

DCL ENGINEERING GROUP PTY LTD

TERMS AND CONDITIONS OF PURCHASE ORDER (P.O.31.08-2011)

The following further terms and conditions of purchase submitted by DCL ENGINEERING PTY LIMITED trading as DCL ENGINEERING GROUP, CFM International and DCL SURFACE ENGINEERING PTY LIMITED, and to any resulting contract, unless expressly varied in writing by the Company.

1. **Acceptance:** This Purchase Order when signed by a duly authorised representative of Buyer, shall be construed as an offer to purchase the materials, equipment and services herein stated upon the terms and conditions, and in accordance to the requirements, herein stated.
No variation in any of the terms, conditions or requirements hereof, nor any additions thereto shall be effective or binding on Buyer without the express written consent of Buyer, and no contract will result from this Purchase Order or any part hereof, except upon the terms, conditions and requirements herein stated and such additional and/or different terms and conditions if any, to which Buyer may expressly agree in writing. Failure of Buyer to object to any additional or different terms and conditions proposed by Seller shall not constitute a waiver of the foregoing.
Acceptance must be made promptly and in writing. A prompt written acknowledgment of this Purchase Order by Seller without a prior or contemporaneous written offer to Buyer of any additional or different terms or conditions, and/or shipment of any of the items specified herein without prior written acceptance by Buyer of any additional or different terms and conditions, shall constitute acceptance of the Purchase Order on the terms conditions and requirements herein stated.
2. **Encumbrances:** Seller warrants that the equipment and materials furnished hereunder, both at the time of contracting (to the extent that it then exists) and at the time of delivery, will be free and clear of any and all charges liens claims and encumbrances of any kind whatsoever.
3. **Compliance:** Seller warrants that in the furnishing of the equipment and materials, and in the performance of the services, required hereunder, Seller shall comply with all applicable federal, state and local laws, ordinances and regulations including but not limited to those concerning health, safety and employment of persons, and that Seller will obtain all necessary licenses and permits and pay all fees taxes and other charges thereby required, and will furnish upon Buyer's request, such evidence of compliance with this warranty as Buyer may request.
4. **Warranty:**
 - (a) Seller warrants that all items delivered under the Purchase Order shall be new and of first class materials and workmanship, shall conform to applicable specifications, drawings, samples or other descriptions herein set forth or furnished to Seller, and shall be free from design defects and suitable for the service or use intended by Buyer, provided the nature of such service or use is made known to Seller. Seller further warrants that any all services to be performed hereunder shall be performed by qualified personnel, fully experienced in performing such services.
 - (b) If any items furnished hereunder, or any part or parts hereof, fail to comply with said warranties within the period nominated in this purchase order as the term of this warranty or failing any such nomination within one (1) year from the date of initial operation or eighteen (18) months from date of shipment, whichever occurs first, Seller shall, at Buyer's option, and without waiver by Buyer of any other remedies provided by law or by this Purchase Order, at Seller's own risk and expense, correct such defects, or if Seller refuses or fails promptly to correct such defect or defects, Buyer may, by contract or otherwise, correct such defects and Seller shall reimburse Buyer for any and all costs incurred by Buyer in so doing.
 - (c) Buyer's approval of any items furnished by Seller shall not relieve Seller of any of its obligations under any provisions of the Purchase Order, including but not limited to, the provisions of this Warranty.
 - (d) Seller's warranties shall extend to Buyer, Buyer's successors, assigns, customers and sub-vendees, who shall be entitled to bring suit directly against Seller for damages caused by any breach of said warranties.
 - (e) Seller's warranties shall be cumulative and shall not exclude any other warranties provided.
5. **Patents:** Seller hereby warrants that the items of materials and equipment furnished hereunder, and any part or parts and/or any combination thereof, do not infringe any existing patents.
6. **Assembly:** All mechanical equipment and all machinery shall be assembled and tested in Seller's shop in accordance with applicable industry standards and practice to ensure that all parts fit properly, and, only if necessary to facilitate shipping, shall be knocked down as may be required. Anything herein to the contrary notwithstanding, however, if the terms of this Purchase Order or any drawings, specifications or other documents made a part hereof specify the degree of assembly required, Seller shall comply with such specifications.
7. **Delivery:** Delivery shall be made within the time specified, except to the extent prevented by causes beyond the control of Seller, who shall advise promptly of any actual or anticipated delay due to such causes and shall forthwith confirm all such notifications in writing giving particulars of the circumstances causing or expected to cause such delay, the adverse effects on Seller's performance under this contract expected as a result of such delay and the steps taken or planned by Seller to minimise such adverse effects. So long as any such delay or the expectation thereof continues, Seller shall furnish such a report in writing to Buyer at least once per week.
