

Conditions of Purchase

1. Definitions and Interpretation

These terms have these meanings when used in these Conditions:

"Colby" means GEA Colby Pty Ltd

"Agreement" means the Purchase Order, these Conditions and all documents attached or incorporated by reference;

"Confidential Information" means all documentation, data, drawings, intellectual property and other information of a party (and includes without limitation Personal Information) except to the extent that such information is in the public domain through no breach of this Agreement;

"Delivery Address" means the ship to address specified in this Purchase Order or otherwise notified to Vendor by Colby

"GST" has the meaning given in the New Tax System (Goods and Services Tax) Act 1999.

"Material" means goods purchased by Colby and free issued to the Vendor.

"Price" means the price of any Work stated in the Order.

"Tax invoice" has the meaning given in the New Tax System (Goods and Services Tax) Act 1999.

"Vendor" means the company, firm, person or persons named in the Purchase Order;

"Work" means performance of the services or delivery, supply or manufacture in whole or in part of the product.

2. Formation of Contract

- 2.1. Acceptance of the Purchase Order shall be deemed to be an acceptance of these Conditions to the exclusion of any other terms, unless and to the extent that Colby expressly agrees in writing to the incorporation of such terms or any variation of these Conditions by reissue of the Purchase Order specifying the amendments as special conditions.
- 2.2. If the Vendor commences Work the Vendor shall be deemed to have accepted the Purchase Order and these Conditions notwithstanding its failure to provide written acknowledgement.
- 2.3. If the Vendor has accepted the Purchase Order, it will be bound to provide the Work specified in the Purchase Order in accordance with this Agreement including any project or other plan, specification or installation instructions incorporated by reference into this Agreement.

3. Vendor's Obligations and Warranties

The Vendor:

- 3.1. shall be responsible for any discrepancies, errors or omissions in specifications, drawings or any particulars supplied by it
- 3.2. shall comply with all Privacy Laws in relation to the Personal Information (as that term is defined in the Privacy Act), whether or not the Vendor is an organisation bound by the Privacy Act and if it is a small business under the Privacy Act, then upon reasonable request by Colby, the Vendor agrees to choose to be treated as an organisation bound by the Privacy Act in accordance with Section 6EA of that Act during the Term of this Agreement;
- 3.3. shall and shall ensure that its employees, agents and contractors do not make public or disclose any Confidential Information of Colby except to the extent required by law to do so and subject to giving Colby reasonable written notice prior to disclosure;
- 3.4. shall ensure that Work packaging is suitable and where possible environmentally friendly (biodegradable);
- 3.5. shall at its cost comply with all relevant laws, orders, regulations or by-laws and bear any additional costs arising from noncompliance;
- 3.6. warrants, without limiting its other warranties under this Agreement or otherwise, that:
 - a) all Work will;
 - i. be new, of merchantable quality, and fit for purpose;
 - ii. provide the full functionality and performance claimed for the Work;
 - iii. operate in accordance with its specifications; and
 - iv. (in the case of software and hardware) when in operation, calculate dates correctly for the period of the useful life of the Work and
 - v. be provided with due skill and care to the standard / reasonably to be expected of a person performing the business of the Vendor.
- 3.7. shall indemnify Colby against all loss, costs, damages, or expenses arising out of any breach of the above warranties.

4. Defects

The Vendor shall, at its cost and without prejudice to any of Colby other rights and remedies, rectify all defects occurring in the Work within the greater of 18 months of the date of receipt of delivery by Colby or the period of warranty

provided by the Vendor in relation to the Work. Such rectification shall be effected as a matter of urgency.

5. Colby Property

- 5.1. Legal title to and property in all material supplied by Colby in respect of the Purchase Order shall remain with Colby and shall not pass to the Vendor or its successors or assignees under any circumstances whatsoever. The Vendor may only use such material in performing its obligations under the Agreement and shall bear the risk of damage or loss and indemnify Colby for all costs and expenses incurred or suffered as a result of such damage or loss including the cost of replacing such material.
 - 5.2. All drawings, specifications, information and samples provided by Colby shall remain Colby's sole and exclusive property, shall be deemed to be Confidential Information and shall not be disclosed by the Vendor to a third party except with the prior written consent of Colby. Colby makes no warranties regarding the accuracy of, and shall not be liable for, any defects, mistakes or inaccuracies in such documents, information or samples.
- ### 6. Intellectual Property Rights
- 6.1. Copyright, patent, database rights, registered designs, trademarks, eligible layout rights and all other rights of a proprietary nature created or arising as a result of Intellectual activity in carrying out the Work, vest in and are transferred by the Vendor to Colby on creation. This clause does not alter the ownership of any such rights pre-existing the date of the Purchase Order.
 - 6.2. The Vendor:
 - a) warrants that Colby's use of the Work provided by the Vendor under this Agreement shall not infringe any author's moral rights under the Copyright Act 1968; and
 - b) shall indemnify Colby, its employees and sub-contractors against any claims against, or costs, expenses, losses or damages suffered or incurred by Colby arising out of, or in any way in connection with, any actual or alleged infringement of any author's moral rights under the Copyright Act 1968.
 - 6.3. For the purposes of this clause 6, Colby use of the Work provided by the Vendor includes Colby right to reproduce, publish, copy, adapt, communicate to the public, materially distort, destroy, mutilate or in any way change the Work or part of the Work to which the Work or any other work provided by the Vendor under this Agreement relates:
 - a) with or without attribution of authorship;
 - b) in any medium; and
 - c) in any context and in any way it sees fit.
 - 6.4. The Vendor shall fully indemnify Colby against any loss, costs (including legal fees) and expenses arising from any claim by a third party in respect of the Work including a claim that the use of the Work or any part of the Work constitutes an infringement of a registered design, trademark or copyright or patent (other than a part based on a design specified by Colby). The Vendor shall at its expense either replace such infringing part with a non-infringing part, or modify such part so as to render it to be non-infringing (in either case, to deliver the same functionality and performance as the infringing part). Or procure for Colby the right to use such a part.

