

PURCHASE ORDER TERMS AND CONDITIONS

- 1. DEFINITIONS:** In the following conditions of purchase "the Purchaser" shall mean Downer EDI Rail Pty Limited and "the Seller" shall mean the entity from whom the "goods", being goods and or services which are the subject of these conditions of purchase, are being ordered. "Purchase Order" means the Purchaser's official Purchase Order form to which these terms and conditions are annexed and all attachments, exhibits and documents referenced therein and all the terms and conditions contained herein.
- 2. CONTRACT:** The Purchase Order, when signed by an authorised representative of the Purchaser (referred to hereinafter as "duly signed") and bearing a Purchase Order number is the only form which will be recognised by the Purchaser as authority for charging the goods to its account and supersedes all previous communications and negotiations. No waiver by the Purchaser of a breach of any provision either in whole or in part of the Purchase Order shall constitute a waiver of any subsequent breach of such provision or of any other provision of the Purchase Order or any other Purchase Order between the Purchaser and the Seller. No provision of the Purchase Order either in whole or in part or any default there under shall be deemed to have been waived by the Purchaser except if in writing and duly signed. The Purchase Order constitutes an offer to purchase and not an acceptance of any offer to sell the goods. The Purchase Order shall only be accepted in accordance with its terms and without modification, addition, deletion or alteration thereof unless agreed to in writing by the Purchaser and duly signed. In the absence of written acceptance or other written confirmation by the Seller of the Purchase Order, the making of any deliveries by the Seller, of the goods shall be deemed an acceptance hereof and the terms and conditions contained in the Purchase Order shall apply to the transaction to the exclusion of all other terms and conditions. No local, general or trade custom shall vary these terms of the Purchase Order.
- 3. PAYMENT TERMS:** Payments will be made in accordance with the Purchase Order and unless anything is stated therein to the contrary, payment for the goods shall be made to the Seller within forty five (45) days from the last day of the month in which the goods were accepted on delivery or within forty five (45) days from the last day of the month in which the invoice was received whichever is the later provided the Seller has complied with all legislative requirements of the Commonwealth of Australia and the relevant States or Territories. The prices charged and payable shall be those stated on the Purchase Order. Any variation in the price of the goods shall only be paid by the Purchaser if the Seller sends the Purchaser a written notice thereof and written notice duly signed by the Purchaser acknowledging acceptance of such price changes is received by the Seller prior to execution of the Purchase Order and a delivery of goods.
- 4. INVOICES:** The Seller shall submit an invoice for each individual Purchase Order and such invoice shall show the destination to which the goods were delivered, the order number and the packing slip number. Any GST, sales tax, excise duty or other tax or charge for which the Purchaser has not furnished or agreed to furnish an exemption certificate, applicable to the Purchase Order shall be stated separately on the invoice. Original Clean On-Board Bills of Lading or Consignment Notes and all other necessary documents, properly signed by the carrier of the goods must be attached to the Seller's invoice and mailed to the Purchaser no later than the day after shipment.
- 5. (a) INFORMATION AND DRAWINGS:** All descriptive specification, illustrations, drawings, data, dimensions and weights furnished by the Seller in relation to the goods or otherwise contained in catalogues, price lists or other advertising matter, of the Seller shall form part of the contractual description thereof. This will include appropriate documentation for hazardous goods, such as a Material Safety Data Sheet, and correct delivery documentation as required by law.
(b) OWNERSHIP OF DRAWINGS AND TOOLINGS: All drawings, plans, diagrams and other information (regardless of the form of media upon which it is recorded) and all dies, tooling, moulds, jigs, and fixtures, whether supplied by the Purchaser or the Seller, and paid for by the Purchaser, in connection with this contract are and shall remain the property of the Purchaser, shall be used only for the purpose of the Contract and shall be returned to the Purchaser after delivery of the goods to the Purchaser or upon earlier termination of this Contract.
- 6. DELIVERY: All delivery dates stated on the Purchase Order are critical to the Seller and failure by the Seller to meet the stated dates may result in the application of liquidated damages to recover costs incurred as a result of the late delivery.** The costs of delivery of the goods shall be payable by the Seller unless otherwise stated on the Purchase Order. Any goods delivered in error or in excess of the quantity ordered on the Purchase Order may be returned to the Seller at the Seller's risk and expense. The Seller shall deliver the goods in accordance with the Purchase Order to the location specified during the normal operating hours of the receiving store at the location, unless otherwise agreed by an authorised representative of the Purchaser. Each shipment and delivery of the goods shall be a separate contract.