8. **Shipping and Packing:** Seller shall comply with the following requirements in connection with shipments and packing:
 - (a) Seller shall make shipments in strict accordance with Buyer's instructions and will be held strictly accountable for any deviations therefrom. Any additional freight charges or costs incurred due to such deviations shall be for Seller's account.
 - (b) Seller shall with each delivery include one copy of a packing list adequate to identify the goods delivered and shall furnish Buyer with such additional copies as are specified in this Purchase Order. A delivery will be deemed not to be complete unless such a list has been furnished.
 - (c) Seller agrees to comply with all shipping and packing instructions specified in this Purchase Order on pursuant thereto and/or required by law. If ocean packing is required and detailed instructions are not given, all items of equipment and materials shall be packed properly and carefully in accordance with the best established practices for overseas shipment. Packing shall be suitable and adequate to protect said equipment and material during transit under conditions which will involve multiple handling and storage and exposure to the elements of weather. All crates and boxes shall be well made of good materials, durable, and, when constructed of timber, not less than 25mm thick well banded with steel straps. Where necessary, due to weight or bulk, skids shall be provided for proper handling and transportation. Insofar as reasonably possible consistent with the proper protection of the equipment or materials being transported all packaging and the dimensions of all packages, bundles, boxes and crates shall be such as to reduce the total volume of such packages, bundles, boxes and crates to a minimum.
 - (d) On shipments within Australia, if packing is not specified and detailed instructions are not given, Seller shall use whatever packing, boxing, or crating is suitable and adequate for the mode of transportation to be used and necessary to protect all items of equipment and materials furnished hereunder from damage in transit.
 - (e) All packages, boxes, crates, bundles and pieces shall be plainly marked with such markings as may be specified by the Buyer.
 - (f) Unless otherwise agreed upon in writing, Seller's price shall include and Buyer assumes no obligation for, any charges for packing or cartage.
9. **Workmen's Compensation and Insurance:** Where work in connection with this Purchase Order is to be performed by Seller at the plant site of Buyer or of Buyer's customer. Seller shall furnish Buyer, promptly following acceptance of this Purchase Order, with certificates of insurance with a company or companies satisfactory to Buyer, evidencing the following:
 - (a) Worker's Compensation Insurance in complete compliance with the applicable Worker's Compensation Law, fully protecting Buyer from all worker's compensation claims arising out of, or incidental to, the performance of Seller's work hereunder.
 - (b) Comprehensive General Liability Insurance including coverage of the risks hereinafter mentioned in this sub-paragraph in amounts not less than \$1,000,000.00 for bodily injury to any one person and \$5,000,000.00 for bodily injury for any one accident and \$1,000,000.00 for property damage for any one accident.
10. **Assignment and Subcontracting:** Seller shall not assign or subcontract the whole or any part of this Purchase Order, or any monies due or to become due hereunder, without the prior written approval of Buyer. In the event such written approval is given, Seller shall bind its subcontractors or assignees, as the case may be, to the terms and conditions of this Purchase Order. Any such subcontracting by Seller shall not relieve Seller of any obligations, responsibilities or liabilities under the terms and conditions of this Purchase Order or in any way detrimental to Buyer.
11. **Independent Contractor:** It is agreed that Seller and all persons performing services pursuant to this Purchase Order on Seller's behalf, shall act as independent contractors and not as agents or employees of Buyer or Buyer's customer, and that such persons shall at no time be, or represent themselves to be agents, servants, or employees of Buyer or Buyer's customer.
12. **Indemnification:** Seller will defend, save harmless and indemnify Buyer and Buyer's customers from and against all liens claimed by any party in respect of any equipment material or other property which is used or produced for the purpose of this Purchase Order and against losses, costs, damages including legal fees, claims, suits and threats which occur by reason of any actual, alleged or threatened breach of any warranty express or implied given by Seller in this agreement and/or which arises out of or are caused by any breach by Seller of the covenants on Seller's behalf herein contained and/or which result from any and all acts or omissions of Seller in connection with performance of Seller's obligations hereunder. Reference in this clause to Seller shall include where the context permits Seller's agents sub-contractors or employees.
