



MSP 101 F4 - STANDARD CONDITIONS OF SALE

1 Interpretation

In these conditions:

- 1.1. **Buyer** means the person or corporation set out in Item 1 of the Contract Particulars which is the buyer of the Goods;
- 1.2. **RCR** means the entity of RCR Tomlinson Ltd (ACN 008 898 486) described in Item 2 of the Contract Particulars;
- 1.3. **Goods** means the products and, if any, services specified in Item 3 of the Contract Particulars and may include work or labour for the repair of any Goods or items supplied by the Buyer;
- 1.4. **Order** means the order for the Goods in this Contract;
- 1.5. Nothing in these conditions shall be read or applied so as to exclude, restrict or modify any condition, warranty, guarantee, right or remedy implied by law and which by law cannot be excluded, restricted or modified.

2 RCR'S Conditions Prevail

These conditions (which can only be waived in writing signed by RCR) prevail over all conditions of the Buyer's order or other documents to the extent of any inconsistency.

3 General

The Buyer has requested RCR to manufacture, fabricate or provide the Goods and services set out in Item 3 of the Contract Particulars and acceptance of this Order by RCR includes acceptance of all the terms as the sole basis of the sale to the Buyer. No changes or alterations to this Order are acceptable unless made in writing by RCR.

4 Price

This Order is placed on a firm price basis in accordance with the price or prices listed in Item 4 of the Contract Particulars. Unless otherwise stated, the Price quoted by RCR is net and exclusive of Goods and Services Tax (GST).

5 Payment

- 5.1. The Buyer must pay RCR within 28 days of the date of the taxable invoice, unless another time for payment is stated in Item 4 of the Contract Particulars.
- 5.2. If the Buyer fails to pay RCR the full amount contained in the invoice within the time in clause 5.1, the full amount unpaid will be a debt due and payable immediately to RCR.
- 5.3. If the Buyer fails to pay RCR the full amount contained in the invoice within the time in clause 5.1 then RCR will charge interest on the amount unpaid by the Buyer at the rate of 2% over RCR's commercial bank overdraft rate.

6 Standard to Conform to Specifications

- 6.1. All documents the parties wish to rely on in entering this Contract must be listed in Item 9 of the Contract Particulars (**Additional Documents**) and shall form part of this Contract.
- 6.2. RCR shall supply the Goods in accordance with any specifications, drawings, samples or other description (if any) furnished by the Buyer and contained in the Additional Documents. Any in progress inspection by the Buyer does not affect this requirement.

7 Warranty

RCR warrants that:

- 7.1. The Goods will be of merchantable quality and be free from substantial defect in workmanship;
- 7.2. Any services, work or labour provided by RCR will be performed by RCR in a workmanlike manner and as contained in the Additional Documents in Item 9 of the Contract Particulars;
- 7.3. Any services, work or labour to be provided on site by RCR including any repairs will be performed by RCR in a workmanlike manner in accordance with this Contract;
- 7.4. Any Goods manufactured or fabricated or services performed by RCR will be performed to the standard agreed by the parties and as set out in Item 3 and Item 9 of the Contract Particulars;
- 7.5. RCR warrants the Goods for the period stated in Item 6 of the Contract Particulars and where no period is stated, (3) months following delivery and/or installation or commissioning and only insofar as the defect is a result of faulty workmanship of RCR or the use of substandard materials by RCR. If the Buyer finds a defect with the Goods the Buyer must notify RCR in writing of the defect within seven (7) days of discovery of the defect and must take all reasonable precautions to prevent the use of the Goods;
- 7.6. If RCR uses a subcontractor or supplier or other person to perform any work under this Order (**Other Person**) any work, labour and services of the Other Person shall only be warranted by RCR to the degree that the Other Person firstly indemnifies RCR;
- 7.7. RCR and the Buyer expressly agree that RCR will not be liable for any consequential loss or damage of any kind suffered by the Buyer as a result of or associated from the Goods;
- 7.8. Notwithstanding clause 7.7, in the event that RCR is liable to the Buyer for any loss, then the parties expressly agree that such loss shall be limited to no more than ten percent (10%) of the Price in Item 4 of the Contract Particulars.

8 Delivery of Goods, Company Retains Title

- 8.1. RCR will deliver the Goods following the timetable or date as set out in Item 7 of the Contract Particulars;
- 8.2. RCR has as its sole discretion the right to vary the date of delivery of the Goods for any reason;
- 8.3. It is acknowledged by the Buyer that RCR fulfils all of its obligations under this Order once the Goods are delivered by RCR and received by the Buyer;
- 8.4. On the Buyer's receipt of the Goods, all risk whatsoever relating to the Goods passes to the Buyer;
- 8.5. Title in the Goods remains with RCR until all sums due and owing by the Buyer to RCR are paid in full notwithstanding the delivery, receipt or passing of risk to the Buyer.



