

Kirby HVAC&R Pty. Ltd.

Trading as Kirby (ABN 42624910041)

Conditions of Purchase

1. Definitions

- (i) "Buyer" means Kirby HVAC&R Pty. Limited or its related companies as indicated in the Purchase Order.
- (ii) "Goods" means all (including but not limited to consultancies, maintenance) goods, services or products covered by the Purchase Order, including raw materials, processed materials or fabricated products.
- (iii) "Purchase Order" means the Buyer's official purchase order to which these conditions apply and includes printed purchase orders, whether delivered by hand, mail or facsimile, and purchase orders issued by means of Electronic Data Transfer or otherwise.
- (iv) "Seller" means the person, firm, partnership, company or other legal entity to whom the Purchase Order is issued and includes its servants, agents and subcontractors.

2. Entire Agreement

- 2.1 These conditions of Purchase and the Purchase Order represent the entire agreement between the parties and shall be incorporated in the contract for the purchase of the Goods specified on the face of the Purchase Order and the Seller shall, by accepting this Purchase Order, be bound by these Conditions of Purchase. These Conditions of Purchase shall apply to the exclusion of all other terms and conditions, whether contained in the Sellers Invoice or conditions of sale or otherwise.
- 2.2 Where the seller is certified to ISO 9001 or ISO 9002, this Purchase Order must be fulfilled in accordance with the terms of that certification.

3. Responsibility for Purchase

The Buyer will not be responsible for any order unless it is issued on a Purchase Order. No variation of a Purchase Order will be effective unless approved in writing by the Buyer. The number appearing on the Purchase Order must be quoted on all invoices, delivery dockets and parcels.

4. Quality

- 4.1 The Seller warrants that the goods:
 - (a) conform with the description provided by the Seller;
 - (b) conform with any applicable specifications agreed by the Buyer and the Seller;
 - (c) are of merchantable quality and are fit for the purpose for which they are sold;
 - (d) are free of defects in material, workmanship and design;
 - (e) are new (unless otherwise specified);
 - (f) are free from all liens and encumbrances and the Seller has good marketable title thereto.
- 4.2 These warranties are in addition to any other warranties or guarantees contained in the Purchase Order or implied by law or provided by the Seller or third party.

5. Liability

- 5.1 The Seller shall, without limitation, indemnify the Buyer for any loss, damage, expense, claim or liability suffered or incurred by the Buyer, whether consequential or otherwise, as a result of a breach of any of the warranties contained in Clause 4 hereof.
- 5.2 Notwithstanding Clause 5.1 and without limiting the generality thereof, the Seller shall repair or replace, at the Buyer's option, all Goods which are or become defective or otherwise fail to comply with all warranties contained in Clause 4 within 30 days of notification of such defect or failure from the Buyer. Such repairs or replacements shall be subject to the warranties contained in Clause 4 and the liabilities contained herein.

6. Loss or Damage in Transit

- 6.1 The Buyer shall advise the Seller of any loss or damage to or defect in the Goods within the following time limits:
 - (a) partial loss, damage, defects or non-delivery of any separate part of a consignment of Goods within 60 days of the date of delivery of the consignment or part consignment; or
 - (b) non-delivery of whole consignment of Goods within 60 days of the intended date of delivery as specified in the Purchase Order.
- 6.2 The Seller shall make good free of charge to the Buyer any loss of or damage to or defect in the Goods where notice is given by the Buyer in compliance with this condition.

7. Rejection

Notwithstanding Clause 6 hereof, the Buyer may reject Goods not conforming for any reason whatsoever to the Purchase Order upon delivery of such Goods or within a reasonable time thereafter. Any payment by the Buyer for such Goods shall not prejudice its right of rejection contained herein.

The Seller shall reimburse the Buyer for:

- (a) any purchase price paid by the Buyer with respect to such Goods; and
- (b) any costs incurred by the Buyer in connection with the rejection of such Goods.

