

## **TERMS AND CONDITIONS OF PURCHASE**

### **1. Scope**

- 1.1 Supplier acknowledges and agrees that these Purchasing Terms and Conditions (the "Terms and Conditions") are incorporated in, and made a part of, each purchase order, requisition, work order, shipping instruction, specification or other document, whether expressed in written form, by electronic data interchange or other tangible format provided to Supplier. The Terms and Conditions will be applicable to all purchases made by TriMas Corporation, its respective subsidiaries and divisions, and any entity controlling, controlled by, or under common control with them ("Buyer"), from Supplier, whether purchases are for tooling, machines, parts, raw materials, or other various goods or services (the "Supplied Goods").
- 1.2 A Purchase Order and the Terms and Conditions will constitute the entire agreement applicable to and binding on Buyer for the Supplied Goods, and expressly excludes any application by Supplier to substitute its general terms of sale as well as any documents issued now or in the future by Supplier relating, directly or indirectly, to the Supplied Goods. Any proposal, offer, counter-offer, or other attempt by Supplier to vary any of the Terms and Conditions will be rejected, and Supplier agrees that any such additional or inconsistent terms will have no force and effect.
- 1.3 Notwithstanding the foregoing, any stenographic or clerical errors to the Terms and Conditions are subject to correction by Buyer.

### **2. Price, Invoicing and Conditions of Payment**

- 2.1 All prices for Supplied Goods will be as stated in the Purchase Order. Supplier will be solely responsible for all transport and unloading costs, customs charges, taxes (including GST), duties, levies, excises and insurance costs, unless otherwise specified on the Purchase Order.
- 2.2 Unless otherwise agreed to in writing by Buyer, Supplier will pay all freight, storage, handling, packaging, insurance or similar charges.
- 2.3 Supplier's invoice will include all information appearing on the Purchase Order necessary for identification and origin of the Supplied Goods. The invoice will be sent to the invoicing address written on the face of the Purchase Order.
- 2.4 No payment will be made by Buyer in advance of receipt of the Supplied Goods. Unless otherwise stated on the Purchase Order and agreed in writing by Buyer, Supplier's invoice will be payable 60 days from the date of invoice. All invoicing and payments will be made through electronic data interchange.
- 2.5 Payment for Supplied Goods will not constitute final acceptance of the Supplied Goods or waive Buyer's right to reject the Supplied Goods. Buyer may reject the Supplied Goods and hold Supplier in default if, at any time, Buyer, or any of its customers, discovers the Supplied Goods to be defective in breach of any warranty under Section 12 or otherwise not conforming to the requirements of the Purchase Order.





- c) either:
  - i) modify, alter or substitute any infringing part of the Supplied Goods at its own expense in order to avoid any continuing infringement of any Intellectual Property Rights; or
  - ii) immediately procure for Buyer the authority to continue the use and possession of any Supplied Goods which would otherwise infringe any Intellectual Property Rights.

5.7 The Supplier represents and warrants that:

- a) it has all necessary licences in relation to the Intellectual Property Rights in the Supplied Goods required for use of the Supplied Goods by Buyer; and
- b) where required in order for Buyer to use the Supplied Goods in the manner contemplated by the Terms and Conditions, Supplier will procure for Buyer any necessary licences and grant Buyer any necessary sub-licences in relation to the Intellectual Property Rights in the Supplied Goods.

5.8 The Supplier indemnifies Buyer, its directors, officers and employees against all liability for any infringement of the Moral Rights of any person involved in creating the Supplied Goods. At the request of Buyer, Supplier will provide an indemnity to a similar effect to any subsequent owner or licensee of the Supplied Goods and to any subsequent purchaser of Buyer's business.

## **6. Packaging and Transport**

6.1 Unless otherwise provided in a Purchase Order, the Supplied Goods must be packed and packaged to ensure their safe delivery in accordance with the Terms and Conditions, industry standards and where incorporated, Buyer's packaging specifications.

