

(February 2009)

## **Safety Equipment Australia - Terms of Purchase Order**

### **1 Definitions**

"Government Agency" means:

- (a) any court or tribunal of competent jurisdiction; or
- (b) any agency, authority, board, department, government, instrumentality, ministry, official or public or statutory person of the Commonwealth or of any State or Territory of Australia, and any local or municipal government or governmental bodies.

"Order Form" means any document by means of which SEA orders Supplies from Supplier which includes, either by direct incorporation or by reference, these terms.

"Purchase Order" means these terms together with any Order Form.

"SEA" means Safety Equipment Australia Pty Limited ACN 29 002 727 586.

"Supplier" means the party who is to provide Supplies to SEA under this Purchase Order and who is nominated on the Purchase Order.

"Supplies" means everything to be manufactured, supplied or delivered under this Purchase Order and includes all work or other services which Supplier is to perform or provide under this Purchase Order.

"Tax" means any tax, levy, charge, franchise, impost, duty, fee, rate, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any Tax.

### **2 Agreement**

- 2.1 Supplier's acceptance of an SEA Purchase Order means Supplier's acceptance of the conditions of the Purchase Order,
- 2.2 If there is any inconsistency between these terms and the Order Form, then the Order Form will prevail.
- 2.3 SEA may vary its order for Supplies, or cancel this Purchase Order, by giving Supplier notice in writing of the variation or cancellation not less than 14 days before the date due for performance by Supplier.
- 2.4 No variation of this Purchase Order by Supplier will bind SEA unless and until SEA accepts the variation in writing

### **3 Charges**

- 3.1 Except as otherwise stated in this Purchase Order - Supplier will charge a price no higher than the price last quoted or charged to SEA for the Supplies.
- 3.2 Supplier's prices are firm, are not subject to variation due to exchange fluctuation, change in government imposts or any other cause, and include all costs of Supplier's ensuring Products comply with all applicable laws, regulations and Australian standards.
- 3.3 All amounts (if any) of Tax will not be included in the price of the items listed on this purchase order. Any relevant Tax will be itemised separately in Supplier's invoice. To avoid doubt, SEA is not required to pay any amount of tax not itemised on the Supplier's invoice.

- 3.4 SEA will pay for satisfactory Supplies at the end of the month following the month in which the Supplies are received or rendered.

The invoice will set out SEA's Purchase Order, item part numbers and all other relevant information.

#### **4 Assignment**

Supplier will not assign the benefit of its Purchase Order in any way.

#### **5 Subcontracting**

Supplier will not carry out its obligations under this Purchase Order by sub-contractor except with SEA's prior written permission.

#### **6 Warranties**

- 6.1 Supplier warrants Supplies against all defects of parts and labour for the period nominated by Supplier in writing, or where no such period is nominated for twelve months from delivery.
- 6.2 Supplier will fully correct all defects under warranty at the earliest practicable time.
- 6.3 Supplier unconditionally warrants that the manufacture, sale or use of the Supplies does not and will not infringe the patent rights, other property rights or confidential information of any third party and indemnifies SEA against all loss or damage to SEA or SEA's customers or persons claiming through SEA accordingly.
- 6.4 Supplier warrants that in provision of Supplies it will strictly comply with all applicable laws, ordinances, orders, rules and regulations, whether international, national, state or local. Upon request by SEA, Supplier will furnish SEA with such evidence of compliance as SEA may reasonably require. Supplier indemnifies SEA against all loss or damage to SEA or SEA's customers or persons claiming through SEA accordingly.
- 6.5 Supplier warrants that Supplies intended for resale may be resold in Australia in the form and packaging supplied without SEA or any reseller contravening any provision of any law and that the Supplies conform with all relevant Australian Standards.

#### **7 Delivery**

Subject to clause 9 below the Supplies are at Supplier's risk until delivered in good condition in accordance with this Purchase Order and accepted in writing by an authorised officer of SEA. Title will pass in Supplies following inspection by SEA or fourteen (14) days after acceptance whichever is sooner.

#### **8 Time**

- 8.1 Supplier's compliance with any obligation to deliver or render the Supplies with a time stipulated in this Purchase Order or any agreed extension to that time will be of the essence to this Purchase Order.
- 8.2 Supplier indemnifies SEA against all loss and damage to SEA or SEA's clients for Supplier's failure to deliver within the time stated on the Purchase Order.
- 8.3 If SEA waives any of its rights under this clause or this Purchase Order, that waiver will not be construed as a continuing waiver, and all of SEA's rights under this Purchase Order will remain enforceable in full.