7. Time and Delivery

- 7.1. The due date stated in the Purchase Order for delivery or completion including any extension of such time or date granted in writing by Colby shall be binding and be of the essence of the Purchase Order.
- 7.2. Unless otherwise specified in the Purchase Order, Work is to be delivered without additional charge to Colby, to the forwarding address stated in the Purchase Order.
- 7.3. Delivery may be made to Colby at the address stated in the purchase order, tender or other purchase documentation between normal business hours. and delivery that varies from these times must be by prior agreement with Colby.

8. Risk, Title and Acceptance

- 8.1. Risk in the Work shall remain with the Vendor until the Work has been accepted by Colby. Title to Work will pass to Colby upon delivery.
- 8.2. If the Work performs or is substantially in accordance with this Agreement (including any specifications) subject to any latent defects, Colby shall be deemed to have accepted the Work not earlier than 28 days after,
 - a) the date of delivery of the Work; or
 - b) the completion of any test(s) specified in the Purchase Order, whichever is the later (provided Colby has not notified the Vendor of non-acceptance). Work (excluding any services which give rise to goods) will be accepted as completed when Colby confirms in writing that the Work have been completed to its reasonable satisfaction.

9. Price and Invoices

- 9.1. Prices are, unless otherwise specified, fixed and not subject to variation except as permitted under this Agreement.
- 9.2. The prices set out in this order must not be exceeded on your invoice without prior approval in writing
- 9.3. Invoices should be sent directly to our Accounts Payable Department.
- 9.4. Subject to clause prices in the Purchase Order include all Government taxes and charges.
- 9.5. If GST is payable in relation to a Taxable Supply made by Colby, under or in relation to the Purchase Order the amount payable for that Taxable Supply will be the amount payable under the Purchase Order plus GST. Terms defined in the GST Act have the same meaning given to those terms when used in this Agreement.
- 9.6. Invoices submitted by the Vendor must be a tax invoice as required the GST Act and specify the Purchase Order number, Line number, Colby Item number and other relevant details as required by Colby. Invoices may only be rendered in accordance with the Purchase Order.
- 9.7. Subject to any contrary term of this Agreement, payment will be made on the last day of the month following the month in which the Vendor's invoice is received.
- 9.8. Colby may set off any amount due and payable by Colby to the Vendor against any amount owing by the Vendor, however or whenever incurred.
- 9.9. Colby has no obligation to make any payment in respect of any Vendor's invoice unless and until:
 - a) If contractor are to be supplied to and from and/or delivered to New South Wales, the Vendor is to supply Colby a completed Subcontractor's Statement regarding Workers Compensation, Pay-roll Tax and Remuneration in the form provided by the New South Wales Government's website (available for download at web address www.industrialrelations.nsw.gov.au/rights/pdf/Subcontractor_StatementForm.pdf) for the month to which the Vendor's invoice relates;
 - b) if Work are to be supplied to or from and/or delivered to any Australian State or Territory other than New South Wales, the Vendor has first supplied a statutory declaration for the month to which the Vendor's invoice relates declaring that, in respect of the Work that is subject of the Vendor's invoice and in any applicable form:
 - i. all of the Vendor's employees and subcontractors have been paid all monies due and payable to them and all taxes, whether State or Federal, have been paid including any State or Territory pay-roll tax; and
 - ii. the Vendor provides certificates of currency for all insurances required to be affected and maintained under the Agreement and required by any Workers' Compensation Statute or Regulation of any State or Territory applicable to the provision of the Work. .
- 9.10. If Colby becomes liable to pay any amount to any third party by reason of the Vendor's failure to provide the documentary evidence required for payment specified in clause 9.7 clause 9.6 applies and Colby may have recourse to any security it may be holding from the Vendor to pay any such liabilities.