6.2 Buyer may, at any time, change packaging or transport requirements. Supplier will be responsible for any damage to the Supplied Goods arising from packaging or transport.

6.3 Supplier will provide all Material Safety Data Sheets and "hazardous substance" warnings related to all shipments of Supplied Goods that constitute hazardous materials, together with special handling instructions advising Buyer and third parties, including transportation carriers, as to the degree of care and precaution that will prevent bodily injury or property damage in handling, transporting, processing, using, recycling or disposing of the Supplied Goods.

6.4 All packing materials shall become the property of Buyer upon delivery and may be disposed of or otherwise dealt with at the sole discretion of Buyer.

6.5 The Supplied Goods, as packaged, will be labelled as required under federal, state and local regulations, regulations from the country of manufacture and supply will include any storage requirements, Buyer's Purchase Order number, description of the Supplied Goods, and quantity and the gross or net weight of the Supplied Goods. Supplier will

include a bill of lading consisting of delivery and identification information for the Supplied Goods, including a clear description of the origin of the Supplied Goods.

## **7. Ownership of the Supplied Goods**

- 7.1 Notwithstanding Section 9, all right, title and interest in and to the Supplied Goods will be transferred to Buyer immediately upon its identification in the Purchase Order. Supplier will not impose or permit to be imposed any lien, encumbrance or security interest or similar reservation of title on the Supplied Goods.
- 7.2 If Buyer purchases or finances all or part of the raw materials or semi-finished products for incorporation into the Supplied Goods, the raw materials and semi-finished products will become the property of Buyer immediately upon payment. Supplier, as bailee, will identify the raw materials and semi-finished products by plainly marking them as Buyer owned property.
- 7.3 All supplies, materials, tools, jigs, dies, gauges, fixtures, moulds, patterns, equipment, ancillary products, materials and other items (collectively "Tools") purchased by or furnished by Buyer, in whole or in part, or by third parties on Buyer's behalf, to Supplier under these Terms and Conditions, or for which Supplier has been reimbursed by Buyer, will remain the property of Buyer and will not be pledged to any third party. Supplier will provide Buyer with drawings, technical specifications, FMEA's and control plans for the Tools. Supplier will bear the risk of loss and damage to the Tools.
- 7.4 The Tools will at all times
- a) be properly stored, operated and maintained by Supplier;
  - b) not be used by Supplier for any purpose other than the performance of these Terms and Conditions;
  - c) be deemed to be personal property of Buyer, not a fixture;
  - d) be conspicuously identified as property of Buyer with relevant part numbers;
  - e) not be commingled with other property of Supplier or with that of a third party; and
  - f) not be moved from Supplier's premises without Buyer's prior written approval.
- 7.5 Supplier will insure the Tools for damage or loss (including theft) in an amount not less than replacement value and will maintain general liability insurance regarding operation of the Tools in amounts and coverage reasonable in the circumstances and acceptable to Buyer.
- 7.6 Upon the request of Buyer, the Tools will be delivered to Buyer by Supplier, either:
- a) F.O.B. transport equipment at Supplier's plant, properly packed and marked in accordance with the Terms and Conditions and requirements of the carrier selected by Buyer; or
  - b) to any location designated by Buyer,

provided that Buyer will pay Supplier the reasonable cost of delivering the Tools to the location.

Buyer has the right to enter Supplier's premises at all reasonable times to inspect the Tools and Supplier's records with respect to the Tools.

