

# Purchase Order Conditions of Supply

## 1. Definitions:

**DDP** has the meaning given in Incoterms 2020.

**Intellectual Property Rights** includes all present and future rights in relation to copyright, trade marks, designs, patents or other proprietary rights, or any rights to registration of such rights whether created before or after the date of the Purchase Order, and whether existing in Australia or otherwise

**KGF AU** means the party issuing the Purchase Order.

**Loss** means any loss, cost, expense, damage or liability of any kind to the extent caused by the Supplier and includes direct, indirect, incidental, special and consequential loss, loss of revenue, loss of profits, loss of contracts, loss of production, increased cost of working capital and business interruption, and legal costs on a full indemnity basis.

**PO Terms** mean these Purchase Order Conditions of Supply.

**Premises** means any premises owned, occupied or controlled by KGF AU.

**Purchase Order** means a purchase order for the supply of goods and/or services issued by KGF AU to the Supplier.

**Supplier** means the entity/person to whom the Purchase Order is addressed and any other party who supplies under a Purchase Order.

**Supplier Code of Conduct** means the KGF AU supplier code of conduct.

**Supplies** comprise of all goods and/or services supplied under a Purchase Order or as otherwise agreed between the parties.

## 2. Application

2.1 If there is a separate signed written agreement between KGF AU and the Supplier in relation to the Supplies, that separate written agreement will apply to the exclusion of these PO Terms.

2.2 Unless otherwise agreed in writing, these PO Terms govern the provision of Supplies as outlined on the Purchase Order and exclude and supersede all prior arrangements or agreements. By accepting the Purchase Order, performance of the Purchase Order, or accepting payment under the Purchase Order, it is deemed the Supplier has accepted these PO Terms.

2.3 These PO Terms, the Purchase Order, and any other documents specified on the Purchase Order constitute the entire agreement for the Supplies between the parties. In the event of inconsistency between the documents, these PO Terms prevail.

2.4 To the extent permitted by law, all other terms and conditions, express or implied, including any alternate terms proposed by the Supplier (including consignment notes or other documents), will be of no legal effect and are expressly rejected and strictly excluded irrespective of whether KGF AU has accepted the Supplies or made payments for the Supplies. Such acceptance shall not be deemed an implied acceptance of any Supplier terms and conditions, even if such terms have been brought to the notice of KGF AU.

## 3. Title and risk

Risk in and title to the Supplies shall pass to KGF AU upon delivery.

## 4. Delivery

The Supplier must deliver the Supplies to KGF AU on a DDP basis at the time and place for delivery stated in the Purchase Order and take all reasonable steps to prevent and minimise delay.

## 5. Price

Subject to these PO Terms, all prices for the Supplies are provided by the Supplier on a DDP basis unless otherwise agreed in writing.

## 6. GST

6.1 Unless otherwise specified in the Purchase Order, the purchase price is exclusive of GST.

6.2 If the Supplies are a taxable supply, the Supplier will be entitled to recover from KGF AU any GST payable as an additional amount, provided the Supplier provides KGF AU with a tax invoice for the taxable supply.

## 7. Invoicing and payment

7.1 KGF AU will pay the Supplier the agreed purchase price for the Supplies by the due date stated in the Purchase Order and if no date is stated, payment will be as follows:

- (a) 30 days after the end of the month in which a tax invoice is received by KGF AU from the Supplier; or
- (b) if the Supplies compromise of livestock, 16 days after a tax invoice is received by KGF AU from the Supplier.

7.2 KGF AU may set-off amounts owing by the Supplier to KGF AU against amounts otherwise due from KGF AU to the Supplier, unless the Supplier is a small business (as defined in the *Payment Times Reporting Act 2020* (Cth)),

7.3 The Supplier agrees and acknowledges that payment for the Supplies by KGF AU is not an admission by KGF AU that the Supplies satisfy the

warranties in these PO Terms. KGF AU reserves the right, acting reasonably, to complete its inspection and testing of the Supplies at any time after delivery of the Supplies.

