



## 1. Definitions

'Buyer' means John Crane Australia Pty Ltd.

'Contract' means a Purchase Order and the Seller's acceptance of the Purchase Order.

'Seller' means the person, firm or company to whom the purchase order is addressed.

'Goods' means the work, articles, services or things or any part of any of them as described in the Purchase Order.

'Specification' means technical description of the goods contained or referred to in the Purchase Order and/ or any relative schedules, drawings and specifications.

'Purchase Order' means the Buyers formal written Purchase Order for the supply of the Goods which incorporates these conditions.

## 2. Acknowledgement and Acceptance

2.1 The Buyer shall be bound by its Purchase Order only if it is placed on its official Purchase Order form and signed on behalf of the Buyer by its authorized representative.

2.2 The Buyer will incur no obligation in respect of any order placed until the Buyer receives the Sellers written confirmation that the Seller accepts the terms and conditions contained in the Purchase Order, which incorporates these Conditions.

2.3 If the Seller shall fail to provide such written confirmation or shall make a counter offer by purporting to accept the offer contained in the Purchase Order on other terms and conditions but never the less delivers the Goods or parts thereof the Buyer shall have either option of either taking the same as if the said offer had been unconditionally accepted or rejecting the same by notice to the Seller in which case the same shall be at the Sellers risk and disposal as from such rejection.

2.4 No terms and conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of order or similar document shall form part of the Contract and the Seller waives any right which it might otherwise have to rely on such terms and conditions.

## 3. Variations

3.1 Neither the Buyer or the Seller shall be bound by any variations, waiver of, or addition to these Conditions except as agreed by both parties in writing and signed on their behalf.

## 4. Warranty

4.1 The Seller warrants that the Goods shall:

a) conform in all respects as to quality, quantity and Specification with the particulars stated in the Purchase Order;

b) be of sound materials and workmanship;

c) be capable of any standard or performance specified in the Purchase Order;

d) if the purpose for which they are required is indicated in the Purchase Order either expressly, or by implication, be fit for that purpose;

e) comply in all respects with all relevant requirements of any Statute, Statutory rule or Order, or other instrument having the force of law which may be in force of law which may be in force at the time when the same are supplied;

f) be clear of all liens and encumbrances whatsoever and that the Seller has a good and marketable title to the same.

## 5. Inspection and Testing

5.1 Before dispatching the Goods the Seller shall where stipulated by the Buyer, carefully inspect and test them for compliance with the Specification. The Seller shall, if instructed by the Buyer, give the Buyer reasonable notice of such tests and the Buyer shall be entitled to be represented thereat. The Seller shall also, at the request of the Buyer, supply to the Buyer a copy of the Sellers tests certified by the Seller to be a true copy.

5.2 It is expressly agreed the Buyer will be entitled to inspect and test the Goods during manufacture and storage or within a reasonable time of delivery, and to reject any Goods supplied and / or work executed which may not be to the Buyers satisfaction under the provisions of Conditions 9 hereof. If the Buyer exercises this right, the Seller shall, if so requested by the Buyer, provide or shall procure the provision of all such facilities as may reasonably be required by the Buyer thereof.

5.3 No Goods shall be deemed to have been accepted by the Buyer until any certificate required by it from the Seller that the goods and / or work are satisfactory has been provided.

## 6. Delivery

6.1 The Seller shall deliver the Goods at the time specified on the Purchase Order. Time shall be of the essence. If, for any reason, the Seller is unable to deliver the Goods within the specified time the Seller shall give the Buyer notice in writing without delay of its intention to claim an extension of time which the Buyer may grant the Seller at its discretion but without prejudice to its rights.



6.2 If the Goods or any portion thereof are not delivered within the time or times specified in the Purchase Order or any extension of such time or times granted by the Buyer, the Buyer shall be entitled to determine the Purchase Order in respect of the Goods undelivered and of any other Goods already delivered under the Purchase Order which cannot be effectively and commercially used by reason of the non delivery of the Goods undelivered. On such determination the Buyer shall be entitled to:-

- a) to return to the Seller at the Seller's expense any of the Goods already delivered but which can not be effectively and commercially used as aforesaid and to recover from the Seller any moneys paid by the Buyer in respect of such Goods: and
- b) to recover from the Seller any additional expenditure reasonably incurred by the Buyer in obtaining other Goods in replacement of those in respect of which the Purchase Order has been determined.

6.3 The Goods, properly packed and secured in such a manner as to reach their destination in good condition under normal conditions of transport, shall unless otherwise directed by the Buyer be delivered by the Seller to the Buyer's works, carriage paid and in the manner specified in the Purchase Order.

6.4 Invoices must bear the Buyer's Purchase Order number. A packing note quoting this number must be sent with the Goods to the place of delivery and an advice note must be forwarded separately on the day of despatch to the destination specified in the Purchase Order.

6.5 No charge will be allowed for packing materials or containers unless agreed by the Buyer but empties will be returned at the Seller's expense by the Buyer on request of the Seller.

6.6 The Seller shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

## 7. Storage

7.1 If for any reason the Buyer is unable to accept delivery of the Goods at the time when the Goods are due for delivery the Seller shall store the Goods, safeguard them and take all reasonable care steps to prevent their deterioration until the actual delivery.

