

# TCI GROUP

Tower Cranes Pty - ABN 46 137 155 652  
Tower Cranes International Pty Ltd - ABN 45 137 155 269

## **Additional Terms and Conditions of Purchase Order**

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### **1. SUPPLY OF GOODS AND SERVICES**

- 1.1. In consideration for payment of the Price by the Purchaser, the Vendor must supply to the Purchaser the Goods and services in accordance with the Purchase Order (which incorporates these Terms and Conditions).
- 1.2. The Vendor must, in supplying the Goods and services:
  - 1.2.1. not interfere with the Purchaser's activities or the activities of any other person at the Delivery Address (or any other location specified by the Purchaser for delivery of the Goods and services);
  - 1.2.2. ensure that the Vendor's employees, agents and contractors entering the Purchaser's premises or a Site, work in a safe manner and are properly qualified for, and skilled in, the performance of their tasks and are of such character and diligence so as not to prejudice:
    - 1.2.2.1. safe working practices;
    - 1.2.2.2. safety and care of property; or
    - 1.2.2.3. continuity of work.
- 1.3. The Vendor must immediately notify the Purchaser if at any time it is or may be unable to comply with any aspect of the Purchase Order.
- 1.4. The Purchaser may cancel any Purchase Order in whole or in part by giving notice to the Vendor at any time prior to the delivery of the Goods. The Vendor must not deliver cancelled Goods and services or invoice the Purchaser for any costs relating to any cancelled Purchase Order.

### **2. DELIVERY**

- 2.1. The Vendor must (at its cost, unless agreed in writing with the Purchaser) deliver the Goods and services to the Delivery Address by the Delivery Date (unless otherwise directed by the Purchaser).
- 2.2. The Vendor must ensure that the Goods and services are suitably packed to avoid damage in transit or in storage.
- 2.3. Packages must be marked with the reference number on the Purchase Order, item number, destination, contents, quantity, date and method of dispatch and weight of each package.

### **3. SPECIFICATIONS**

All Goods and services supplied by the Vendor to the Purchaser must comply with the Specifications.

### **4. TIME FOR PERFORMANCE**

The Vendor must perform the Services by the date specified in the Purchase Order.

### **5. PRICE**

5.1. The Purchaser must pay the Vendor the agreed Price for the Goods and services.

5.2. The Prices are fixed and firm and may not be increased (except in accordance with the Purchase Order) without the Purchaser's prior written approval.

### **6. QUALITY**

6.1. The Goods and services must match the description referred to in the Purchase Order.

6.2. The Goods and services must be fit for the purpose for which goods of the same kind are commonly supplied or bought and for any other purpose the Purchaser specifies in the Purchase Order.

6.3. The Goods and services must be of good merchantable quality. The Goods and services must be unencumbered.

### **7. WARRANTY PERIOD**

7.1. If, during the Warranty Period, any of the Goods and services are found by the Purchaser to be Defective, the Purchaser may at its option do any one or more of the following:

7.1.1. return the Defective Goods and services to the Vendor;

7.1.2. repair or make good the Defective Goods and services;

7.1.3. withhold payment not yet made in relation to Defective Goods and receive from the Vendor a full refund for any payments made for such Defective Goods and services;

7.1.4. retain the Defective Goods and services and claim for any loss or damage which the Purchaser suffers in connection with the Defective Goods and services

7.2. The Vendor must at the Purchaser's election:

7.2.1. repair or replace the Defective Goods and services;

7.2.2. reimburse the Purchaser for any expenses incurred in repairing or making good (as the case may be) any Defective Goods and services, at the Vendor's cost, if requested to do so by the Purchaser.

7.3. In addition to clauses 7.1 and 7.2, the Vendor must assign to the Purchaser the benefit of all trade warranties or manufacturer's warranties applicable to the Goods and services and provide copies of the warranties to the Purchaser.