- 7.7 Buyer does not guarantee the accuracy of any Tools or the availability or suitability of any Tools furnished by Buyer to Supplier, including any warranty, either express or implied, as to fitness, condition, merchantability, design or operation or fitness for a particular purpose. Supplier agrees to check carefully and approve all Tools supplied by Buyer prior to use. Supplier will assume all risk, loss, damages, injuries or expenses arising, either directly or indirectly, from the use, maintenance, repair of the Tools, including any interruption of service or loss of business, profits or any other indirect, special or consequential damage and/or personal injury or death.
- 7.8 In any dispute involving ownership of Tools, there is a rebuttable presumption that Buyer is the sole owner of the Tools and Supplier grants Buyer a security interest in the Tools to secure Supplier's obligations under these Terms and Conditions. Supplier authorizes Buyer, at Buyer's sole option, to file financing statements to evidence Buyer's interest in the Tools.
- 7.9 Supplier grants Buyer an exclusive, irrevocable option to purchase any Tools owned by Supplier and used in the manufacture of the Supplied Goods at a price agreed upon in writing by the parties, but in no event greater than the replacement cost of the Tools less

- a) Supplier agrees that time is of the essence. Supplier further agrees that if Supplier fails to deliver Supplied Goods pursuant to the Purchase Order, Buyer may:

- b) Unless subject to Section 13, Buyer's changes cause an increase or decrease in the cost of or time required for performance of a Purchase Order by Supplier, an equitable adjustment will be negotiated promptly and in good faith by the parties, and the Purchase Order will be modified in writing accordingly. Supplier must submit in writing any claim for adjustment to Buyer within 30 days from the date that notification of the change is received by Supplier. Upon approval of the claim by Buyer, any excess or obsolete Tools or Supplied Goods set forth in the claim will become the property of Buyer, to dispose or utilize as Buyer deems necessary.
- c) Notwithstanding the foregoing, Supplier will be required to continue to perform under the revised Purchase Order.

## **11. Acceptance of Supplied Goods**

- 11.1 The Purchase Order will be deemed to have been accepted by Supplier and constitute a binding contract upon the earlier of Supplier's:
- a) written acknowledgment; or
  - b) shipment of the Supplied Goods.

Buyer may revoke its offer or terminate a Purchase Order without liability to Supplier at any time before Buyer receives actual notice of Supplier's acceptance.

If the Purchase Order is deemed to be accepted based on a prior offer by Supplier, such acceptance is limited to and expressly made conditional on assent to the express terms set forth in the Purchase Order.

- 11.2 Buyer and its customers will have the right to enter Supplier's premises at reasonable times to verify that the Supplied Goods conform to the Purchase Order. Supplier agrees to provide all supporting documentation requested by Buyer in the course of the investigation. Final acceptance of the Supplied Goods by Buyer will not be conclusive with respect to latent defects or misrepresentations.
- 11.3 Buyer reserves the right to reject or revoke acceptance of nonconforming Supplied Goods, which includes but is not limited to defects or defaults revealed by inspection, analysis or subsequent manufacturing operations, even though such items previously may have been accepted, non-compliance with the Purchase Order or non-compliance with the date and hours of delivery at any time.
- 11.4 In addition to Section 11.3 and any other remedies Buyer may have, at its option, Buyer may
- a) correct or have corrected the non-conforming Supplied Goods at Supplier's expense;
  - b) reject and return the Supplied Goods at Supplier's own risk and expense; or
  - c) instruct Supplier to retrieve the non-conforming Supplied Goods at its expense within 8 days of notification of rejection or revocation of acceptance.



- 11.5 Buyer will be permitted to dispose of the Supplied Goods upon Supplier's failure to retrieve the non-conforming Supplied Goods. If defects or deficiencies in the Tools provided by Supplier are discovered by Buyer prior to final acceptance, Buyer will be entitled to, among other remedies, a return of all sums paid to date under this contract.
- 11.6 Supplier will be responsible for the design and manufacture of the Supplied Goods to the extent designated by Buyer in the Purchase Order or as otherwise agreed to in writing by the parties, regardless of any assistance provided by Buyer or approval by Buyer.