## 8. Warranties

8.1 The Supplier represents and warrants to KGF AU that:

- (a) all Supplies are free of encumbrances of any kind;
- (b) the Supplies are fit for the purpose for which they are purchased;
- (c) any goods will comprise of new materials of merchantable quality and suitable for their intended purpose;
- (d) the provision of Supplies will conform with all requirements of any relevant Australian Standards, laws and regulations;
- (e) the Supplier holds all necessary licences, permits, authorisations and consents required for the provision of the Supplies;
- (f) any services will be provided promptly and carefully with all due care, skill and judgement, in an efficient, professional and cost effective manner and in accordance with any specification, accepted professional and business practices;
- (g) the Supplies or the provision of them do not infringe any patent, registered design, trademark, copyright, moral right or any other third party intellectual property;
- (h) the Supplies will be properly packed, labelled and transported;
- (i) if the Supplies comprise of livestock, they are fit for human consumption and in accordance with any specifications as agreed between the parties; and
- (j) the Supplier is compliant with all applicable employment, workplace and safety laws and shall cause its suppliers and sub-contractors and their respective officers, employees, agents, consultants and contractors to comply, with all applicable industrial agreements and employment laws.

## 9. Indemnities

9.1 The Supplier indemnifies KGF AU against any and all Loss arising in connection with the acts or omissions of the Supplier or its personnel in relation to the supply of the Supplies including:

- (a) breach of these PO Terms;
- (b) third party claims; and
- (c) claims in relation to incidents which occur at a KGF AU Premises involving the Supplier's employees, consultants, contractors and sub-contractors,

except to the extent that the loss is caused by the negligent or wilful acts of KGF AU or its personnel.

## 10. Indemnities (livestock only)

10.1 If the Supplies compromise of livestock, this clause 10 applies in addition to the indemnities outlined in clause 9 above.

10.2 The Supplier indemnifies KGF AU against any and all Loss arising in connection with the acts or omissions of the Supplier or its personnel in relation to the supply of the Supplies including:

- (a) third party claims;
  - (b) claims in relation to incidents which occur at a KGF AU Premises involving the Supplier's employees, consultants, contractors and sub-contractors;
  - (c) late delivery of the Supplies;
  - (d) short delivery of the volume of the Supplies;
  - (e) delivery of Supplies that do not conform to any agreed product specifications;
  - (f) any recall of the Supplies (whether initiated by KGF AU or the Supplier); and
  - (g) return of any Supplies by a customer of KGF AU,
- except to the extent that the loss is caused by the negligent or wilful acts of KGF AU or its personnel.

## 11. Insurance

11.1 The Supplier must insure all Supplies until they are delivered (and installed, if part of the Supplies) for their full replacement value.

11.2 The Supplier must hold the following insurance:

- (a) workers' compensation insurance for an amount required by the relevant State or Territory legislation in respect of any employee engaged in the supply;
- (b) public and product liability insurance for an amount of not less than \$20,000,000;
- (c) comprehensive motor vehicle insurance for all vehicles used in connection with the provision of the Supplies; and
- (d) where the Supplies involve the provision of professional advice or

design, professional indemnity insurance for an amount of not less than \$10,000,000,

and will provide a certificate of currency upon request from KGF AU.

11.3 Notwithstanding any other clause in these PO Terms, to the extent that:

- (a) the Purchase Order value is greater than \$500,000; and
- (b) works are being undertaken in a production area,

KGF AU will arrange:

- (i) Contract Works insurance for the Supplies on KGF AU's Premises and whilst Supplies are in transit within Australia to KGF AU's Premises ; and
- (ii) Construction Third Party Liability insurance in relation to the Supplies at KGF AU's Premises under its Construction Liability insurance cover during the construction and/or ancillary work and/or installation and/or commissioning and during the attendance at KGF AU Premises of the Supplier to fulfil its obligations under the Purchase Order and these PO Terms.

The KGF AU insurances arranged under this clause 11.3 shall include the Supplier as an insured.

11.4 Any excess or deductible payable under the policies listed in clause 11.3 above shall be paid by the Supplier save and except to the extent that KGF AU is at fault.

11.5 KGF AU does not warrant or represent that any of the required insurances or those insurances arranged by KGF AU under clause 11.3 are sufficient for the Supplier's needs. The Supplier must satisfy itself as to the adequacy of the Supplier's insurance or, if applicable, those insurances arranged by KGF AU

## 12. Re-supply

12.1 Without limiting the rights of KGF AU under these PO Terms, if the Supplies do not comply with the Purchase Order and these PO Terms, at the request of KGF AU, the Supplier must:

- (a) re-supply the portion of the Supplies which do not comply; or
- (b) refund the price paid for the Supplies which do not comply.

12.2 If the Supplier becomes aware that any of the Supplies do not comply with the Purchase Order or PO Terms, the Supplier must promptly notify KGF AU.