## **9 Inspection**

- 9.1 SEA is entitled to assume that all Supplies are new, are in good order and condition and conform to this Purchase Order and to Supplier's obligations at law as to specification, quantity and quality at the time of delivery and that they are free from encumbrances or liens, and Supplier warrants accordingly.
- 9.2 SEA is entitled to assume that all services to be provided by Supplier will be performed by competent staff and that all reasonable care and skill will be exercised by such staff in the provision of the supplies, and Supplier warrants accordingly.
- 9.3 SEA may reject Supplies which have been delivered and are not in accordance with the assumptions which SEA is entitled to make under subclauses 9.1 and 9.2.
- 9.4 Supplies which SEA rejects within 14 days of delivery will be deemed not to have been accepted by SEA, notwithstanding any payment that SEA may have made for such Supplies. Such payment will not constitute a waiver of Supplier's warranties.
- 9.5 Supplies which SEA rejects will be and remain at Supplier's risk.
- 9.6 SEA's acceptance of Supplies does not relieve Supplier from making good any shortages in delivery. SEA will notify Supplier of shortage claims within 14 days of becoming aware of them.
- 9.7 SEA accepts no responsibility or liability for goods supplied in excess of those ordered under this Purchase Order.

## **10 Installation**

- 10.1 Where Supplier, Supplier's staff agents or sub-contractors are required to enter the premises of SEA in connection with the provision of Supplies, such entry will be at supplier's own risk and Supplier indemnifies SEA against loss, damage, claims and liability including claims against SEA whether alleging negligence on the part of SEA or otherwise.
- 10.2 Supplier, its staff, agents or sub-contractors will, while on SEA's premises, comply with all instructions of SEA or its authorised officers.

## **11 Other Provisions**

- 11.1 The law applicable to this Purchase Order is the law of New South Wales.
- 11.2 Any legal proceedings respecting this Purchase Order will be brought in an appropriate court in that State.
- 11.3 Supplier in entering into this agreement does not rely on any statement or representation of or on behalf of SEA which is not expressly set out in this Purchase Order.
- 11.4 If SEA forms the reasonable opinion that the Supplies or any part of them are deficient then SEA may at its option:
  - (a) require those Supplies be resupplied or performed again;
  - (b) terminate this Purchase Order,
  - (c) have the Supplies, or similar goods or services provided by some third party and invoice Supplier the cost for same.
- 11.5 Supplier does not enter into this agreement in consideration of or as consideration for any collateral agreement.

- 11.6 SEA may give any notice to Supplier by any lawful method including without limiting the generality sending the notice by post addressed to Supplier at Supplier's address last known to SEA and Supplier will be deemed to have received the notice 72 hours after it was posted.
- 11.7 In construing this Purchase Order:
- (a) words importing one gender import the other genders:
  - (b) words importing the singular import the plural:
  - (c) "Supplies" includes attachments and accessories and also all replacements, parts and repairs, as they exist from time to time; and
  - (d) headings of clauses are for convenience only and do not affect the interpretation of these terms.
- 11.8 This Purchase Order binds Supplier and if Supplier is a corporation, its successors and lawful assigns, and if natural person, his/her heirs, successors, executors, administrators and lawful assigns.
- 11.9 If there are more Suppliers than one, this Purchase Order binds each of them severally and every two or more of them jointly.
- 11.10 Any part of this Purchase Order which is or becomes void is severable.

## **12 Supplies Manufactured to SEA's Order**

- 12.1 This clause applies where Supplier has manufactured the Supplies to SEA's specification.
- 12.2 Supplier acknowledges that it has carefully examined all of SEA's specification, drawings, samples and patterns relating to the Supplies.
- 12.3 Where Supplier is responsible for any part of the design of the Supplies. Supplier will not start work on the Supplies until:
- (a) Supplier has supplied two sets of detailed working or erection drawings and two sets of computer circuit diagram to SEA's satisfaction; and
  - (b) SEA has approved the work in accordance with those drawings and diagrams.
- 12.4 SEA will indicate its approval or disapproval within 21 days of receiving the drawings and diagrams.
- 12.5 Supplier will make the Supplies with first-class workmanship and materials in accordance with this Purchase Order and the drawings and diagrams approved by SEA under this clause.
- 12.6 Supplier will be responsible for any discrepancies, errors or omissions in drawings and diagrams, notwithstanding that SEA has approved them.
- 12.7 All specifications, samples, patterns, circuit diagrams, test equipment provided by SEA, drawings and other technical information including the draft and approved diagrams and drawings under this clause are SEA's exclusive property including where applicable copyright and patent rights, and Supplier will at all times treat all such information as confidential to SEA. Supplier undertakes that it will not reproduce, show or sell to any person or company other than SEA the Supplies, or identical goods or services, manufactured or developed by Supplier to inspect and test the Supplies.
- 12.8 Supplier will notify SEA when the Supplies are available for delivery to allow SEA to attend at the place of manufacture or other suitable place of Supplier to inspect and test the Supplies.

12.9 Those tests will be:

- (a) such tests as are necessary in SEA's opinion to confirm the proper design, manufacture and function of the Supplies; and
- (b) such tests are specified in the Purchase Order; or such tests as Supplier normally carries out for items of kind and similar to the Supplies.

12.10 SEA's participation in any such tests does not constitute acceptance of the Supplies or prejudice any of SEA's rights under this Purchase Order.