



Conditions of Purchase (Effective 1 November 2023) Bituminous Products Pty Ltd

1. Definitions

- (i) "Australian Consumer Law" means Schedule 2 to the *Competition and Consumer Act 2010* (Cth) and the applicable fair trading legislation in the State or Territory in which the relevant Buyer's site issuing the Purchase Order is situated.
- (ii) "Buyer" means Bituminous Products Pty Ltd or its related companies as indicated in the Purchase Order.
- (iii) "Consumer" has the same meaning as in section 3 of the Australian Consumer Law.
- (iv) "Goods" means all services (including but not limited to consultancies, maintenance) goods or products covered by the Purchase Order, including raw materials, processed materials or fabricated products.
- (v) "Purchase Order" means the Buyer's official purchase order or (in the absence of an official purchase order) a written request to supply, and includes printed purchase orders or a written request to supply, whether delivered by hand, mail, email or facsimile, and purchase orders issued by means of Electronic Data Transfer or otherwise.
- (vi) "Seller" means the person, firm, partnership, company or other legal entity to whom the Purchase Order is issued and includes its servants, agents and sub-contractors.

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 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 Purchase Order, to the exclusion of all other terms and conditions, whether contained in the Seller's invoice, offer to supply, pricing offer, or conditions of sale or otherwise. By supplying or delivering the Goods and/or accepting the Purchase Order, the Seller is deemed to have thereby accepted the application of these Conditions of Purchase to the Purchase Order, to the exclusion of all other terms and conditions.
- 2.2 Where the Seller is certified to ISO9001 or ISO9002 or a higher level of certification, 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); and
- (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 any third party.
- 4.3 If the Buyer is a Consumer, these Conditions of Purchase shall be subject to the provisions of the Australian Consumer Law

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 or as a result of a breach of any other term of these Conditions of Sale or the Purchase Order.
- 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.
- 5.3 If the Buyer is a Consumer, nothing in this clause 5 limits the Buyer's rights under the Australian Consumer Law.

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 120 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, 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:

<p>(a) refuse to accept such Goods and terminate the Purchase Order without penalty, cost or charge; or</p> <p>(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.</p> <p>8.3 If any Goods are not delivered to the place specified in the Purchase Order or otherwise agreed between the Buyer and the Seller, the Seller will be responsible for any additional expense incurred in delivering them to their correct destination.</p> <p>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.</p> <p>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 sub-contracted 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 reperformed 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.</p> <p>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.</p> <p>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 must meet the lower delivered cost for those Goods or the Buyer may cancel any Purchase Order in respect of Goods that have not been delivered and acquire the Goods from the alternative source.</p> <p>13. Terms of Payment The terms of payment unless otherwise stated on the Purchase Order are 62 days from the completion of the month of invoice. The Buyer reserves the right to set off any amount owing under any Purchase Order against any amount due from the Seller to the Buyer for any reason whatsoever.</p> <p>14. Sub-Contracting and Assignment 14.1 The Seller shall not assign its rights or obligations hereunder or sub-contract 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 sub-contracting any work to be performed pursuant to the Purchase Order shall not relieve the Seller of its responsibility for the</p>	<p>whole of the work to be performed pursuant to the Purchase Order or of any obligations contained in the Purchase Order or at law.</p> <p>14.3 Where the Buyer has consented to the placing of sub-contracts by the Seller, copies of each sub-order shall be sent by the Seller to the Buyer immediately they are issued and the Buyer reserves the right to inspect all sub-contracted work.</p> <p>15. Packaging, Storage and Hazardous Goods 15.1 The Goods shall be properly packed to avoid being damaged during delivery of 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 Code (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 Safety Data Sheets. 15.4 If requested by the Buyer, 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 must be communicated in writing to the Buyer as soon as practicable upon acceptance of the Purchase Order. The Buyer may cancel the Purchase Order by written notice to the Seller if: (a) the Seller has not provided the requested information; or (b) the Buyer, acting reasonably, is not satisfied that the requested information is accurate and complete; or (c) after having regard to the information provided by the Seller, the Buyer (in its absolute discretion) does not wish to proceed with acquiring the Goods. 15.5 Subject to clause 15.3, the Goods shall be packed and labeled in accordance with any packaging and labeling 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.</p> <p>16. Insurance 16.1 The Seller must maintain adequate insurance including, without limitation: (a) product and public liability insurance with coverage of not less than USD \$20 million per insured event; (b) worker's compensation or employer's liability insurance; (c) motor vehicle insurance with coverage of not less than USD \$10 million per insured event; (d) product / marine transit insurance for 125% of the replacement cost of the Product; and (e) additional insurance as specified in the Purchase Order. 16.2 Such insurance must note the Buyer's interests under the Purchase Order and the Conditions of Purchase. The Seller must, within 5 days of a request from the</p>
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Buyer, provide to the Seller certificates of currency for all such insurance policies.

17. Force Majeure

Neither the Seller nor the Buyer is 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 occurrence gives written notice thereof to the other party within 7 days of the commencement of that 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. Work on Buyer's Site

Should the Purchase Order require the Seller to carry out any work on a 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.

20. 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 of 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.

21. GST

The Seller acknowledges that the purchase price includes provision for any GST payable with respect to the supply of the Goods and the Buyer is not therefore required to pay any separate or additional amount on account of GST. The Seller must, as a condition of payment of the Price, provide a tax invoice to the Buyer where the supply of the Goods is subject to GST.