13. **Liens:** Seller shall keep the premises of Buyer and Buyer's customer and all materials equipment and other property thereon free from any and all liens and encumbrances. Whenever Buyer requests, Seller shall furnish Buyer with proof satisfactory to Buyer that all such liens and all claims and suits in respect in such premises and materials equipment and other property thereon have been discharged satisfied and released or at the option of Buyer, with a satisfactory surety bond indemnifying Buyer and its customer against any claims based thereon.
14. **Cancellation:** In addition to and without prejudice to the right to cancel under clause 15 hereof, Buyer may terminate this Purchase Order in accordance with the following provisions:-
 - (a) If this Purchase Order covers Merchandise manufactured or fabricated to Buyer's Specification or specifications especially prepared by Seller to Buyer, then at any time prior to delivery of all Merchandise covered by this Purchase Order, Buyer may terminate this Purchase Order in whole or in part by written or telegraphic notice to Seller and in such event the following provisions shall apply.
 - (i) Immediately upon receipt of such notice of termination or upon such other date as may be specified in said notice, Seller shall stop all work in connection with this Purchase Order except as otherwise directed by Buyer.
 - (ii) Buyer shall pay and seller shall accept as full compensation Seller's actual direct-out-of-pocket costs attributable to the Merchandise to the date work is stopped, including Seller's reasonable expenses in connection with termination of any sub-contracts, all as approved by Buyer, plus 10% of such costs, provided, however, that in no event shall the total amount to be paid to Seller upon such termination plus payments previously made exceed proportion of the aggregate total purchase price specified herein that the work actually performed hereunder to the date work stopped bears to the entire work to be performed hereunder.
 - (iii) The Merchandise or uncompleted portions of the Merchandise shall be the property of Buyer and Seller shall safely hold the same for a reasonable time, subject to receipt of Buyer's written shipping or other disposition instructions.
 - (b) If the Merchandise is standard stock merchandise, Buyer may terminate all or any part of the unshipped portion of this Purchase Order at any time by written or telegraphic notice to Seller, and in such event Buyer shall have no further obligation for cancellation charges or otherwise hereunder except to make payment, subject to other applicable terms hereof, for the Merchandise actually shipped and in transit prior to such termination and to make payment for the Merchandise as to which this Purchase Order is not terminated which is shipped subsequent to such termination.
 - (c) If there is any dispute between Buyer and Seller as to the appropriate amount to be paid by Buyer to Seller pursuant to this clause following termination of this Purchase Order, the dispute shall be referred to Arbitration as hereinafter provided.
 - (d) Buyer shall be entitled to receive delivery of all Merchandise to which Buyer is entitled pursuant to this clause upon payment of the amount due to Seller in respect thereof (after deduction of any appropriate retention amount calculated in accordance with the terms of the Purchase Order) PROVIDED ALWAYS that if there is a dispute between the parties hereto as to the whole or any part of the amount claimed by Seller to be payable in respect of such Merchandise, Buyer shall be entitled to receive delivery of such Merchandise upon payment of any amount payable for the same in respect of which there is no dispute and upon Buyer furnishing Seller with a Bank Guarantee or other reasonable security sufficient to ensure payment of any amount in dispute between the parties hereto to the extent to which Seller establishes a right to receive the same by arbitration or by agreement with Buyer.
15. **Default:** In the event of default by the Seller in complying with any of the terms, conditions or requirements of this Purchase Order, or if it becomes apparent that delivery or completion cannot be accomplished within the time specified, Buyer may, at its option, terminate and cancel this Purchase Order without prejudice to any rights, elections or remedies Buyer may have, and without penalty or liability except to pay for conforming goods received and accepted or work completed and accepted.
16. **Confidentiality:** All drawings, specifications, technical data and other information furnished to Seller either by Buyer or Buyer's customer in connection with this Purchase Order are and shall remain the property of Buyer or Buyer's customer and shall be returned to Buyer at Buyer's request, and may not be copied or otherwise reproduced or used in anyway except in connection with the work performed under this Purchase Order. It is understood that an information or data furnished to Seller hereunder is for Seller's own confidential use, and in no way shall be shown or otherwise made known or available to any third party at any time without Buyer's written consent. Seller shall in no way dispose to third parties or use any of the confidential information in any manner detrimental to the interest of Buyer or Buyer's customer.
17. **Publicity:** Seller shall not advertise or publicly announce the fact that Seller has contracted to supply any of the items of material, equipment or services covered by this Purchase Order, or show or exhibit any drawings or photographs of equipment or materials furnished hereunder, without first obtaining the prior written permission of Buyer and Buyer's customer.