8. Delivery

- 8.1 The date and place of delivery of the Goods shall be that specified in the Purchase Order unless otherwise agreed between the Buyer and the Seller.
- 8.2 Time is of the essence hereof insofar as it applies to the obligations of the Seller. If any Goods are not delivered within the time specified in the Purchase Order, the Buyer may either:
 - (a) refuse to accept such Goods and terminate the Purchase Order, or
 - (b) cause the Seller to deliver the Goods by the most expeditious means, whereupon any additional delivery charges in excess of those which would apply for the usual means of delivery shall be borne by the Seller.
- 8.3 If any Goods are not delivered to the place specified in the Purchase Order or otherwise agreed between the Buyer and Seller, the Seller will be responsible for any additional expense incurred in delivering them to their correct destination.

9. Title and Risk

Title to and risk of loss in the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with Clause 8 but without prejudice to any right of rejection or other rights which may accrue to the Buyer hereunder.

10. Inspection in Progress and Prior to Despatch

The Seller agrees that the Buyer or its agents shall have the right of inspection of all work performed pursuant to the Purchase Order while in any stage of engineering, manufacture or installation, and of the Goods prior to their despatch. The Seller shall make this a condition of any subcontracted work. The Buyer or its agents shall have the power to reject any work performed or being performed or any Goods that do not conform to the Purchase Order, whereupon the work or Goods rejected shall be re-performed at no additional cost to the Buyer. Any such inspection shall not relieve the Seller of any obligations contained in the Purchase Order or at law.

11. Intellectual Property

The Seller shall indemnify the Buyer in respect of any loss, damage, expense, claim or liability suffered or incurred by the Buyer as a result of any claim by a third party alleging infringement of any intellectual property rights in relation to the Goods or any work to be performed pursuant to the Purchase Order.

12. Price

- 12.1 The purchase price of the Goods payable by the Buyer shall be that specified in the Purchase Order and shall be fixed firm, and cannot be varied without the prior written agreement of the Buyer.
- 12.2 The purchase price specified in the Purchase Order shall be on an F.I.S. basis unless otherwise agreed.
- 12.3 If the Buyer notifies the Seller that it is able to buy any Goods at a lower delivered cost than similar Goods supplied by the Seller, then either the Seller shall agree to meet the lower cost for those Goods or the Buyer may cancel any outstanding Purchase Order for those Goods from the Seller and acquire the goods from the alternative source.

13. Terms of Payment

The terms of payment unless otherwise stated on the Purchase Order are 32 days from the completion of the month of invoice. The Buyer reserves the right to set out any amount owing under any Purchase Order against any amount due from the Seller to the Buyer for any reason whatsoever.

14. Subcontracting and Assignment

- 14.1 The Seller shall not assign its rights or obligations hereunder or subcontract any work to be performed pursuant to the Purchase Order without the prior written consent of the Buyer.
- 14.2 The Buyer's consent to the Seller subcontracting any work to be performed pursuant to the Purchase Order shall not relieve the Seller of its responsibility for the whole of the work to be performed pursuant to the Purchase Order or of any obligations contained in the Purchase Order or at law.
- 14.3 Where the Buyer has consented to the placing of subcontracts by the Seller, copies of each suborder shall be sent by the Seller to the Buyer immediately they are issued and the Buyer reserves the right to inspect all subcontracted work.

