



Purchase Order Terms & Conditions

June 2014



Appendix A

Purchase Order Standard Terms & Conditions

1. Applicability

1.1. These General Purchase Conditions are incorporated into all invitations to tender, quotations, orders, Purchase Orders, order confirmations, instructions and agreements concerning the purchase of Goods by Air Radiators from the Supplier.

1.2. Any modification of or addition to these General Purchase Conditions shall be valid only if expressly agreed to in writing by Air Radiators.

1.3. Any agreements or general conditions of the Supplier, however described, are expressly excluded from applicability and in no way bind Air Radiators in relation to the purchase of Goods.

2. Agreement to purchase Goods

2.1. All quotations and offers originating from the Supplier shall be irrevocable, unless the Supplier gives written notice at the time the quotation or offer is made that it is made without obligation.

2.2. All costs involved in preparing a quotation or offer shall be borne by the Supplier.

2.3. No agreement for the purchase of the Goods shall be binding on Air Radiators until the Purchase Order has been signed by both the Supplier and Air Radiators.

2.4. No instructions regarding the Goods shall be binding on Air Radiators unless they have been confirmed by Air Radiators in writing.

2.5 The supplier shall work in alignment with Air Radiators Supplier Quality Assurance Requirements; Supplier Quality Manual ARQM005 latest revision updated on Air Radiators website www.airrads.com.au

3. Price & Payment

3.1. Price is a firm price and is not subject to variation.

3.2. Subject to clauses 3.3 and 3.5, Air Radiators shall pay the Tax Invoice for the Goods, which the Supplier shall provide in accordance with clause 7, no later than 30 days after the Goods have been delivered.

3.3. If the Supplier fails to discharge or fully discharge any obligation under these General Purchase Conditions, Air Radiators may suspend its obligation to pay the Supplier.

3.4. Payment by Air Radiators shall in no way whatsoever imply a waiver of any right Air Radiators has under these General Purchase Conditions.

3.5. Air Radiators may at any time set off any claim of the Supplier on Air Radiators against claims which Air Radiators has on the Supplier on any account whatsoever.

4. Delivery of Goods

4.1. The Goods shall be delivered in the manner and at the time stated in the Purchase Order.

4.2. A packing list and Tax Invoice shall accompany the Goods

4.3. Delivery shall be completed upon:

4.3.1. The Supplier complying with clause 4.1; and

4.3.2. Air Radiators has signed an acknowledgement of receipt of the Goods.

4.4. Unless otherwise agreed in writing, the Supplier shall not make partial deliveries. If the parties have agreed that partial deliveries will be made, then for the purposes of these General Purchase Conditions, the term delivery includes a partial delivery.

4.5. The Supplier cannot derive any right whatsoever from the signing referred to in clause 4.2 and such signing will not prevent Air Radiators from exercising its rights on account of a failure on the part of the Supplier.

4.6. The Supplier's obligation to deliver the Goods shall continue notwithstanding any failure by Air Radiators to fulfil any of its obligations.

5. Hazardous Substances

5.1. At the time of delivery to Air Radiators of any Hazardous Substance and/or any Goods containing Hazardous Substance, full details of any Hazardous Substances are to be provided to Air Radiators in compliance with the Safe Work Australia (SWA) National Standards and Codes of Practice for Hazardous Substances and Dangerous Goods, in particular, but not limited to, the National Code of Practice for the Control of Workplace Hazardous Substances [NOHSC:2007(1994)] and National Model Regulations for the Control of Workplace Hazardous Substances [NOHSC:1005(1994)], as amended from time to time.

5.2. All documentation, including that related to operation, maintenance, assembly, shipping and handling must be clearly endorsed to identify the presence and nature of the hazard.

5.3. All Goods containing Hazardous Substances must bear appropriate labels according to the SWA National Standards and Codes of Practice for Hazardous Substances and Dangerous Goods: Approved Criteria for Classifying Hazardous Substances [NOHSC:1008(2004) 3rd Ed.] as amended from time to time clearly identifying the nature of the substances, the associated hazards and appropriate safeguards.

5.4. All Hazardous Substances and any Goods containing them, proposed for delivery to Air Radiators shall conform to all laws in relation to Hazardous Substances which apply in the country of manufacture, during transit and within Australia.