- 7. PACKING:** The cost of all packing, boxing and/or crating, protection, transportation and associated matters are included in the price specified for the goods on the Purchase Order unless otherwise stated. The packaging is deemed to be non returnable unless otherwise agreed to in writing by the Purchaser. The goods must be suitably packed or otherwise prepared for shipment so as to secure the lowest transportation and insurance rates and be in accordance with the carrier's requirements. Packing slips correctly numbered with full details of the goods therein must be enclosed in each package or case despatched. **N.B.:** Failure to properly identify components with Downer EDI Rail identification numbers may delay acceptance and subsequent payment. Hazardous goods must be packaged with appropriate protection and paperwork (including Material Safety Data Sheets) to comply with all applicable legislation.
- 8. ACCEPTANCE:** The Purchaser shall inspect the goods following delivery and shall in due course give notice to the Seller of any matter or thing by reason whereof the Purchaser alleges that the goods are not in accordance with the contract and such goods may be returned by the Purchaser to the Seller at the expense of the Seller. Any payment by the Purchaser for the goods prior to the Purchaser's inspection of the goods shall not be construed as an acceptance of unsatisfactory or defective goods or goods not in accordance with the contract on behalf of the Purchaser. The Purchaser reserves the right to return to the Seller any goods subsequently found not to be in accordance with the contract and any costs incurred by the Purchaser for such reason shall be payable by the Seller or credited to the Purchaser.
- 9. TERM:** The Purchase Order is valid for a period of one (1) month from the date stated thereon or until such date as specified thereon and after that time shall lapse unless a subsequent Purchase Order is forwarded to the Seller.
- 10. RISK AND TITLE:** Any risk associated with the goods shall remain with the Seller until delivery of the goods to the Purchaser in accordance with the Purchase Order. The Seller shall at its expense insure and keep insured the goods to their full insurable value until risk passes to the Purchaser as set out herein. Property in the goods shall pass to the Purchaser upon delivery of the goods to the Purchaser in accordance with the Purchase Order.
- 11. TERMINATION:** In addition to and without prejudice to any other rights herein, the Purchaser may terminate all or any part of the undelivered portion of goods, the subject of the Purchase Order, at any time. In such event the Purchaser shall have no liability to the Seller whatsoever hereunder in relation to such goods except to make payment, subject to their terms herein, for the goods actually delivered and in transit prior to such termination and to make payment for any of the goods for which the Purchase Order is not terminated.
- 12. WARRANTY:** The goods furnished by the Seller are covered under warranty for materials and workmanship for a period of 24 months from the date of delivery of the end product(s) manufactured by Downer EDI Rail in which the goods are incorporated. The Seller warrants that the goods are of merchantable quality, free from any defects, and conform to the specifications provided by the Purchaser and/or to the sample or descriptions provided by the Seller and are fit for the purpose intended by the Purchaser for their use. Any defective goods shall be replaced or corrected by the Seller at its own cost. If the Seller fails to comply with its obligations under this clause the Purchaser may have the required rework or replacement done by a third party at the cost of the Seller. The replaced or corrected goods shall again be covered under warranty for 24 months from the date of replacement or rework. For proprietary items the goods will be covered by a design warranty for a period of 60 months from the date of delivery of the end product(s) manufactured by Downer EDI Rail in which the goods are incorporated.
- 13. INDEMNITY:** The Seller shall indemnify and keep the Purchaser and its successors, officers, employees, agents, assignees and any users of the goods indemnified against any and all actions, claims, demands, summons, suits, proceedings, judgments, orders, decrees, damages, costs, fines, penalties, liabilities or obligations of whatsoever kind including but not limited to damage or destruction of property and injury or death of person, resulting from or connected with the goods supplied hereunder whether or not caused wholly or in part by any act, omission, default, negligence, wilful act of the Seller or breach of its obligations hereunder. The Seller warrants that the "goods" provided do not infringe any patent, registered design, trademark or name, copyright and other intellectual property rights or other protected rights.
- 14. PUBLICITY:** The Seller shall not without written consent duly signed by the Purchaser, in any manner advertise or publish the fact that the Seller has contracted to supply to the Purchaser the goods.
- 15. AMENDMENTS:** The Purchaser may at any time prior to the delivery of the goods or formation of the contract or purchase, issue written instruction duly signed authorising or requiring additions, deletions or alterations to the Purchase Order. The Seller will comply with those instructions forthwith.
- 16. LEGAL CONSTRUCTION:** These conditions shall be governed and interpreted according to the laws in force in New South Wales and the Seller hereby consent and submit to the jurisdiction of the courts of New South Wales held in Sydney.
- 17. EXCESS GOODS:**
 - (a) Goods ordered pursuant to the Agreement which the Purchaser finds no longer required for any reason may be returned to the Seller by the Purchaser for credit provided that: the Purchaser pays the return freight costs; and the goods are unmarked and in their original packaging; and the seller has a reasonable prospect of selling the Goods.
 - (b) If the Purchaser considers that it is overstocked in any item which the Seller normally supplies, the Seller agrees to consider purchasing that item on reasonable buy-back terms whether or not the item was purchased pursuant to the Agreement.