15. Packaging, Storage and Hazardous Goods

- 15.1 The Goods shall be properly packed to avoid being damaged during delivery or loading and unloading. All packages shall be clearly marked with the Purchase Order number and the location of delivery.
- 15.2 The Seller shall comply with all applicable Australian and International Laws, regulations and other relevant requirements relating to the transport, packaging, storage, handling and use of the Goods.
- 15.3 All Goods which are hazardous goods must be marked by the Seller with international danger symbol(s) and display the name of the material in English. Products classified as "Dangerous Goods" in accordance with the Australian Dangerous Goods (ADG) Code must be marked in accordance with that Code. Delivery and other documents must include disclosure of the hazard(s) and name of the material in English. Goods must be accompanied by emergency material in English in the form of written instructions, labels or markings and Material Safety Data Sheets.
- 15.4 All information held by or reasonably available to the Seller regarding any potential Hazards or special requirements known or believed to exist in the transport, packaging, storage, handling or use of the Goods shall be immediately communicated to the Buyer.
- 15.5 The Goods shall be packed in the case of Dangerous Goods, to comply with the requirements of the ADG Code and marked accordingly with the relevant approvals. Such packaging shall also be marked with the appropriate information required by the ADG Code. In all other cases the Goods shall be packed in accordance with any packaging requirements or specifications communicated by the Buyer to the Seller. Any proposed alteration to the Buyer's packaging requirements or specifications shall be subject to the Buyer's prior approval.
- 15.6 Where required by the Buyer or at law, the Seller shall provide all necessary Certificates of Conformance, Certificates of Analysis and Test Certificates together with the Goods delivered pursuant to the Purchase Order.

16. Insurance

The Seller shall maintain adequate insurance including, without limitation, public liability, worker's compensation (including common law liability), automotive and other means of transportation/freight liability insurance and product damage insurance upon such terms and for such amounts as are reasonable in the circumstances of the Purchase Order.

17. Force Majeure

Neither the Seller nor the Buyer shall be liable to the other for default or delay in performing its obligations under the Purchase Order caused by any occurrence beyond its reasonable control including without limitation, fire, strike, industrial disturbance, riot, war, act of God and governmental order or regulation, PROVIDED THAT the party affected by such occurrences gives written notice thereof to the other party within 7 days of the commencement of the occurrence.

18. Buyer's Rights in Specifications, Plans, Process Information, etc.

Any specifications, plans, drawings, process information, patterns or designs supplied by the Buyer to the Seller in connection with the Purchase Order shall remain the property of the Buyer, and any information derived therefrom or otherwise communicated to the Seller in connection with the Purchase Order shall be kept confidential and shall not, without the written consent of the Buyer, be published or disclosed to any third party, or made use of by the Seller except for the purpose of implementing the Purchase Order. Any specifications, plans, drawings, process information, patterns or designs supplied by the Buyer to the Seller must be returned to the Buyer on request by the Buyer. Any invention or improvement made by the Seller attributable in whole or in part to such specifications, plans, drawings, process information, patterns or designs shall be the property of the Buyer.

19. Tooling

Any special tools, jigs, fixtures and patterns acquired at the expense of the Buyer, or supplied by the Buyer for the fulfillment of this order are the property of the Buyer, and are not to be used without the authority of the Buyer. The Seller will be responsible for maintaining tooling to produce Goods to the specifications.

20. Work On Buyer's Site

Should the Purchase Order require the Seller to carry out any work on the site of the Buyer, such work shall be subject to, in addition to the conditions of the Purchase Order and any conditions imposed by law, the conditions contained in the General Conditions for On-site Work by Contractors for the particular site, a copy of which will be given to the Seller before any such work commences.

21. Applicable Law

The Purchase Order shall be governed by, subject to and construed in accordance with the laws of the State or Territory in which the relevant Buyer's site issuing the Purchase Order is situated and the parties accept the jurisdiction of the courts or that State or Territory and the Commonwealth of Australia. The Seller shall comply at all times with all applicable Federal, State and Local Laws and regulations.

22. Transaction Tax

Where, after the introduction of the GST from 1/7/2000, or in conjunction with any subsequent change in the GST law, there is a reduction in or abolition of any existing transaction taxes, the consideration (excluding any GST) payable by the Buyer for Goods will be reduced by the same proportion as the actual total supply cost of the Seller are reduced as a consequence of that reduction or abolition of those transaction taxes. The Seller will issue to the Buyer a tax invoice on delivery in the form prescribed by any relevant law or regulation.