## **12. Express Warranty.**

12.1 Supplier represents and warrants that during the Warranty Period, the Supplied Goods will:

- a) strictly conform with the Purchase Order, including instructions, advertisements, statements on containers or labels, descriptions and samples, then current release/revision levels of specifications and drawings;
- b) be new (unless otherwise agreed in writing) and of premium quality;
- c) be free from damage, defects and faults;
- d) be fit for Buyer's purpose, including the specified performance in the component, system, subsystem and environment in which the Supplied Goods are or reasonably may be expected to perform or, if Buyer's purpose is not known, for the purpose for which the Supplied Goods are commonly used;
- e) be of merchantable quality; and
- f) correspond with the description of the Supplied Goods by Supplier and conform with any samples supplied to Buyer,

fair wear and tear excepted, and provided that Buyer ensures that the Supplied Goods are properly maintained in accordance the manufacturer's recommended maintenance and scheduled servicing.

12.2 Supplier represents and warrants that:

- a) it has, or by no later than the date of delivery will have, good title to, and is, or by no later than the date of delivery will be, the sole beneficial owner of, the Supplied Goods;
- b) it will deliver the Supplied Goods to Buyer free of any charge or encumbrance;
- c) as at the date of the Terms and Conditions, it is not aware of any actual or threatened claim for infringement of Intellectual Property Rights, arising out of the manufacture, sale or use of the Supplied Goods; and
- d) it and Supplier's employees are in possession of all requisite licenses, permits and authorities necessary to lawfully perform the Terms and Conditions.

- 12.3 The warranties in this Section 12 and any other warranties given by Supplier in relation to the Supplied Goods, are in addition to:
- a) any warranty or service guarantee supplied by the manufacturer of the Supplied Goods (if applicable); and
  - b) any warranty implied by law except that no course of dealing or usage of trade



- a) cancel the undelivered portion of any Supplied Goods covered by a Purchase Order and not be required to make further payments except for payments associated with conforming Supplied Goods delivered or services rendered prior to cancellation; or
- b) take out and maintain the necessary insurances at Supplier's expense, and the costs thereof shall be a debt due to Buyer, provided that Buyer shall be under no

## **17. Default by Supplier.**

17.1 Buyer may terminate any Purchase Order in the event of any of the following:

- a) Supplier is in material breach of any term of the Terms and Conditions and such breach is not remedied (if capable of being remedied) within seven (7) days of written notice by Buyer to Supplier;
- b) any representation, warranty or statement made by, or repeated by, Supplier, in or in connection with the Terms and Conditions is untrue or misleading (whether by omission or otherwise) in any material respect;
- c) Supplier ceases or threatens to cease conducting its business in the normal manner;
- d) an Insolvency Event of Supplier; or
- e) if Supplier:
  - i) sells, or offers to sell, a material portion of its assets;
  - ii) sells or exchanges, or offers to sell or exchange, or causes to be sold or exchanged, a sufficient amount of its stock or other equity interests that effects a change in the control of Supplier; or
  - iii) executes, or otherwise becomes subject to, a voting or other agreement or trust that effects a change in the control of Supplier.

17.2 In the event of termination under Section 17.1, Buyer will not be liable to Supplier for any amount, except for conforming Supplied Goods that have been delivered to Buyer prior to termination, and Supplier will be liable to Buyer for all damages sustained by reason of the default which gave rise to the termination.

17.3 If notice is given to Supplier pursuant to Section 17.1a), Buyer, in addition to terminating the Terms and Conditions:

- a) may return any nonconforming Supplied Goods to Supplier;
- b) shall be regarded as discharged from any further obligations under the Terms and Conditions; and
- c) may pursue any additional or alternative remedies provided by law.

## **18. Termination**

18.1 Buyer reserves the right to terminate any Purchase Order, in whole or in part, at any time without liability, at Buyer's convenience. Such termination will not constitute a default by Buyer.