6. Ozone Depleting Substances

Air Radiators reserves the right to reject any Ozone Depleting Substance or items containing Ozone Depleting Substance(s).

7. Inspection

7.1. Air Radiators may at any time prior to delivery inspect or cause the inspection of the Goods. The Supplier shall give its full cooperation to such inspection.

7.2. The Supplier shall not derive any right from an inspection referred to in Clause 7.1 or from the fact that no such inspection has taken place.

8. Ownership and Risk

8.1. Unless otherwise agreed in writing, ownership of and risk in, the Goods shall pass from the Supplier to Air Radiators at the completion of delivery.

8.2. The Supplier warrants that Air Radiators acquires the unencumbered ownership of the Goods upon completion of delivery.

9. Packaging and Shipment

9.1. The Supplier shall pack the Goods at its expense with due observance of the requirements imposed by or pursuant to statute and in a manner that is necessary to ensure the safe delivery of the Goods.

9.2. Each delivery of Goods shall be accompanied by: a packing list or delivery docket; and a Tax Invoice for the Goods which specifies the Price and the purchase order number of the Goods.

9.3. The Supplier shall collect packaging material on Air Radiators' demand at the Supplier's expense and risk.

9.4. Packaging or loaned packaging will be collected by the Supplier at the Supplier's expense and risk.

10. Warranty

10.1. The Supplier warrants that the Goods conform to the Agreement.

10.2. Without limiting clause 10.1, the Supplier warrants that the Goods:

10.2.1. Comply with the specifications set out in the Purchase Order;

10.2.2. Are new, safe, free of defects or faults, are of merchantable quality and are unencumbered by rights of third parties;

10.2.3. Are suitable for the purpose for which they were ordered;

10.2.4. Comply with all laws and/or applicable self-regulatory rules, and/or demands made by Air Radiators, inter alia in regard to quality, health, safety, the environment and advertising;

10.2.5. Bear a designation of the manufacturer or the person marketing the Goods; and

10.2.6. Bear and are accompanied by all information and instructions which are necessary for their correct and safe use, and the Goods are provided with and accompanied by all documentation requested by Air Radiators, regardless whether that documentation was requested by Air Radiators before, during or after entering into the Agreement.

10.3. Without limiting clause 10.1, the Supplier warrants that all information which the Supplier has provided to Air Radiators in relation to the Goods is true and accurate.

10.4. If it is found (regardless of the results of earlier inspections) that the Supplier is in breach of clause 10.1, 10.2 or 10.3 Air Radiators may, at its option:

10.4.1. Require the Supplier to repair the Goods or make good what is missing at the Supplier's expense; or

10.4.2. Reject the Goods and require the Supplier to replace the Goods at the Supplier's expense; or

10.4.3. Reject the Goods and require the Supplier to remove the Goods from Air Radiators' Premises at the Supplier's expense and refund any part of the Price that has been paid.

10.5. The exercise by Air Radiators of any of the options specified in clause 10.4 is without prejudice to Air Radiators' other rights under these General Purchase Conditions.

10.6. In urgent cases and in cases where it will reasonably have to be assumed following consultation with the Supplier that the Supplier will fail to perform its obligation under clause 10.4, Air Radiators shall have the right to carry out the repair or replacement of the

Goods itself or to have the same carried out by a third party at the Supplier's expense. The exercise of such a right shall not release the Supplier from its obligations under these General Purchase Conditions.

11. Confidentiality

11.1. The Supplier shall keep confidential all information originating from Air Radiators or relating to Air Radiators (including ideas, knowledge, trade secrets, Intellectual Property, data, procedures, substances, prototypes, samples, financial and business information, any other commercially valuable information and the like) which is disclosed by Air Radiators or comes within the Supplier's knowledge in connection with the Agreement and its performance, which Air Radiators has designated to be confidential, which Air Radiators regards as confidential or which the Supplier can reasonably assume to be confidential ("Confidential Information"). The Supplier shall restrict access to Confidential Information to the persons who need to know this information for the purposes of the Agreement and/or its performance only. Except with the prior written permission of Air Radiators and subject to this Agreement, the Supplier shall not disclose or make public the Confidential Information or any part thereof to any person, firm, company or other entity and the Supplier shall not use the Confidential Information or any part thereof for any other purpose than for the Agreement and/or its performance.

