

13 August 2024

F 20-008.1 TERMS AND CONDITIONS OF PURCHASE

1 Definitions

- 1.1 **Contract** means the contract constituted pursuant to clause 2;
- 1.2 **Goods** means (if any) the Goods stipulated in the Purchase Order;
- 1.3 **Intellectual Property** means any intellectual or industrial property whether protected by statute, at common law or in equity, including any patent, invention, copyright, design (whether or not registrable) trade secret, circuit layout design or right in relation to circuit layouts, right to confidential information, technical information, processes, techniques and know how;
- 1.4 **Nominated Address** means the address stipulated in the Purchase Order for delivery of the Goods and/or the performance of Services;
- 1.5 **Price** means the Price stipulated in the Purchase Order for the Goods and/or Services;
- 1.6 **Purchase Order** means the Purchase Order for the supply of Goods and/or Services subject to these General Conditions of Purchase;
- 1.7 **Purchaser** means Copamate Products Pty Ltd ABN 15 091 031 677;
- 1.8 **Seller** means the Seller named in the Purchase Order;
- 1.9 **Services** means the Services (if any) stipulated in the Purchase Order; and
- 1.10 **Conditions** means these General Conditions of Purchase, together with Purchase Order.

2 Contract

- 2.1 The acceptance by the Seller of the Purchase Order shall constitute a binding contract between the Seller and the Purchaser on the terms of these Conditions;
- 2.2 No document, representation or statement except these Conditions shall form part of the Contract unless the Purchaser agrees in writing. In the event of any inconsistency between these Conditions and any such document, representation or statement, these Conditions shall prevail;
- 2.3 Any variation of the Contract shall be of no effect unless in writing and signed by both the Purchaser and the Seller.

3 Price

- 3.1 The Price includes, as appropriate, the cost of delivery free into store to the Nominated Address and insurance costs, duties, taxes (except GST) and packing costs and any other costs and expenses associated with manufacturing, delivering and/or supplying the Goods and/or Services;

- 3.2 Subject to clause 3.3, any increase in the cost of manufacturing, delivering and/or supplying the Goods and/or Services between the date of the Purchase Order and the date of delivery or supply shall be borne by the Seller;
- 3.3 The Purchaser may apply any amounts due under the Contract towards payment of any other amounts, which the Seller owes to the Purchaser.

4 **GST**

- 4.1 The Price indicated on the Purchase Order for the Goods or Services does or does not include GST, as stipulated in the Purchase Order;
- 4.2 If GST is payable in respect of the supply of the Goods or Services or any other supply made under or in connection with the Purchase Order, the Purchaser must reimburse the Seller for the amount of that GST, PROVIDED THAT the Seller must first issue a tax invoice to the Purchaser. The Purchaser may reject without payment any invoice issued by the Seller which is not a tax invoice;
- 4.3 If the amount payable for the Goods or Services or any other supply made under or in connection with the Purchase Order is calculated by reference to any cost or expense incurred by the Seller, the amount payable is to be calculated using the GST-exclusive amount of that cost or expense.
- 4.4 If there is an adjustment event in relation to the supply of the Goods or Services or any other supply made under or in connection with the Purchase Order:
- (a) the Seller must refund to the Purchaser the amount by which the GST reimbursed pursuant to clause 4.2 exceeds the adjusted GST; or
 - (b) the Purchaser must pay to the Seller the amount by which the adjusted GST exceeds the GST reimbursed pursuant to clause 4.2.
- 4.5 for the purpose of calculating the GST to be reimbursed to the Seller pursuant to clause 4.2 the amount payable for the Goods, Services or other supply or any part thereof which is expressed or calculated in a currency other than Australian dollars shall be converted into Australian dollars:
- (a) using the method required to be used by the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or any relevant regulation, ruling or determination under that Act; or
 - (b) if no method is specified by that Act or any such regulation, ruling or determination, using the relevant mid-market exchange rate quoted by ANZ Banking Group Pty Ltd for the date on which the Seller issues an invoice for or receives any payment from the Purchaser, whichever is earlier;
- 4.6 In this clause, "GST" means Goods and Services Tax levied pursuant to A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the expressions "supply", "tax invoice", "input tax credit" and "adjustment event" have the same meanings as in that Act.

5 **Delivery**

- 5.1 The Seller must deliver the Goods and/or supply the Services to/at the Nominated Address;

- 5.2 The Seller shall be deemed not to have delivered the Goods to and/or supplied the Services at the Nominated Address unless it obtains a receipt or signed delivery docket from an authorised agent or employee of the Purchaser.