18.2 In the event of such termination by Buyer, Supplier, its' suppliers and subcontractors, will:

- a) immediately stop all work on such Purchase Order; and
  - b) upon request by Buyer, transfer title and deliver all finished goods, work in process and/ or raw materials which Supplier produced or acquired in connection with such Purchase Order.
- 18.3 In the event of a termination by Buyer under this Section 18, Supplier will be reimbursed for:
- a) the Purchase Order price for all finished goods or performed services which conform to the Purchase Order and are delivered to Buyer; and
  - b) Supplier's reasonable actual cost of work in process or raw materials which Supplier produced or acquired in connection with such Purchase Order and which Supplier cannot reasonably use in its operations within 90 days after the date of termination.
- 18.4 Supplier will furnish any claim for reimbursement of costs within 30 days after termination or any such claim will be deemed to have been waived. Supplier will not be paid for any work performed after receipt of the notice of termination, or for any costs incurred by Supplier's suppliers or subcontractors which Supplier could reasonably have avoided or that were not authorized pursuant to a valid Purchase Order or material release by Buyer.
- 18.5 Buyer's obligation to Supplier upon termination under this Section 18, if any, will be limited to the express provisions of this section.
- 18.6 Without limiting the foregoing, in no event will Buyer be liable for any lost profits, cancellation charges, or incidental or consequential damages.



by the nonperforming party within 10 days of the event. During the period of any delay or failure to perform by Supplier, Buyer, at its option, may purchase Supplied Goods from other sources and reduce its schedules to Supplier by such quantities, without liability to Buyer, or cause Supplier to procure the Supplied Goods from other sources in quantities and at times requested by Buyer and at the price set forth in the Purchase Order. If requested by Buyer, Supplier will, within 5 days of such request, provide adequate assurance that the delay will not exceed a period of time that Buyer deems appropriate. If the delay lasts more than the time period specified by Buyer, or Supplier does not provide adequate assurance that the delay will cease within the time period, Buyer may, among its other remedies, immediately cancel the Purchase Order and seek damages against Supplier for non-performance.

### 22.3 Limitation on Buyer's Liability/ Waiver.

In no event will Buyer be liable to Supplier for anticipated profits or for incidental or consequential damages. Buyer's liability for a claim of any kind or for any loss or damage arising out of or in connection with or resulting from these Terms and Conditions, or from any performance or br



jurisdiction of and agrees to be bound by the Federal Courts of Australia and of that State.

The United Nations Convention on Terms for the International Sale of Products will not apply to these Terms.

22.9 No gifts.

The Supplier must not give any employees, officers or agents of Buyer (or their families) any gifts, tips or other gratuities.

22.10 Interpretation.

The following words have the following meanings in these Conditions, unless the context requires otherwise:

**Confidential Information** means any information which is taken by any provision of this Agreement to be confidential, or which the disclosing party makes the receiving party aware is considered by the disclosing party to be confidential, or which is by its nature confidential, or which the receiving party knows or ought to know is confidential, whether in any medium or form or conveyed by any means, and includes, but is not limited to any information relating to:

- a) the composition, design and supply of the Supplied Goods;
- b) the personnel, policies and business strategies of Buyer; and
- c) the terms upon which the Supplied Goods have been supplied or installed in accordance with this Agreement,

but excludes any such information which was at the date of the Terms and Condition or becomes subsequent to that date part of the public domain otherwise than through a breach of confidence or was acquired by a party from a third party entitled to disclose it.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**FMEA** means failure mode and effects analysis, a method (first developed for systems engineering) that examines potential failures in products or processes.

**GST** has the same meaning as in the GST Law.

**GST Law** means the A New Tax System (Products and Services Tax) Act 1999 (Cth).

**Insolvency Event means**, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act)] or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a

compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event, except to reconstruct or amalgamate while solvent.

**Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trade mark, design, patents, circuit layouts, plant varieties, business and domain names, inventions and Confidential Information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not registrable, registered or patentable.

**ISO**