11.2. The obligations in Clause 11.1 do not apply to information of which the Supplier can prove supported by documentary evidence that it:

11.2.1. Was fully in its possession prior to disclosure by Air Radiators without the Supplier having an obligation to observe secrecy toward Air Radiators or a third party; or

11.2.2. Already was or subsequently came to be common knowledge or available at the time of disclosure by Air Radiators, otherwise than by an act, omission or breach of this Agreement by the Supplier; or

11.2.3. Was acquired by the Supplier from a third party who was not bound to keep this information confidential; or

11.2.4. Was developed independently by the Supplier without any use of information disclosed by Air Radiators; or

11.2.5. Must be disclosed by the Supplier pursuant to the law, any provision or regulation of a body approved by the government, or a binding and final decision of a court or other public authority. In such case the Supplier will immediately notify Air Radiators in order to make it possible, in consultation with Air Radiators, to limit the extent of the disclosure by the Supplier to what is strictly required.

11.3. The Supplier shall impose the same obligation as that imposed on it by Clause 11.1 on all employees or third parties it has engaged in the performance of the Agreement and ensure its employees or third parties are bound by these obligations. The Supplier warrants that these employees or third parties will not act in violation of the obligation of confidence.

11.4. The Supplier shall:

11.4.1. At least use the same efforts to protect the Confidential Information as it uses to protect its own proprietary information; and

11.4.2. Implement reasonable security measures to safeguard the Confidential Information from unauthorised use or copying.

12. Intellectual Property

12.1. Both the Supplier and Air Radiators agree that it will not have any claim, ownership or interest in the other party's Background Intellectual Property and this includes, subject to this Agreement, any Improvements in the Background Intellectual Property.

12.2. If any Background Intellectual Property subsists in the Goods:

12.2.1. The Supplier grants Air Radiators a non-exclusive, sub-licensable, irrevocable, perpetual, worldwide, transferable and royalty-free licence to use any of the Supplier's Background Intellectual Property for the purpose of using or exploiting the Goods acquired in any Purchase Order, to sub-licence the rights to any of Air Radiators' customers or other third parties in the resupply of the Goods to enable a customer or third party to make full use of the Goods or otherwise use or exploit the Goods in connection with Air Radiators' business; and

12.2.2. Air Radiators grants the Supplier a non-exclusive, royalty-free, non-sub-licensable licence to use any of Air Radiators' Background Intellectual Property for the sole purpose of complying with this Agreement and any Purchase Order.

12.3. Where a Purchase Order requires the Supplier to provide Customised Goods:

12.3.1. Air Radiators is and shall be at all times the absolute owner of the Customised Intellectual Property upon its creation;

12.3.2. Air Radiators may deal with Customised Intellectual Property as it determines to be appropriate in the circumstances;

12.3.3. The Supplier assigns to Air Radiators their complete interest, including all rights and title in and to the Customised Intellectual Property including all future works of copyright;

12.3.4. The assignment in clause 12.3.3 includes any rights the Supplier acquired in respect of any infringement of the Customised Intellectual Property or conduct before the date of the assignment and covers the Supplier's rights in the Customised Intellectual Property around the world;

12.3.5. Air Radiators grants the Supplier a non-exclusive, royalty-free, non-sub-licensable licence to use any of its Customised Intellectual Property for the sole purpose of complying with this Agreement and any Purchase Order;

12.3.6. After the delivery of a Purchase Order, the Supplier will not use or exploit any Customised Intellectual Property without the prior written authorisation of Air Radiators; and

12.3.7. The Supplier must do anything, and continue to do anything, Air Radiators reasonably asks it to do (including signing documents and providing evidence), that is necessary for Air Radiators to obtain full ownership of the Customised Intellectual Property or that will assist Air Radiators in any proceedings including infringement, application and registration proceedings. This obligation includes the execution of Assignment Deeds to confirm the ownership of Customised Intellectual Property by Air Radiators.