6 Time

- 6.1 If a time for delivery of the Goods and/or supply of the Services is stipulated in the Purchase Order, that time (as varied pursuant to this clause 6 shall be of the essence of the Contract);
- 6.2 The Purchaser may delay the time for delivery or supply by notice in writing to the Seller given at any time prior to actual delivery or supply by the Seller;
- 6.3 The Purchaser may give notice in writing to the Seller at any time prior to actual delivery of supply by the Seller requiring the Seller to deliver the Goods and/or perform the Services in instalments on dates stipulated in the notice;
- 6.4 If the Goods are not delivered and/or the Services not supplied by the time stipulated in the Purchase Order, as varied pursuant to this clause 6, the Purchaser may, without prejudice to any of its rights and remedies pursuant to the Contract, rescind the Contract, unless the delay is caused by factors outside the Seller's reasonable control;
- 6.5 The Purchaser shall not be liable to the Seller in respect of any cost, expense, loss or damage whatsoever incurred or suffered by the Seller as a direct or indirect result of the rescission of the Contract pursuant to clause 6.4.

7 Acceptance

- 7.1 The Purchaser shall be deemed not to have accepted the Goods, and property and risk in the Goods shall not pass, until the Purchaser has inspected them and advised the Seller that they are in conformity with the Contract, provided that if the Purchaser does not inspect the Goods within 7 days after delivery the Purchase shall be deemed to have accepted the Goods;
- 7.2 The inspection and acceptance referred to in clause 7.1 shall be without prejudice to any of the Purchaser's rights and remedies pursuant to the Contract and, without limiting the foregoing, shall not release the Seller from its obligations under clauses 10 and 11.

8 Payment

Subject to clause 4.2 the Purchaser must pay the Price to the Seller within 30 days after the end of the month in which the Goods are accepted by the Purchaser and/or the Services are performed.

9 Insurance

The Seller shall, until acceptance of the Goods by the Purchaser and/or completion of the performance of the Services, at its own cost and in a form acceptable to the Purchaser, insure the Goods and any materials provided by the Purchaser to the Seller pursuant to clause 12 in the joint names of the Purchaser and the Seller for any loss of or damage to the Goods and/or such materials.

10 Guarantee and Indemnity

- 10.1 The Seller hereby guarantees the Goods and/or Services against any omissions or defects or other failures arising in whole or in part from faulty design, materials or

workmanship, or any other omissions, defects or failures which render them unsuitable for the Purchaser's requirements, which occur at any time from the date of acceptance of the Goods and/or completion of the Services within a reasonable period from the date the Goods and/or Services are put into commercial use, notwithstanding that such omissions, defects or failures come to the attention of the Purchaser at any time after expiry of that period;

10.2 Pursuant to clause 10.1 the Seller shall, at the option of the Purchaser:

- (a) refund the Price;
- (b) repair, modify or replace at the Seller's expense, Goods which are unsuitable for the Purchaser's requirements; and
- (c) supply again Services which in the opinion of the Purchaser are not supplied in accordance with the contract;

and the Seller shall be liable for all resulting costs and expenses incurred by the Purchaser, including but not limited to, where appropriate, those costs and expenses incurred by the Purchaser in obtaining the Goods, returning them to the Seller, re-installing and recommissioning them.

10.3 The Purchaser may, at its option, have the repair, modification or replacement of the Goods or resupply of the Services referred to in clause 10.2 undertaken by a third party or undertake the repair, modification, replacement or resupply itself, and all resulting costs and expenses shall be borne by the Seller;

10.4 The Seller shall be liable to the Purchaser for any special, consequential, direct or indirect loss, damage, harm or injury suffered by the Purchaser or any other person caused by or in any way connected with a failure to supply the Goods and/or the Services in accordance with the Contract and hereby indemnifies the Purchaser in respect of any such loss, damage, harm or injury.

11 Warranty

11.1 The Seller hereby warrants to the Purchaser that

- (a) the Goods and/or Services correspond to the description in the Contract and conform to all specifications, drawings, samples and/or descriptions provided by the Purchaser to the Seller;
- (b) the Goods and/or Services are fit and sufficient for the purpose for which they are intended;
- (c) the Goods and/or Services are of the quality specified (or, if no quality is specified, the best merchantable quality);
- (d) the Goods are free of all defects and will operate satisfactorily and reliably under all conditions;
- (e) the Goods are free of all liens and encumbrances and the Seller has good title to them;
- (f) the supply of the Goods and/or Services by the Seller to the Purchaser and the licence granted by the Seller pursuant to clause 14 does not infringe the intellectual property rights of any third party; and

- (g) the Seller shall strictly comply with all applicable laws and all notices, directions and requirements of the Purchaser from time to time.

12 Materials Supplied by Purchaser

12.1 The Purchaser shall provide to the Seller all patterns, designs, specifications, drawings, samples, dies, tools, jigs, technical information, equipment and other materials specified in the Contract or which the Purchaser has agreed in writing to provide to enable the Seller to produce the Goods and/or Services (the materials);

12.2 All materials, and the Purchaser's intellectual property rights in the materials (if any), remain the property of the Purchaser. The Seller must return the materials to the Purchaser within 7 days after delivery of the Goods and/or supply of the Services;

12.3 The Seller must not use the materials for any purpose except the supply of the Goods and/or Services to the Purchaser.