## 13. Recall

In the event of a recall (either by the Supplier, KGF AU or a Government authority), the Supplier indemnifies KGF AU against all Loss arising from or in connection to the recall to the extent it was caused by the Supplier.

## 14. Access

The Supplier must allow KGF AU or its nominated representative to access the Supplier's premises (and any other premises where the Supplies are being manufactured or are stored or located) when reasonably required by KGF AU. The Supplier must immediately report to KGF AU and forward any reports from any government authority or regulator which affect or relate to the Supplies (including any recall of the Supplies).

## 15. Manufacturer's Warranty

Where any of the Supplies under the Purchase Order are subject to a manufacturer's warranty, the Supplier will provide details of the warranty to KGF AU and ensure that KGF AU obtains the benefit of the warranty.

## 16. Defects liability period

A defects liability period of 12 months shall commence on delivery of the Supplies. At any time prior to the expiration of the defects liability period, KGF AU may (acting reasonably) direct the Supplier to rectify any defect in the Supplies which become apparent. This direction must identify the defect and a date by which the Supplier must complete the rectification. A separate defects liability period of the same duration as the original defects liability period shall apply to the rectification work.

## 17. Intellectual Property

17.1 Each party retains all background Intellectual Property Rights which existed in substantially the same form and contents prior to creation of the Purchase Order.

17.2 All Intellectual Property Rights arising out of the provision of the Supplies, vests in, and is the property of KGF AU from the time of its creation.

17.3 The Supplier grants to KGF AU, an irrevocable, non-exclusive, royalty free licence to use the Supplier's intellectual property for the purposes of the implementation and use of the Supplies.

## 18. Confidentiality

Each party (**Recipient**) agrees to maintain in confidence all confidential information and trade secrets disclosed by the other party (**Discloser**) (including without limitation all information in relation to the business, strategies, affairs or technology of the Discloser and the terms of any agreement between the parties) (**Confidential Information**) and ensure that the Confidential Information is kept confidential.

## 19. Termination

19.1 Either party may terminate a Purchase Order immediately by notice in

writing if the other party is in breach of any provision these PO terms and such breach is not remedied within 7 days of receiving written notice of such breach.

19.2 Either party may terminate a Purchase Order, immediately by notice in writing if the other party becomes bankrupt, insolvent or unable to trade within these PO Terms.

19.3 KGF AU may also terminate a Purchase Order for any reason, with KGF AU to pay for any reasonable costs incurred by the Supplier in relation to the Supplies prior to the cancellation.

## 20. Notification

20.1 Any notification under these PO Terms is to be provided in writing to the registered address of the recipient.

20.2 Without limiting the Supplier's obligations under the Contract, the Supplier must promptly notify KGF AU of the following:

- (c) proposed changes relating to the production of the Supplies, including any changes to the origin, source, nature or the materials used to produce any Supplies;
- (d) any change to the name, address or ownership of the Supplier; and
- (e) any proposed or actual material change to the Supplier's operations that may adversely impact on the Supplies including any specification or requirement under these PO Terms.

## 21. Processing site requirements

21.1 In the event the Supplier's employees, consultants, contractors and/or sub-contractors are required at a KGF AU processing site, the Supplier must ensure that:

- (a) all people engaged and/or employed by the Supplier have been tested for "Q- Fever" and, if required by KGF AU, vaccinated prior to entry to the KGF AU processing plant site; and
- (b) have received a relevant site induction and safety training for entry and/or working on the KGF AU site prior to entry to the site.

## 22. Supplier Code of Conduct

The Supplier must comply with KGF AU's Supplier Code of Conduct. A copy of which is annexed to these PO Terms.

## 23. Subcontracting

The Supplier must not without KGF AU's prior written approval, subcontract any part of the supply of the Supplies which approval shall not be unreasonably withheld.

## 24. Assignment

Either party may assign the benefit of the contract arising under this document with the consent of the other party which consent shall not be unreasonably withheld.

## 25. Governing law and jurisdiction

The laws of the State of Queensland govern these PO Terms, and the parties submit to the exclusive jurisdiction of the Courts of Queensland.

## 26. Reservation of rights

A failure, delay, relaxation or indulgence of either party in exercising any power, right or remedy under the PO Terms does not operate as a waiver of that power, right or remedy unless otherwise indicated in writing signed by that party. If a party elects to waive any rights it will not constitute a waiver of any rights relating to any subsequent or other breach of the Terms. No variation in the order or these PO Terms is permitted without prior written approval from KGF AU.