12.4. The Supplier Warrants and Guarantees that:

12.4.1. The use (including the resale) of the Goods delivered or supplied to Air Radiators by Air Radiators or any third party does not infringe the Intellectual Property rights or other rights of any third party;

12.4.2. It is the owner of its Background Intellectual Property, has the right to grant all the licences in this Agreement and has the right to execute all Assignment Deeds in relation to the Customised Intellectual Property; and

12.4.3. It will not seek to challenge, object, oppose, seek to revoke, remove or invalidate Air Radiators' Background Intellectual Property or the Customised Intellectual Property, prevent Air Radiators from seeking to register or use Air Radiators' Background Intellectual Property or the Customised Intellectual Property or encourage or assist any person to do any of these things.

12.5. The Supplier shall indemnify Air Radiators against all and any claim or proceeding that is made or commenced and any liability, loss, damage or expense (including legal costs on an indemnity basis) whether incurred directly or indirectly as a result of Air Radiators use or resale of the Goods, or a claim that the infringe the Intellectual Property rights of a third party and the Supplier shall compensate Air Radiators for all damage resulting therefrom.

12.6. All drawings, materials and other auxiliary materials provided by Air Radiators or made or purchased by the Supplier at the expense of Air Radiators, are the property of Air Radiators and may at all times be claimed by Air Radiators without notice. The Supplier shall administer all these auxiliary materials and keep them in good condition at its own expense and risk. It shall not use them for, or allow them to be used by third parties except with the written authorization of Air Radiators

13. Liability

13.1. Any failure of the Supplier to perform its obligations under these General Purchase Conditions or the Agreement shall give Air Radiators the right to demand that the Supplier fully or partly remedy the failure in the performance and/or the consequences thereof at the Supplier's risk and expense.

13.2. The Supplier shall be liable for any and all damage suffered by Air Radiators as a result of any failure of the Supplier to fulfil its obligations under these General Purchase Conditions or the Agreement and/or as a result of any act or omission of the Supplier or its employees or third parties engaged by it. The Supplier shall be liable for both direct and consequential damage.

13.3. The Supplier shall take out and maintain adequate insurance for the liability referred to in this Clause 11, and shall allow Air Radiators to inspect the policy if it so desires. This obligation to insure also extends to auxiliary materials involved in the performance of the Agreement in any way whatsoever.

13.4. Air Radiators shall not be liable for any damage suffered on the part of the Supplier, unless the damage results from intent or wilful recklessness exclusively on the part of Air Radiators or any of its employees.

14. Indemnity

Without prejudice to the provisions set forth in Clause 12, the Supplier shall indemnify Air Radiators, its employees and agents against all loss, damage, injury or expense sustained or incurred as a result, whether directly or indirectly, of the Supplier's breach of these General Purchase Conditions, including any action or claim for alleged infringement of any patent, copyright, registered design, trademark or any other intellectual property rights, by reason of Air Radiators' receipt or enjoyment of the Goods.

15. Force Majeure

15.1. In case of force majeure on the part of either party the performance of the obligations under the General Purchase Conditions shall be fully or partly suspended for as long as the situation of force majeure continues, without either party being liable to pay any compensation to the other party. If the situation of force majeure continues for more than thirty (30) days, the other party will be entitled to terminate the agreement the subject of the General Purchase Conditions with immediate effect by registered letter and without recourse to the courts, without this giving rise to any right to compensation. Force majeure on the part of the Supplier shall in any case not include: lack of personnel, strikes, breach of contract by third parties engaged by the Supplier, failure of auxiliary materials, liquidity or solvency problems of the Supplier and government measures on the account of the Supplier.

16. Termination

16.1. If the Supplier:

16.1.1. Fails to deliver the Goods by the date required in the Purchase Order;

16.1.2. Is in breach of any term of the General Purchase Conditions;

16.1.3. Being an individual, commits an act of bankruptcy, becomes a bankrupt, executes a deed of assignment or deed of arrangement under Part 10 of the Bankruptcy Act 1966 as amended or a creditor accepts a composition under that Act or any analogous overseas law;

16.1.4. Being a corporation (other than for the purpose of a reconstruction or amalgamation):

16.1.4.1. Is the subject of a compromise or arrangement with its creditors;

16.1.4.2. In respect of property of which a receiver or a receiver and manager is appointed; or

16.1.4.3. In respect of which a provisional liquidator or liquidator is appointed, Air Radiators can, without prejudice to any other rights and remedies it has under these General Purchase Conditions, terminate the Agreement in whole or part by notice in writing to the Supplier

16.2. On such termination Air Radiators can:

16.2.1. Cease payment of the Price;

16.2.2. Recover from the Supplier all portions of the Price paid for undelivered Goods; and

16.2.3. Purchase similar Goods from alternative suppliers and claim by way of indemnity from the Supplier any loss it may occur in doing so.

