

TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES

1. INTERPRETATION

1.1 In these Conditions the following words shall have the following meanings:

Word	Meaning
“the Company”	Envirosuite Operations Pty Ltd ABN 32 607 985 580
“the Contract”	the Order and the Seller’s acceptance of the Order;
“Goods and/or Services”	any Goods and/or Services agreed in the Contract to be purchased by the Company from the Seller (including any part or parts of them);
“Order”	the Company’s written instruction to supply the Goods and/or Services, incorporating these Conditions;
“Seller”	the person, firm or company who accepts the Company’s Order.
“Services”	any services agreed in the Contract to be purchased by the Company from the Seller (including any part or parts of them);
“Applicable Law”	the law in force in the state of Victoria, Australia.

2. APPLICATION OF TERMS

- 2.1 The Company may from time to time request the Seller to supply it with quantities of Goods and/or Services. All orders for Goods and/or Services will be placed by the Company in writing using its standard purchase order form or such other form as may be reasonably required by the Company from time to time.
- 2.2 Each Order for Goods and/or Services by the Company from the Seller shall be deemed to be an offer by the Company to purchase Goods and/or Services subject to these Conditions and no Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.
- 2.3 No terms or conditions endorsed upon, delivered with or contained in the Seller’s quotation, acknowledgement or acceptance of order, specification or similar document will form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.
- 2.4 These Terms and Conditions apply to all the Company’s purchases and any variation to these Terms and Conditions shall have no effect unless expressly agreed in writing and signed by an authorised officer of the Company.

3. QUALITY AND DEFECTS

- 3.1 The Goods and/or Services shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Order and specification and/or patterns supplied or advised by the Company to the Seller, and be provided with acceptable care and skill. The Goods and/or Services also shall be fit for the particular purposes for which they are required by the Company. By fulfilling the Order, the Seller acknowledges that the Company is relying upon the Seller's skill or judgement in providing such Goods and/or Services.
- 3.2 At any time prior to delivery of the Goods and/or Services to the Company the Company shall have the right to inspect and test the Goods and/or Services with reasonable notice to the Seller .
- 3.3.1 If the results of such inspection or testing cause the Company to be of the opinion that the Goods and/or Services do not conform or are unlikely to conform with the Order or to any specifications and/or patterns supplied or advised by the Company to the Seller, the Company shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity and in addition the Company shall have the right to require and witness further testing and inspection.
- 3.4 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and/or Services and any such inspection or testing shall not diminish or otherwise affect the Seller’s obligations under the Contract.

TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES

- 3.5 If any of the Goods and/or Services fail to comply with the provisions set out in condition 3 the Company shall be entitled to avail itself of any one or more remedies listed in condition 13.
- 3.6 All warranties provided by the Seller in connection with the Goods and/or Services, which arise out of this Contract or by operation of law, shall extend for the useful life of such Goods and/or Services.
- 3.7 The Seller warrants that it will supply the Goods and/or Services in accordance with all applicable laws, regulations, industry standards and codes of conduct in force in Australia and any other relevant jurisdiction relating to the nature, method of manufacture, acquisition, testing, packaging, labelling, release for supply and delivery of the Goods and/or Services;
- 3.8 The Seller warrants that it has the necessary skills, experience, qualifications, resources, technology and know-how to supply the Goods and/or Services in accordance with these Terms and any Contract.

4. INDEMNITY

- 4.1 The Seller shall keep the Company indemnified in full against all direct, indirect or consequential liability, loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with:
- 4.1.1 defective workmanship, quality or materials;
 - 4.1.2 an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods and/or Services;
 - 4.1.3 any claim made against the Company in respect of any liability, loss, damage, injury, cost or expense sustained by the Company's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods and/or Services.
 - 4.1.4 the Seller's negligence or wrongful act or omission.

5. DELIVERY

- 5.1 The Goods and/or Services shall be delivered, carriage paid, to the Company's place of business or to such other place of delivery as is agreed by the Company in writing prior to delivery of the Goods and/or Services. The Seller shall off-load the Goods and/or Services as directed by the Company.
- 5.2 The date for delivery shall be specified in the Order.
- 5.3 The Seller shall invoice the Company upon, but separately from, despatch of the Goods and/or Services to the Company.
- 5.4 The Seller shall ensure that each delivery is accompanied by a delivery note which shows, inter alia, the order number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 5.5 Time for delivery shall be of the essence.
- 5.6 Unless otherwise stipulated by the Company in the Order, deliveries shall only be accepted by the Company in normal business hours.
- 5.7 If the Goods and/or Services are not delivered on the due date then, without prejudice to any other rights which it may have, the Company reserves the right to:
- 5.7.1 recover from the Seller any expenditure reasonably incurred by the Company in obtaining the Goods and/or Services in substitution from another supplier; and
 - 5.7.2 claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Seller's failure to deliver the Goods and/or Services on the due date.

TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES

- 5.8 If the Seller requires the Company to return any packaging material to the Seller that fact must be clearly stated on any delivery note delivered to the Company and any such packaging material will only be returned to the Seller at the cost of the Seller.
- 5.9 Where the Company agrees in writing to accept delivery by instalments the Contract will be construed as a single contract in respect of each instalment. Nevertheless failure by the Seller to deliver any one instalment shall entitle the Company at its option to treat the whole Contract as repudiated.
- 5.10 If the Goods and/or Services are delivered to the Company in excess of the quantities ordered the Company shall not be bound to pay for the excess and any excess will be and will remain at the Seller's risk and will be returnable at the Seller's expense.