## **8. WARRANTIES**

8.1. The Vendor warrants to the Purchaser that:

8.1.1. it has and will have the right to sell and transfer title to and property in the Goods and services to the Purchaser;

8.1.2. it is able to pay its debts as and when they are due and payable and no Goods and services are liable to a claim by a trustee in bankruptcy or a liquidator;

8.1.3. it will carry out all of its obligations under these Terms and Conditions with diligence;

8.1.4. the Goods and services will be fit for the purpose for which they are ordinarily acquired, or any other purpose notified to the Vendor in writing;

8.1.5. it is validly existing under the Laws of its place of incorporation or registration;

8.1.6. it has the power to enter into and perform its obligations under these Terms and Conditions and to carry out the transactions contemplated by these Terms and Conditions;

8.1.7. all Goods and services delivered under these Terms and Conditions will:

8.1.8. be free from all Security Interests;

8.1.9. be free from defects in materials or workmanship;

8.2 Each party will notify the other party as soon as it becomes aware or reasonably suspects that any Goods and services delivered to the Purchaser do not comply with these Terms and Conditions (including the relevant Purchase Order).

## **9. INDEMNITY**

9.1. The Vendor indemnifies the Purchaser from and against any loss, liability, damage, claim, action or expense (including legal expense) which the Purchaser (or any of its directors, employees, agents, officers or subcontractors) suffers or incurs as a result of any of the following:

9.1.1. a breach of these Terms and Conditions by the Vendor, including any failure to deliver Goods and services in accordance with these Terms and Conditions;

9.1.2. any warranty given by the Vendor (including under these Terms and Conditions) being incorrect or misleading in any way; or

9.1.3. any negligent act or failure to act by the Vendor or any of the Vendor's directors, employees, agents, officers or subcontractors, (Loss) except to the extent the Loss is caused by the negligent or wrongful actions or omissions of the Purchaser or its directors, employees, agents, officers or subcontractors.

## **10. TERMINATION**

10.1. The Purchaser may terminate these Terms and Conditions immediately by notice to the Vendor if:

10.1.1. the Vendor fails to supply Goods and services in accordance with these Terms and Conditions, and does not remedy such failure within 7 days of the Purchaser's notice to the Vendor;

10.1.2. the Vendor fails to comply with any other obligation under these Terms and Conditions, and does not remedy such failure within 7 days of the Purchaser's notice to the Vendor to remedy such failure;

10.1.3. the Vendor fails to comply with the Purchaser's reasonable direction given in respect of any Delivery Address and its surroundings;

10.1.4. an Insolvency Event occurs in respect of the Vendor;

## **11. CONFIDENTIALITY AND ANNOUNCEMENTS**

11.1. The Vendor must keep confidential and not disclose, and ensure that its employees, agents and subcontractors keep confidential and not disclose, to any person the terms of these Terms and Conditions and any information accessed or obtained from the Purchaser or as a result of or in connection with these Terms and Conditions.

## **12. PERSONAL PROPERTIES SECURITY ACT 2009**

12.1. The Purchaser may register any security interest contemplated by these Terms and Conditions on the PPS Register.

12.2. Any action taken by the Vendor in relation to the Vendor's security interest in the Goods and services is at the cost of the Vendor.

## **DEFINITIONS**

*Business Day* means a day on which banks are open for business.

*Defective means Goods and services* (or any aspect of them) which are not in accordance with the Purchase Order or which are damaged, deficient, faulty, inadequate or incomplete.

*Delivery Address* means the place for delivery specified on the Purchase Order.

*Delivery Date* means the delivery date specified on the Purchase Order.

*Goods and services* means the goods and services described on the Purchase Order.

*Price* means the price set out in the Purchase Order.

*Purchaser* means TCI Group or one of its subsidiaries, as set out in the Purchase Order.

*Purchase Order* means the purchase order for Goods and services issued by the Purchaser.

*Security Interests* includes, without limitation, any security interest within the meaning of section 12(1) of the Personal Property Securities Act 2009

*Site* means any premises or places made accessible to the Vendor to deliver the Goods and services (including the Delivery Address).

*Specifications* means, in respect of any Goods and services, the following minimum specifications, standards or technical requirements:

- a. the manufacturer's specifications for the Goods and services;
- b. all Australian and relevant State standards, specifications and requirements applicable to the Goods and services;
- c. all other specifications to which the Goods and services must comply, including any relevant performance requirements, technical constraints and quality standards in, or attached to, the Purchase Order.

*Warranty Period* means the period of months during which the warranties in relation to Defective Goods apply under these Terms and Conditions as stipulated by the Vendor before the Purchase Order is given to the Vendor (and, if no period is stipulated, 12 months) commencing on the date of delivery of the Goods and services.

*Vendor* means the party identified as such in the Purchase Order.

**Governing Law.** Any purchase made by the Purchaser is governed by the law in force in the State of the Purchaser