The Purchaser shall have no liability to the Seller in respect of or in connection with any failure by the Purchaser to provide any Materials.

GENERAL CONDITIONS OF PURCHASE

13 Design and Specifications

If the Purchaser reviews design drawings, specifications, construction drawings or workshop drawings or any other documents prepared by or on behalf of the Seller, gives any approval, direction, or instruction to the Seller, provides information to the Seller, this shall not relieve or reduce the Seller's sole responsibility for the supply of the Goods and performance of the Services in accordance with the Contract, shall not release the Seller from its obligations under clauses 10 and 11, and shall not restrict the Purchaser's rights and remedies under the Contract or constitutes acceptance by the Purchaser that the Seller has complied with its obligations under the Contract. The Purchaser assumes no responsibility or duty of care whatsoever to the Seller, notwithstanding any such review, approval, direction, instruction, or provision of information.

14 Confidentiality

The Seller shall keep confidential the terms of the Contract and the Materials and shall only disclose them as required by law and to those of its employees, servants or agents necessary to enable the Seller to perform the Contract.

15 Intellectual Property

The Seller hereby grants to the Purchaser a perpetual, irrevocable, non-exclusive, royalty-free, transferable licence (with the right to sub-license) to use all Intellectual Property (whether owned by the Seller or not) which is used or developed by the Seller in connection with the work under the Contract.

16 Breach and Termination

16.1 The Purchaser may terminate the Contract by written notice to the Seller:

- (a) if the Seller is in breach of a term of the Contract and fails to remedy the breach within 14 days of the receipt by it of a notice in writing from the Purchaser specifying the breach and requiring the Seller to remedy it;

- (b) if the Purchaser is of the reasonable opinion that the Seller is unable or unwilling to comply with its obligations under the contract with due diligence or in a competent manner; or
- (c) if the Seller becomes bankrupt or makes an assignment of his estate for the benefit of his creditors or makes a composition or other arrangement with his creditors or if, being a company, the Seller shall go into liquidation whether voluntary or compulsory (except for the purposes of reconstruction) or has a receiver appointed over all or any of its assets or if any person or corporation goes into possession of or appoints an agent overall of any of the assets of the Seller.

16.2 Termination of the contract pursuant to this clause shall be without prejudice to the rights of either party accruing prior to termination;

16.3 The Seller shall be liable to the Purchaser for any loss whether direct, consequential, economic or otherwise suffered by the Purchaser and arising out of or in connection with such termination or prior breach;

16.4 The Purchaser shall not be liable to the Seller for any loss, whether direct, consequential, economic or otherwise, suffered by the Seller and arising out of or in connection with termination of the Contract pursuant to this clause 16.

16.5 If the Seller breaches a term of the Contract and the Purchaser does not terminate the Contract pursuant to this clause 16, the Purchaser shall not be bound to perform its obligations under the Contract until the breach is remedied by the Seller.

17 Limitation of Liability

All warranties, conditions, promises, undertakings, covenants and other provisions implied by law relating to the Goods and/or the Services of their supply and/or delivery form part of the Contract and these Conditions do not exclude, restrict or modify the application to the Contract of any provision of the *Competition and Consumer Act 2010 (Cth)* or State Fair Trading Acts or their equivalents.

18 Assignment

The Seller must not assign, sub-licence, sub-contract or transfer in whole or in part any of its interest or obligations under the Contract without the Purchaser's prior written consent, which consent may be granted, withheld or granted subject to conditions in the Purchaser's absolute and unfettered discretion.

19 Dispute Resolution

Any dispute between the Purchaser and the Seller arising out of or in any way connected with the Contract which is not resolved by the Purchaser and the Seller within 14 days after service of written notice of the dispute by either party on the other party shall be referred for decision to an arbitrator. If the Purchaser and the Seller are unable to agree on the appointment of an arbitrator within 30 days after service of the written notice of the dispute, either party may request the President for the time being of the Institution of Engineers Australia to appoint an arbitrator. The arbitration shall be conducted in accordance with the Rules for the conduct of Commercial Arbitrations of the Institute of Arbitrators Australia.

20 **General**

- 20.1 If any provision or part of any provision of the Contract is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision of the contract;
- 20.2 Any waiver by the Purchaser of strict compliance with any provision of the Contract shall not be effective unless in writing and signed by an authorised officer of the Purchaser;
- 20.3 The Contract shall be governed by the law of the Australian State in which the Purchaser accepts the Goods or in which the Services are performed and the parties agree to submit to the jurisdiction of the courts of that State and any courts having appellate jurisdiction from them;
- 20.4 No provision of these Conditions shall be construed adversely against one party solely on the basis that that party was responsible for the drafting of that provision.