must use them solely for the purpose of performing this contract.
 - (d) The Supplier must return them to OFA on demand.
- 11.4 If the Supplier is manufacturing or procuring the manufacture of the goods and services and the goods are required to be manufactured or fabricated to OFA's specifications or special requirements (and are not goods of the type ordinarily manufactured by the Supplier or the Supplier's sub-contractors) OFA will own all intellectual property rights of any kind that arise as a result of, or in the course of, the design and manufacture of the goods.
- 11.5 If the Services are required to be performed to OFA's specifications or special requirements, OFA will own all intellectual property rights of any kind that arise as a result of, or in the course of, the performance of the services.
- 11.6 The Supplier will do all necessary acts to give effect to OFA's rights under clauses 11.4 and 11.5.
- 11.7 The Supplier warrants that the supply of the goods and services to OFA, the use of goods by OFA or any resale or hiring out of the goods by OFA will not infringe the intellectual property rights of any person and OFA will not have to pay any licence fee, royalty or other amount to any person in connection with the goods or services.

12. CONFIDENTIALITY AND PRIVACY ACT 1988

- 12.1 The Supplier must keep all relevant OFA information confidential in the performance **of this contract, including but not limited to:**
 - (a) Information on our drawings, designs, records, OFA employees and / or contractors.
 - (b) No information other than in the performance of this contract may be shared with outside parties without OFA written prior approval.
- 12.2 The Supplier must ensure all their employees, representatives, sub-contractors and other agents comply with all applicable Privacy Laws. OFA reserves the right to request a copy of the Supplier's Privacy Policy.

13. SUB-CONTRACTING

- 13.1 The Supplier must not sub-contract the whole or any part of its obligations under this contract without the written prior approval of OFA which we may grant or withhold at our sole discretion. The Supplier will remain principally liable for the performance of this contract and the acts / omissions of any sub-contractor.

14. TERMINATION

- 14.1 As well as OFA's other rights, OFA may terminate this contract where:
 - (a) The Supplier fails to supply products by the date required in the order.
 - (b) The Supplier breaches the agreement and fails to remedy the breach within 7 days of receiving written notice from OFA.
 - (c) The Supplier has neglected, or omitted to, carry out any direction from OFA in respect of the agreement, and fails to comply within 7 days of receiving a written notice to comply from OFA.
 - (d) The Supplier becomes or threatens to become insolvent, bankrupt or enter into a compromise or arrangement with creditors or any form of external administration.
 - (e) The Supplier has intimated that it is unwilling or unable to complete its obligations under the agreement.
- 14.2 OFA may terminate an order in its absolute discretion, without assigning any reason for the termination. In such circumstances, OFA will pay the Supplier for any goods and / or services already supplied, and all costs incurred by the Supplier up to the time of termination. Any goods and / or services paid for to date, whether completed or not, shall become the property of OFA. At this time, the Supplier must provide all necessary supporting and substantiating documentation to evidence costs incurred to date of termination. OFA's liability to the Supplier must under no circumstances exceed the amount for the Goods and Services otherwise payable under this agreement.
- 14.3 OFA may also terminate an order with immediate effect where it reasonably believes that the Supplier has breached the OFA Supplier Management Policy in any material respect. The only price payable to the Supplier following termination of the order will be for goods and / or services delivered to OFA in accordance with the terms and conditions prior to the breach.

Purchasing - Terms and Conditions of Trade

15. INDEMNITY AND INSURANCE

- 15.1 The Supplier shall indemnify OFA's officers, employees, agents and Customers against all loss, damage, claim, expense or liability incurred in connection with the following:
- (a) The Supplier's performance or breach of this contract.
 - (b) Any Supplier products supplied either in part or wholly.
 - (c) Claims by third parties that claim products infringe their intellectual property rights.
 - (d) Any negligent or wilfully wrong act or omission by the Supplier directly, by Supplier employees, agents and/ or sub-contractors fails to supply products by the date required in the order.
- 15.2 The Supplier shall indemnify and hold OFA harmless against any claim, action, damage, loss, liability, cost, charge, expenses, outgoing or payment (including any legal costs on a full indemnity basis) arising out of, or in connection with, the supply of the goods / services in respect of:
- (a) Personal injury to, or the death of, any person.
 - (b) Loss of, damage to, or loss of use of, any property, including property of OFA.
 - (c) Any claim that the goods and / or services infringe the intellectual property rights of a third party.
 - (d) A breach of clause 6 of these terms and conditions.
 - (e) Wrongful or negligent act or mission by or on behalf of the Supplier, including a breach of these terms.
- 15.3 The Supplier is responsible for all acts or omissions of the Supplier's officers, employees, agents and contractors in relation to the provision of the services and supply of goods.
- 15.4 The Supplier must remedy any environmental damage or degradation resulting from the Supplier's actions or omissions.
- 15.5 The Supplier must affect and maintain appropriate insurance policies taking into account the goods and services the Supplier provides and all other necessary business risks. OFA reserves the right to be provided proof of the appropriate insurances on request. If and when requested, the Supplier must provide immediately.

16. GENERAL

- 16.1 This contract may only be varied with OFA's written agreement.
- 16.2 The Supplier may not assign this contract without our prior written consent which may be granted or withheld at OFA's sole discretion.
- 16.3 These terms and conditions plus our order constitutes the entire agreement between the Supplier and OFA in relation to its subject matter.
- 16.4 The parties are independent contractors. No relationship of employment, agency, partnership or joint venture is created by this contract.
- 16.5 Any delay by OFA or failure to exercise a right under this contract is not a waiver of that right or any other rights. OFA's consent to a breach of this contract is not a consent to any subsequent breach.
- 16.6 If a provision of these terms and conditions is unenforceable for any reason, such unenforceability shall not affect any other part of such provision or any other provision in the terms and conditions.
- 16.7 The terms and conditions shall be governed by the Laws of Western Australia and the parties agree to submit to the jurisdiction of the courts of that state.
- 16.8 OFA agrees that it will deal with all personal information provided by the Supplier in accordance with its legal requirements and the OFA Privacy Policy, a copy of which is available on the website.
- 16.9 If the Supplier subcontracts and part of the services:
- (a) The terms of the subcontract must be consistent with these terms and conditions.
 - (b) The Supplier's obligations are not lessened or otherwise affected by subcontracting the performance of those services and.
 - (c) The Supplier is responsible for ensuring the subcontractors' compliance with the OFA Supplier Management Policy.
- 16.10 OFA shall have no liability to the Supplier in respect of any other matter in connection with the order unless a claim together with full particulars is lodged with OFA within 21 days of the occurrence of the event upon which the claim is based.
- 16.11 **In summary, the Supplier acknowledges, accepts and agrees overall as part of these terms and conditions:**
- (a) **OFA Supplier Management Policy**
 - (b) **OFA Warranty Policy; and**
 - (c) **OFA Warranty Terms & Conditions**
 - (d) **These documents are all available for download from the OFA website - <http://www.oreflow.com.au>**