

## Purchase Order Terms and Conditions

### 1. APPLICATION

These terms and conditions govern all purchase orders issued by Primec (Haynes Mechanical Pty Ltd) (with such issuer named on the purchase order being "the Buyer") to the exclusion of all other terms unless specifically agreed in writing.

### 2. ARTICLES PURCHASED

- (a) The articles will be of merchantable quality, new, free from defects, and fit for the purpose for which the articles are generally used, or intended to be used by the Buyer to the extent within the reasonable knowledge of the Seller.
- (b) Unless otherwise agreed to in writing by the parties, the Seller warrants that articles will conform to any specifications given and to any drawings, samples or other descriptions furnished or adopted by the Buyer.

### 3. DELIVERY

- (a) The Seller will deliver the articles in accordance with the terms specified in the purchase order and at the time or times nominated by the Buyer.
- (b) The Seller will unload the articles at the delivery point nominated by the Buyer.
- (c) The Seller will immediately advise the Buyer in writing of any circumstances that may cause delay in delivery, the action taken to avoid or minimise the delay and the estimated period of delay.
- (d) The Seller will ensure that, in delivering the articles, it will:
  - (i) comply with all mass, dimension and load restraint requirements for vehicles or the carriage of goods;
  - (ii) comply with all relevant requirements in relation to container weight declarations;
  - (iii) manage all transport and journey documentation, including consignment notes, declarations, manifests and log books;
  - (iv) provide the Buyer, upon request, with all information and documentation reasonably required by the Buyer (or a relevant government authority or agency) to monitor or audit compliance with this clause (including permitting inspections of transport and journey documentation and vehicles); and
  - (v) notify the Buyer upon becoming aware of any breach by the Seller or its personnel of this clause.
- (e) The Seller will ensure that prior to the delivery or use of any dangerous goods or hazardous substance (together known as "Hazardous Substance"), the Seller:
  - (i) applies appropriate labelling;

- (ii) provides the Buyer with a copy of the current Material Safety Data Sheet for such Hazardous Substance that complies with the National Code of Practice for the Preparation of Material Safety Data Sheets; and
- (iii) provides the Buyer with a completed risk assessment if Services include the use of such Hazardous Substances.

### 4. INSPECTION

- (a) All articles may be subject to inspection and testing at reasonable times and places nominated by the Buyer, including the period of manufacture.
- (b) The Seller, without additional charge, will arrange industry standard testing of all articles and, if requested by the Buyer, will provide evidence thereof to the Buyer prior to delivery.
- (c) The Seller will provide all reasonable facilities and assistance for the safety and convenience of the Buyer's inspectors to allow them to conduct additional inspections.
- (d) All articles are also subject to final inspection and acceptance at the Buyer's premises notwithstanding any payments or other prior inspections. Such final inspection will be made within a reasonable time after delivery.

### 5. DEFECTIVE GOODS

- (a) The Buyer may, at its option, either return for credit or refund or require prompt correction of replacement of the defective or nonconforming article or part thereof.
- (b) Return to the Seller of any defective or nonconforming article and delivery to the Buyer of any corrected or replaced articles will be at Seller's expense.

### 6. EXTRAS

- (a) No charges will be allowed for transportation packing or returnable containers unless stated.
- (b) All shipments must be packaged and must conform with the Buyer's packaging specifications referred to elsewhere in this order if any, and so as to permit efficient handling and to provide protection in shipment.
- (c) If tendered to a common carrier for delivery, packaging must also conform to the packaging requirements applicable to such carrier, and acts of the common carrier will be deemed to be acts of the Seller.
- (d) Damage to any articles resulting from improper packaging will be charged to Seller.

### 7. CHANGES

- (a) The Buyer may at any time by a written notice make changes in the specifications, designs or drawings, samples or other description to which the articles are to conform in methods of shipment and packaging or place of delivery.
- (b) If any such change causes an increase or decrease in the cost of or time required for the

performance of any part of the work under this order, a proportionate adjustment will be made in the price or delivery schedule or both and the purchase order modified in writing accordingly.

- (c) Any claim by the Seller for an adjustment must be made in writing within 30 days of the receipt of any such notice, provided however, that the Buyer may, in its discretion, receive and act upon any such claim so made at any time prior to final payment under the purchase order.
- (d) Nothing in this clause excuses the Seller from proceeding without delay to perform the purchase order as changed.

#### **8. PRICE AND PAYMENT**

- (a) Prices are, unless otherwise specified, fixed and not subject to variation except as permitted under the purchase order.
- (b) Subject to the purchase order, prices in a purchase order include all Government taxes and charges.
- (c) The Seller will submit a valid tax invoice specifying the purchase order number, product items number and other relevant details required by the Buyer.
- (d) Subject to any contrary term of the purchase order, payment will be made on the last day of the month following the month in which the Seller's invoice is received.

#### **9. TAXES AND DUTIES**

- (a) The Seller assumes liability under all laws that impose taxes or duties on the manufacture or sale of the articles or any component part thereof, and to pay any and all such taxes or duties except those that the Buyer specifically agrees or is by law required to pay.
- (b) Any taxes to be paid by the Buyer will be separately stated on the invoice.
- (c) Prices will not include any taxes for which the Buyer has furnished a valid exemption certificate.
- (d) Notwithstanding the above, all prices are GST exclusive unless otherwise specified. All invoices issued by the Seller must be GST compliant tax invoices.

#### **10. PASSING OF RISK AND TITLE**

- (a) The risk in the articles passes to the Buyer upon completion of unloading of the articles at the delivery point.
- (b) Except if title has passed to the Buyer or the Buyer's customers under other provisions of this purchase order, title to the articles will pass to the Buyer upon completion of unloading of the articles at the delivery point.