6. RISK/PROPERTY

The Goods and/or Services shall remain at the risk of the Seller until delivery to the Company is complete (including off-loading and stacking) when ownership of the Goods and/or Services shall pass to the Company.

7. INSURANCE

- 7.1 The Seller must, before performing any of its obligations, effect the following insurance policies with a reputable insurer and maintain those policies during the performance of the Seller's obligations under the Contract:
- (a) Public and Products Liability Insurance with a limit of liability of \$20 million per occurrence (and for products liability insurance, in the aggregate);
 - (b) where the Services are professional services, Professional Indemnity Insurance with a limit of liability of \$10 million per occurrence;
 - (c) Motor Vehicle Insurance with a limit of liability of at least \$10 million per occurrence;
 - (d) Workers' Compensation Insurance; and
 - (e) any other insurances agreed between the Parties and set out in a Purchase Order.
- 7.2 Before commencing the performance of its obligations under the Contract, and at other times requested by the Company, the Seller must give the Company certificates of currency issued by the insurer in respect of each insurance policy.
- 7.3 Nothing in this clause limits the Seller's liability or responsibility under these Terms and Conditions.

8. PRICE

- 8.1 The price of the Goods shall be stated in the Order and unless otherwise agreed in writing by the Company shall be exclusive of value added tax but inclusive of all other charges.
- 8.2 No variation in the price nor extra charges will be accepted by the Company.

9. PAYMENT

- 9.1 The Company shall pay the price of the Goods and/or Services within current month + 60 days of delivery of the Goods and/or Services to the Company, or other mutually agreed payment terms.
- 9.2 Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Seller to the Company against any amount payable by the Company to the Seller under the Contract.

10. CONFIDENTIALITY

The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by the Company or its agents and any other confidential information concerning the Company's business or its products which the Seller may obtain and the

TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES

Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to the Company and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Seller.

11. THE COMPANY'S PROPERTY

Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Company to the Seller or not so supplied but used by the Seller specifically in the manufacture of the Goods and/or Services shall at all times be and remain the exclusive property of the Company but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Company and shall not be disposed of other than in accordance with the Company's written instructions, nor shall such items be used otherwise than as authorised by the Company in writing.

12. TERMINATION

12.1 Either party ("the First Party") shall have the right at any time by giving notice in writing to the other ("the Second Party") to terminate the Contract forthwith if:

12.1.1 the Second Party commits a breach of any of the terms and conditions of the Contract;

12.1.2 any distress, execution or other process is levied upon any of the assets of the Second Party ;

12.1.3 the Second Party enters into any compromise or arrangement with its creditors, commits any act of bankruptcy or if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction as a solvent company) or if a petition is presented to court, or if a receiver and/or manager, receiver, administrative receiver or administrator is appointed in respect of the whole or any part of the Second Party's undertaking or assets;

12.1.4 the Second Party ceases or threatens to cease to carry on its business; or

12.1.5 the financial position of the Second Party deteriorates to such an extent that in the opinion of the First Party, the capability of the Second Party adequately to fulfil its obligations under the Contract has been placed in jeopardy.

12.2 The termination of the Contract, however arising, will be without prejudice to the rights and duties of either party accrued prior to termination. The Conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

13. REMEDIES

13.1 Without prejudice to any other right or remedy which the Company may have, if any Goods and/or Services are not supplied in accordance with, or the Seller fails to comply with, any of the terms of this Contract the Company shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods and/or Services have been accepted by the Company:

13.1.1 to rescind the Order;

13.1.2 to reject the Goods and/or Services (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods and/or Services so returned shall be paid forthwith by the Seller;

13.1.3 at the Company's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods and/or Services or to supply replacement Goods and/or Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

13.1.4 to refuse to accept any further deliveries of the Goods and/or Services but without any liability to the Seller;

13.1.5 to carry out at the Seller's expense any work necessary to make the Goods and/or Services comply with the Contract; and

TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES

13.1.6 to claim such damages as may have been sustained in consequence of the Seller's breaches of the Contract.

14. ASSIGNMENT

- 14.1 Neither party shall be entitled to assign the Contract or any part of it without the prior written consent of the other party .
- 14.2 The Company may assign the Contract or any part of it to any person, firm or company.

15. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods and/or Services ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

16. EXPORT CONTROL

- 16.1 The Parties agree to comply with any national and international legislation prohibiting or limiting the export or import of products.
- 16.2 The Seller shall, supported by the Company, ensure that all Goods and/or Services to be supplied pursuant to the Contract shall be classified pursuant to applicable export regulations and that the Company at any time is informed of such classifications and the implications thereof.

17. GENERAL

- 17.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 17.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 17.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 17.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Seller will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 17.5 Any dispute or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, which cannot be solved by negotiation, shall be governed by Applicable Law without regard to its conflict of laws rules or principles.
- 17.6 Prior to commencement of any legal proceedings, the Parties shall meet at a senior level to attempt to resolve differences. Nothing in this Clause shall prevent any party from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief without provision of security.