17. Assignment

17.1. The Supplier may not assign any of its rights and obligations under the Agreement to third parties without the prior written permission of Air Radiators.

17.2. The Supplier may not contract out the performance of any of its obligations under the Agreement to third parties without the prior written permission of Air Radiators.

18. Invalidity

The invalidity of any provision of these General Purchase Conditions shall not affect the validity of the other provisions of these General Purchase Conditions.

19. Warranty

A party's failure or delay to exercise a power or right does not operate as a waiver of the power or right. A waiver is not effective unless it is in writing.

20. Applicable Law and Jurisdiction

20.1. The legal relationship between Air Radiators and the Supplier is governed exclusively by Victorian Law.

20.2. All disputes between Air Radiators and the Supplier shall be settled by the competent court of Victoria, Australia.

21. Definitions

In these General Purchase Conditions the following definitions apply:

21.1. Agreement means the agreement between Air Radiators and the Supplier for the purchase of the Goods as contained in these General Purchase Conditions and the Purchase Order;

21.2. Air Radiators means Air Radiators Proprietary Limited Ltd (ABN 66 005 037 856), registered office at 45 Heales Road Lara, Victoria and/or its affiliated companies;

21.3. Associated Documentation means all materials and documentation, including instructions, specifications and manuals' relating to the Goods, Background Intellectual Property or Customised Intellectual Property, as the case dictates;

21.4. Background Intellectual Property means Intellectual Property owned or controlled by a party, including but not limited to Intellectual Property developed prior to or independently of this Agreement, which the party determines, in its sole discretion, to make available for the carrying out of a Purchase Order including any Associated Documentation;

21.5. Customised Goods means products supplied by the Supplier to Air Radiators under a Purchase Order that requires the Supplier to create, develop or discover new products or a customisation to the Goods in accordance with specifications provided by Air Radiators including any Associated Documentation, but excludes the Goods;

21.6. Customised Intellectual Property means all Intellectual Property that has been created, developed or discovered in relation to the Customised Goods and includes any Improvements and Associated Documentation;

21.7. Delivery means delivery of the Goods by the Supplier in accordance with clause 4 of these General Purchase Conditions and includes the delivery of all accompanying materials and documentation;

21.8. Goods means the products to be purchased by Air Radiators from the Supplier, whether products from the Supplier's standard product range or Customised Goods, as specified in the Purchase Order, together with any Associated Documentation;

21.9. GST has the same meaning as given under the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

21.10. Hazardous Substances means a substance which has the potential through being used at work to harm the health and safety of persons in the workplace as detailed in the

Safe Work Australia (SWA) National Standards and Codes of Practice for hazardous substances and dangerous goods as amended from time to time;

21.11. Improvement means any improvement, advancement, modification, adaptation or the like arising from a party's use of Background Intellectual Property or Customised Intellectual Property;

21.12. Intellectual Property means all rights resulting from intellectual activity whether capable of protection by statute, common law or in equity and including copyright, discoveries, inventions, patent rights, registered and unregistered trademarks, design rights, circuit layouts and plant varieties and all rights and interests of a like nature including but not limited to methods and techniques, together with any documentation relating to such rights and interests;

21.13. Ozone Depleting Substance means any ozone depleting substance (ODS) specified in the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 as amended from time to time;

21.14. Price means the price to be paid to the Supplier by Air Radiators for the Goods, as stated on the Order, and includes the cost of packaging and delivery, insurance costs, GST and any other taxes and levies;

21.15. Purchase Order means the completed purchase order on the reverse side of these General Purchase Conditions relating to the purchase of Goods by Air Radiators from the Supplier, and includes any other written instructions given and duly signed by Air Radiators to the Supplier in relation to the purchase of the Goods;

21.16. Supplier means any party that supplies or has agreed to supply Goods to Air Radiators.