

**DIVERSE GROUP AUSTRALIA PTY LTD**

**STANDARD TERMS AND CONDITIONS OF PURCHASE**

**1. DEFINITIONS**

In these conditions:

**DGA** means Diverse Group Australia Pty Ltd (ABN 33 146 840 780);

**Supplier** means the Supplier named in the Order Form;

**Purchase Order** means the Purchase Order to which these conditions are attached;

**Purchase Price** means the purchase price for the Products specified in the Purchase Order;

**Products** mean the products ordered by DGA referred to in the Purchase Order.

**2. LEGALLY BINDING AGREEMENT**

2.1 The acceptance by the Supplier of the order by DGA in the Purchase Order will create a legally binding contract between the Supplier and DGA to supply the Products for the price set out in the Purchase Order and set out in these conditions.

2.2 The contract created pursuant to clause 2.1 does not incorporate any terms or conditions submitted by the Supplier and it is agreed that the Supplier's terms are excluded and these terms prevail.

2.3 If the Supplier amends the Purchase Order in any respect when purporting to accept it, DGA will only be deemed to have accepted the amendment if it notifies the Supplier that it accepts the amendment.

2.4 If the Supplier has not accepted the Purchase Order within the time stipulated the Purchase Order will lapse.

**3. SUPPLY OF THE PRODUCTS**

The Supplier agrees to supply the Products to DGA for the Purchase Price.

**4. DELIVERY**

- 4.1 The Supplier must deliver the Products to DGA at the delivery location specified in the Purchase Order during the business hours of DGA.
- 4.2 The Products must be delivered by the Supplier to DGA by the date specified in the Purchase Order.
- 4.3 Costs of freight must be paid by the Supplier unless specified otherwise in the Purchase Order.

**5. DELAYS**

Where a delay to site access, non-delivery of materials and consumables to the relevant

**6. TITLE AND RISK**

Title and risk in the Products passes to DGA when the Products are delivered to and accepted by DGA.

**7. PAYMENT**

- 7.1 DGA must pay the Purchase Price within 45 days of receipt of the Products by DGA (subject as provided in clauses 9 and 10).
- 7.2 The Purchase Price includes Goods and Services Tax.
- 6.3 The Supplier must pay any customs duty or similar charge in respect of the Products if they are imported.

**8. WARRANTIES**

The Supplier provides the following warranties (**Warranties**) to DGA as follows:

- (a) the Products will comply with any specifications in material published by the Supplier;
- (b) the Products will be fit for their specified purpose;
- (c) the Products will match any samples;
- (d) that the Supplier has title to the Products and has the right to sell them;
- (e) that the Products do not restrict any patent or other rights of other persons; and
- (f) the Products are not subject to any Security Interest as defined in the Personal property Securities Act 2009.

## 9. FAILURE TO COMPLY WITH WARRANTIES

- 9.1 Without limiting any of the other remedies if the Supplier fails to comply with any of the Warranties in clause 8, DGA may:
- (a) reject any Products which fail to comply with the Warranties; and/or
  - (b) require the Supplier to supply the Relevant Products again; and/or
  - (c) pay the costs of DGA in obtaining replacement Products.
- 9.2 If the Products are packaged and the packages are not opened immediately or shortly after delivery the remedies of DGA set out in clause 9.1 (and which arise at law) shall be available from when the packaging is opened or removed.
- 9.3 If DGA rejects the Products it may, at its option, either:
- (a) require the Supplier to collect the Products which do not comply with the Warranties from DGA at the Supplier's cost; or
  - (b) return the Products which do not comply with the Warranties to the Supplier and recover the cost of doing so from the supplier. Risk in the Products shall pass to the Supplier when they leave DGA's premises.

## 10. CANCELLATION

- 10.1 Without limiting any of its other rights, in these conditions DGA may at any time up to 28 days from receipt of the Products cancel the purchase of the Products by giving notice to the supplier (**Cancellation Notice**).
- 10.2
- (a) If DGA has given the Supplier a Cancellation Notice before the Products have been despatched by the Supplier DGA is not required to make payment of any sum, except freight charges which the Seller cannot cancel. The Supplier must use reasonable efforts to cancel transport after receiving a Cancellation Notice. The Supplier must, at the request of DGA produce evidence that it has attempted to cancel the transport and the cost of the transport.
  - (b) If DGA has given a Cancellation Notice after the products have been delivered to it or while they are in transit to it:
    - (i) DGA must return the Products to the Supplier at its cost;
    - (ii) risk in the Products shall pass to the Supplier when it receives the Products.
  - (c) If DGA gives a Cancellation Notice prior to payment for the Products it shall not be required to make payment for the Products, but must make any payments required by this clause.
  - (d) If DGA gives a Cancellation Notice after it has paid for the Products it shall at its option:

- (i) be given a credit for the price it has paid against subsequent purchases; or
- (ii) obtain a refund.

## **11. NOTICES**

Notices under these conditions must be given in writing and may be given by post; facsimile or email. Notice shall be given to one of the following:

- (a) as specified in the Purchase Order;
- (b) any address, facsimile number or email with which the Parties have used to communicate prior to or after the Purchase Order has been accepted; or
- (c) if there is not data relevant for the purposes of (a) or (b), to the principal place of business of the relevant party and the facsimile number or email published by it as the point of contact for making orders.

## **12. VARIATIONS IN WRITING**

Any variation will only be effective if they are agreed in writing and will only bind DGA if they are agreed by DGA's Chief Executive Officer or Chief Operating Officer.

## **13. GOVERNING LAW**

These conditions and the Contract between the Supplier and DGA are governed by the laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the Courts of Western Australia.