18. **Patterns & Special Tooling:** All moulds, patterns, fixtures, jigs, and special tooling and the like, utilised in the manufacture of the equipment dealt with hereon, and paid for as a separate item by Buyer, shall be and remain the property of Buyer, and shall be delivered to Buyer on demand. Seller shall be responsible, at its own expense, for the storage, care and insurance of such moulds, patterns, fixtures, jigs and special tooling.
19. **Taxes:** Except as may otherwise be provided in this Purchase Order the prices stated herein include all applicable federal, state and local taxes and duties but do not include any such tax or duty for which an exemption is available. Seller agrees to accept and use any exemption certificates supplied by Buyer, if acceptable to the taxing authorities. In case it shall ever be determined that any tax or duty included in the price stated herein was not required to be paid by Seller, or, if required to be paid, is subject to refund, the price shall be decreased by the amount thereof, or such amount shall be paid to Buyer. Buyer may elect. The price shall be similarly decreased, if Seller through fault or negligence or failure to follow Buyer's instructions, is required to pay or does not obtain a refund or drawback of any such tax or duty.
20. **Inspection and Testing:**
 - (a) Seller shall comply with all inspection and testing instructions that may be referred to in this Purchase Order or contained in the specifications or drawings referred to therein.
 - (b) Buyer and Buyer's customer reserve the right to inspect all Seller's or its sub-suppliers plant all items of materials and equipment ordered pursuant hereto, and to witness any testing thereof. Buyer and Buyer's customer also reserve the right to use an inspection agency for any such inspection or witness any such tests. When Buyer's inspection is required material or equipment shall not be packed or shipped without Buyer's written release or written waiver of inspection.
 - (c) All items of materials and equipment are subject to Buyer's inspection within a reasonable time after arrival at ultimate destination. If any items of materials or equipment or any workmanship are found to be defective, inferior or not in conformity with this Purchase Order, Buyer shall have the right to reject same. Neither making nor waiving inspection, nor failing to inspect or reject by Buyer shall relieve Seller of any of its obligations, responsibilities or liabilities under this Purchase Order.
Seller shall be responsible for all inspections required to comply with all applicable federal, state, and local laws, ordinances, regulations and manufacturer's standards.
21. **Property in Materials and Equipment:** Where any part payment for the materials and equipment to be used or to be supplied pursuant to this Agreement is made by Buyer, the title to and property in the equipment whether wholly or partly completed in respect of which such payment is made and any materials and parts to be used for the purpose of this Agreement and then on hand in respect of which a payment has been made shall pass to Buyer. Seller will promptly and appropriately mark all such equipment and materials which become the property of Buyer and if Seller fails to do so a representative of Buyer shall be entitled to mark the same and to have access to the same for that purpose. Notwithstanding that the property in any equipment or materials that pass to Buyer, the risk therein shall remain in Seller until such time as possession thereof is delivered to Buyer. Seller shall insure all such equipment and materials in the joint names of Seller and Buyer and shall keep the same insured until delivery thereof. Seller shall furnish Buyer with such evidence as Buyer may reasonably require of the currency of any such insurance and in the event of Seller failing to do this Buyer shall be entitled but not obliged to arrange its own insurance and to recover the cost thereof from Seller by way of a deduction from any moneys payable to Seller pursuant to this Agreement or by other action.
22. **Remedies:** The remedies herein reserved to Buyer shall be cumulative and additional to any other or further remedies in law or equity provided.
23. **Applicable Law:** All matters relating to the validity, construction and interpretation of this Purchase Order and any Agreement resulting therefrom shall be interpreted in accordance with the laws of the State of New South Wales, Australia.
24. **Entire Agreement:** This Purchase Order, when accepted by Seller together with any drawings, specifications, data and attachments relating to the same, shall constitute the entire agreement between the parties and shall supersede any other agreements or understanding made prior thereto. No modification thereof, additions thereto or deletions therefrom shall be binding upon Buyer, unless made in writing and executed by a duly authorised representative of Buyer. No claim or right arising out of breach of this contract can be discharged in whole or in part by waiver or renunciation thereof, unless said waiver or renunciation is in writing and signed by a duly authorised representative of Buyer.
25. **Arbitration:** If at any time any dispute whatsoever shall arise between Buyer and Seller in connection with this Contract, either party may give to the other notice in writing of the existence of such dispute, and the same shall be referred to arbitration of a person mutually agreed upon, or failing agreement within thirty (30) days of receipt of such notice, of some person appointed by the President for the time being of the Institute of Engineers, Australia. The submission shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act in force in the State of New South Wales. Such Arbitration shall take place in New South Wales or in such other State of Australia as shall be designated by Buyer.