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- 8.6. Until title of the Goods passes, RCR reserves and retains the following rights in relation to the Goods until all accounts owed by the Buyer to RCR are fully paid:
- 8.6.1. Ownership of the Goods;
 - 8.6.2. To enter the Buyer's premises, or the premises of any associated entity or agent of the Buyer where the Goods are located, without liability for trespass or any resulting damage and retake possession of the Goods; and
 - 8.6.3. To keep or resell the Goods repossessed under this clause.

9 Intellectual Property

- 9.1. If any specifications, drawings, plans and other information relating to the Goods or the Additional Documents are created or modified by RCR, RCR retains all intellectual property whatsoever in that material. No change in title of the intellectual property occurs by virtue of RCR manufacturing or supplying the Goods for the sole benefit of the Buyer or for any other reason.
- 9.2. The Buyer acknowledges that RCR will not be responsible for any infringement of any intellectual property of the Buyer that the Buyer has in any components, material or Additional Documents and RCR will not be liable for any claim whatsoever due to RCR's use of the Buyer's intellectual property.

10 Cancellations

- 10.1. RCR reserves the right to cancel this Order at any time and for any reason at the sole discretion of RCR and for any reason because of any event beyond the reasonable control of RCR which alters the ability of RCR to fulfil the terms of this Order. This includes any reason by Force Majeure, including strikes or industrial disputes, delay in the supply of raw materials, parts, any unforeseen breakdown or damage to RCR's plant, any riot or civil disturbance or any act of war, terrorism, or insurrection;
- 10.2. If RCR cancels this Order, the Buyer agrees that they will not prosecute any claim in law or in equity against RCR;
- 10.3. No Order may be cancelled by the Buyer except with RCR's consent in writing and on terms which will indemnify RCR against all losses.

11 Responsibility

- 11.1. Risk in the Goods passes to the Buyer upon delivery to the place stated in Item 8 of the Contract Particulars and not before;
- 11.2. If the Buyer provides any components to RCR for inclusion in the Goods the risk of those components remains with the Buyer at all times even when in the possession, custody or control of RCR. RCR will use all reasonable care to provide suitable storage of the Buyer's components but will not be liable for any loss or damage.

12 Company's Quotations and Performance

- 12.1. RCR's quotations shall be valid for the period stated in Item 5 of the Contract Particulars. Where no period is stated in Item 5, then the quotation will expire within fourteen (14) days after the date of the quotation.
- 12.2. Any performance figures or performance parameters in Item 3 of the Contract Particulars or otherwise given by RCR are estimates only. RCR is under no liability for Goods or services not attaining such figures unless those figures are specifically guaranteed in writing by RCR. Any written guarantees are subject to the recognised tolerances and parameters applicable to the figures;
- 12.3. RCR is not responsible to the Buyer or any person claiming through the Buyer for any loss or damage to the Goods in transit or installation or service caused by any event of any kind by any person, whether or not RCR is legally responsible for the person who caused or contributed to that loss or damage.

13 Storage

RCR reserves the right to make a reasonable charge for storage of the Goods or any component of the Buyer to be used in manufacture or supply of the Goods, if delivery instructions are not provided by the Buyer within 14 days of a request by RCR.

14 Returned Goods

RCR is not under any duty to accept Goods returned by the Buyer. If RCR agrees to accept returned Goods from the Buyer the Buyer must return the Goods to RCR at any place directed by RCR and on such other terms as RCR directs.

15 Site Works

Where the Order includes RCR installing, servicing, repairing or erecting the Goods (the Work) on site as described in Item 9 of the Contract Particulars the following will apply:

- 15.1. The Buyer will provide uninterrupted access to the site for the Work including the provision of a mobile crane if necessary;
- 15.2. RCR shall not be liable in any way whatsoever for any loss or damage to the Buyer or Buyer's agents, employees, servants or subsidiaries due to the Work at the site;
- 15.3. The Buyer will provide all on-site services including electricity, fuel and water to RCR at no cost to RCR. This provision extends to any chemicals or treatments reasonably required for the Work;
- 15.4. Work to be performed on-site outside usual business hours, shall only be done by agreement in writing between the parties and on such terms as RCR agrees;
- 15.5. Notwithstanding anything in this Contract, RCR may refuse at its sole discretion to perform the Work on-site if the site is not suitable for any reason.

16 Place of Contract and Governing Jurisdiction

This Contract for sale of goods is made in New Zealand and the parties submit all disputes arising between them to the Courts of New Zealand and any Court competent to hear appeals from the New Zealand Courts.