#### **11. INTELLECTUAL PROPERTY**

The Seller indemnifies the Buyer, its successors, assignee, agents, customers and users, of the articles against loss damage or liability (including costs and expenses) which may be incurred on account of a claim, judgment or demand involving infringement or alleged infringement of any intellectual property rights (including in relation to (including patents, copyright, trade secrets or trademarks) in the manufacture, use or disposition of any articles supplied.

#### **12. EXCUSABLE DELAY**

- (a) Neither party will be liable for damages for delay in delivery arising out of causes beyond its reasonable control and without its fault or negligence (including but not limited to acts of God, fires, floods, epidemics, quarantine restrictions, and unusually severe weather).
- (b) This clause will not apply to any industrial action by the Seller's employees or contractors, design errors, manufacturing errors or equipment failure in any circumstances.
- (c) The Seller will notify the Buyer in writing within 10 days after the beginning of any such cause in reliance of clause 12(a).
- (d) The Buyer may terminate the purchase order at no charge if the delay under this clause continues for more than 45 days.

#### **13. INFORMATION**

- (a) Drawings, data design, inventions and other technical information supplied by the Buyer remain the Buyer's property and will be held in confidence by the Seller and its officers, employees, contractors and agents.
- (b) Such information will not be reproduced, used or disclosed to others by the Seller without the Buyer's prior written consent and will be returned to the Buyer upon completion by the Seller of its obligations under this purchase order or upon demand.
- (c) Any information which the Seller may disclose to the Buyer relevant to the use or maintenance of the articles may be used by the Buyer for those purposes.

#### **14. GRATUITIES OR INDUCEMENT**

The Seller warrants that none of its officers, employees, agents, representatives has offered or given any gratuities to the Buyer's officers, employees, agents or representatives with the purpose of securing this purchase order or securing favourable treatment.

#### **15. BUYER APPROVALS AND REVIEWS**

- The review or approval by the Buyer of any work or of any designs, drawings, specifications or other documents prepared for the purpose of the purchase order will not:
- (a) relieve the Seller of any of its obligations under the purchase order;
  - (b) excuse or constitute a waiver of any defects or nonconformities in any articles furnished under the purchase order; or
  - (c) change, modify or otherwise affect any of the provisions of the purchase order, including but not limited to the prices and delivery schedules.

#### **16. ASSIGNMENT**

- (a) The Seller will not without the prior written consent of the Buyer (which may be withheld in Buyer's absolute discretion) assign or sub-contract the purchase order or any part of it, or the supply of articles which are not manufactured by the Seller.

- (b) Where the Seller does sub-contract any work, all acts of sub-contracts are deemed to be acts of the Seller.

**17. TERMINATION**

- (a) The Buyer may terminate this order if the Seller:
  - (i) fails to comply with any of the provisions of these terms and conditions;
  - (ii) is insolvent; or
  - (iii) if the Seller becomes the subject of administration, liquidation, a proceeding for relief of debtors or makes an assignment for the benefit of creditors.
- (b) Without affecting its right to terminate this order under paragraph (a), the Buyer may for its convenience terminate this order in whole or from time to time in part provided that the Seller is paid reasonable compensation (calculated on the same basis as purchase order pricing) for work started but not completed. The Seller will provide auditable details of its proposal for such compensation within 7 days of receiving a notice under this clause, and at any other time at the request of the Buyer.
- (c) The Buyer may withdraw a notice within 14 days of receiving the Seller's compensation proposal. If the parties do not agree on compensation, and the notice is not withdrawn, either party may refer the matter to the disputes process.

**18. RIGHTS, REMEDIES AND WAIVERS**

- (a) The rights and remedies provided to the Buyer under this purchase order are cumulative and in addition to any other rights and remedies provided by law or equity.
- (b) A waiver of a breach of any provision does not constitute a waiver of any other breach.
- (c) The laws of Queensland will apply to this purchase order, and the Seller submits to the jurisdiction of the courts of that State.

**19. DISPUTES**

- (a) In the event of a dispute, either party may deliver a written notice to the other party which:
  - (i) states that it is a notice of dispute under this clause and identifies the dispute;
  - (ii) states the alleged relevant facts that are relied on; and
  - (iii) states the terms on which it is alleged the Dispute should be resolved.
- (iv) If, within 14 days of delivery of a notice of dispute, the dispute has not been wholly resolved:
- (v) either party may give the other party not less than 7 days and not more than 14 days written notice of the time (which must be within normal business hours) and place (which must be at or reasonably proximate to the place of the business of the Buyer or at a place reasonably convenient to both parties) for a without prejudice meeting; and
- (vi) representatives of the parties who have authority to resolve the dispute must meet and use their best endeavours to resolve the dispute.

- (b) Communications between the parties during a dispute meeting, whether oral or in writing, will not be admissible as evidence in any legal process unless in writing and signed by both parties.
- (c) Despite the existence of a dispute, the Seller must continue to perform its obligations under the purchase order.
- (d) Neither party may commence proceedings in court in relation to a dispute unless:
  - (i) a notice of dispute has been delivered in relation to that dispute and the party commencing proceedings has complied with its obligations under this clause; or
  - (ii) the only relief sought is urgent injunctive or urgent declaratory relief.

**20. NOTICES**

A notice or other communication required or permitted to be given by a party to another will be in writing and:

- (a) hand delivered; or
- (b) sent by post, postage prepaid, to that party's address set out in the order or subsequently notified to each party from time to time; or
- (c) sent by email or facsimile addressed to the responsible manager of the party for whom those contact details have been given.

**SMART PEOPLE.  
SMART SERVICES.**

**Primec**