10. No Inducement

If the Vendor either directly or indirect provides to an employee of Colby either before or after the placing of the Purchase Order, any benefit of any character whatsoever which might reasonably be construed as an inducement for the employee to show favour to the Vendor in respect of any matter including the placing of the Purchase Order, then Colby may at its option give notice to the Vendor that this Agreement is void and of no force or effect.

11. Liability, Indemnity and Insurance

- 11.1. The Vendor shall be solely responsible for all loss, damage, injury or death which may be sustained by any person, firm or corporation as a result of or by reason of its execution of the Work and shall hold harmless and fully indemnify Colby and its officers, contractors, employees and agents against all loss, damage, injury, costs and expenses, actions, proceedings, claims and demands (including legal fees and disbursements) whatsoever which may be brought or made against them or any of them as a result of or arising out of the execution of the Work and agrees to accept and bear all costs which may be incurred in connection with such actions, proceedings claims and demands. The obligation of the Vendor to indemnify under this clause shall be reduced to the extent that a negligent act or omission of Colby has directly caused the loss, damage or injury.
- 11.2. Except to the extent that liability cannot be legally limited or excluded and whether in contract, tort, negligence, under an indemnity, strict liability or otherwise:

- a) Colby's liability arising out of or in connection with the Agreement shall be limited to payment of the prices due and owing in accordance with clause 9.5 and in no event shall Colby be liable for economic loss, loss of profit, loss of revenue or loss of contract, indirect or consequential loss or damage.
- b) The Vendor shall at its expense effect and maintain:
 - 11.3. a) a public liability policy for an amount not less than \$10 million per occurrence;
 - b) an insurance policy covering loss of or damage to the Work;
 - c) if the Work involves any consulting or design, a professional indemnity policy for an amount of not less than \$5 million per occurrence and
 - d) such insurance as is legally required under any Workers' Compensation legislation applicable in the location where the Work is to be performed.
12. **Site Access**
 - 12.1. The Vendor will be given access to the site where Work is to be performed for a period sufficient to enable to execute its contractual obligations under this Agreement. Access shall be at a mutually convenient time.
 - 12.2. Unless otherwise agreed in writing the Vendor shall provide at its own expense all site facilities, constructional plant and other amenities as may be necessary for the performance of the Work.
 - 12.3. The Vendor shall comply with all occupational health and safety and security regulations applying on Site and when on Colby premises, with all Colby security, sexual harassment, occupational health and safety policies and all other workplace regulations and policies of Colby.
13. **Termination**
 - 13.1. If the Vendor defaults in the due observance or performance of any or all of its obligations under this Agreement or if a liquidator, administrator, receiver and manager, controller or other like officer is appointed over all or some of the assets of the Vendor or there is a change in ownership of the Vendor, then Colby may, at its option and without prejudice to any other rights Colby may have against the Vendor, give 14 days' notice in writing to the Vendor that this Agreement is terminated and retain or enforce any security given. Any monetary security so retained or the proceeds of enforcement of any security may be applied by Colby against any loss and damage incurred by Colby arising from such termination.
 - 13.2. Colby may at any time without cause, vary, cease or suspend the Work or terminate the Agreement by giving notice in writing to the Vendor. On receipt of a notice from Colby, the Vendor shall immediately, vary, cease or suspend Work in accordance with and to the extent specified in the notice. If such notice is given, Colby shall only be liable for the amount of any direct cost and normal overheads falling within the scope of the Purchase Order, as have accrued to the date of receipt of the notice from Colby up to a maximum of the amounts that would otherwise have been payable under the Purchase Order.
14. **General**
 - 14.1. For the purpose of service of any document or notice in connection with the Purchase Order it shall be sufficient for either Colby or the Vendor to forward such document or notice by ordinary mail transmission or facsimile to the address of the other party shown herein. The parties agree that they will conduct business electronically in relation to the purchase of Work.
 - 14.2. If the whole or any part of these Conditions is or becomes or is held to be illegal invalid or unenforceable, then the whole and each part of the clauses of these Conditions shall (to the extent necessary to avoid such illegality invalidity or unenforceability) be interpreted read down or severed without affecting the operation of the remaining clauses.
 - 14.3. The Vendor shall not, without the prior written consent of Colby, assign, transfer or subcontract the performance of any or all of the Vendor's obligations or benefits under this Agreement to a third party.
 - 14.4. This Agreement may only be amended in writing signed by both parties.
 - 14.5. This Agreement shall be construed and operate in conformity with the laws of the State of NSW, Australia and the parties irrevocably submit to the jurisdiction of the courts of that state and the appeal courts from them.
 - 14.6. The Purchase Order may include additional or special terms and conditions which are expressed to override, exclude or modify these Conditions. Where such terms are included they will take precedence in the following order
 - a) Preferred Supplier Agreement
 - b) the terms of the Purchase Order;
 - c) any referenced document, plan or specification whether attached or incorporated by reference.