## 8. Risk and Title

8.1 Subject to the provisions of Condition 8.2 the title in the Goods shall pass to the Buyer on delivery without prejudice to any right of rejection which may accrue to the Buyer under these conditions.

8.2 If the Seller postpones delivery at the request of the Buyer pursuant to Condition 7 the title in the Goods shall pass to the Buyer seven days after the date of receipt of notification from the Seller that the Goods are due and ready for delivery or on such other dates as may be agreed but the Goods shall nevertheless remain at the seller's risk until delivery has been completed.

## 9. Remedies

9.1 Without prejudice to any other right or remedy which the Buyer may have, if any Goods are not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract the Buyer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Buyer.:

- a) to rescind the Order;
- b) to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller;
- c) at the Buyer's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or to supply replacement goods and carry out any other necessary work to ensure that the terms of the Contract are re fulfilled;
- d) to refuse to accept any further deliveries of the Goods but without any liability to the Seller;
- e) to carry out at the Seller's expense any work necessary to make the Goods comply with the Contract; and
- f) to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

## 10. Price and Payment

10.1 It shall be at the option of the Buyer to charge at cost all raw materials supplied by the Buyer to the Seller for subsequent conversion to components by the Seller. Such charges will be reclaimed by the Seller in the final selling price of the Goods.

10.2 The price for the Goods shall be as stated on the Purchase Order and shall be exclusive of GST but inclusive of all other charges unless stated otherwise.

10.3 Payment shall be made at the end of the month following month of delivery on receipt of a valid GST invoice unless otherwise agreed in writing, by the Buyer.



## 11. Buyers Property

11.1 All patterns, dies, moulds or other tooling or materials, design rights or other forms of intellectual property supplied by the Buyer or prepared or obtained by the Seller for and at the sole cost of the Buyer, shall be marked with the Buyers name or as otherwise specified by the Buyer and shall be and remain the property of the Buyer returnable in good condition on demand.

11.2 The Seller shall insure any material or property sent to the Seller by the Buyer for any purpose in connection with the Purchase Order and shall maintain all such items in good order and condition and insure them against all risks while in Sellers custody.

11.3 If the Purchase Order calls for the machining, processing or treatment of any material or parts of the property of the Buyer, or for which the Buyer is responsible, the Buyer reserves the right to charge to the Seller the cost of such materials or parts if whilst in the Seller's custody they are destroyed or damaged or rendered unfit for the purpose for which they were originally manufactured.

11.4 The Seller shall not, at any time, use such items, nor shall it authorize or knowingly permit them to be used by anyone else for, or in conjunction with, any purpose other than the supply of the Goods to the Buyer unless such use is expressly authorized by the Buyer, previously and in writing.

## 12. Confidentiality

12.1 The Seller will not without first obtaining the written consent of the Buyer in any way whatsoever advertise or publish the fact that the Seller has contracted to supply the Buyer with the Goods.

12.2 The Seller shall keep in strict confidence all technical and commercial know – how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by the Buyer or its agents and any other confidential information concerning the Buyer's business or its products which the seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or subcontractors as need to know same or the purpose of discharging the Seller's obligations to the Buyer and shall ensure that such employees, agents or subcontractors are subject to like obligations of confidentiality as bind the Seller.

## 13. Indemnity and Insurance

13.1 The Seller shall indemnify the Buyer against all loss, actions, costs, claims, demands, expenses and liabilities whatsoever (if any) which the Buyer may incur either at common law or by statute:

- a) defective workmanship, quality or materials
- b) an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods; and
- c) any claim made against the Buyer in respect of any liability, loss damage, injury, cost or expense sustained by the Buyer's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of these terms of the Contract by the Seller.

13.2 The Seller shall hold satisfactory insurance cover with a reputable insurer to fulfil the Seller's insurance obligations including public liability insurance cover. The Seller shall effect insurance against all those risks arising from the Seller's indemnity in Condition 13.1. Satisfactory evidence of such insurance and payment of current premiums shall be shown to the Buyer upon request.

## 14. Statutory Requirements and Buyers Regulations

14.1 Where the work is carried out by the Seller at the Buyer's premises, the Seller shall comply with requirements of any factory rules (including Health and Safety Regulations) and / or work regulations laid down by the Buyer.

## 15. Assignment and Sub-Contracting

15.1 The Seller shall not without the consent in writing of the Buyer assign or transfer the Purchase Order or any part of it to any other person except as a part of a company reconstruction.

15.2 The Seller shall not without the consent in writing of the Buyer sub – let the Purchase Order or any part thereof other than for materials, minor details, or for any part of the Goods which the makers are named in the Purchase Order or the Specification. Any such consent shall not relieve the Seller of any of its obligations to the Purchase Order and the Seller shall be liable for the acts, defaults or negligence of any of its subcontractors, agents, servants, workmen and further the Seller shall ensure the observance by such sub-contractors of the provisions thereof.



## 16. Code of Conduct

16.1 Buyer is committed to conducting its business ethically and lawfully. To that end Buyer, through its ultimate parent company, Smiths Group plc, maintains a Code of Corporate Responsibility and Business Ethics and mechanisms for reporting unethical or unlawful conduct. Buyer expects that Seller also will conduct its business ethically and lawfully. If Seller has cause that Buyer or any employee or agent of Buyer has behaved unethically or unlawfully under, or in connection with, this contract is encouraged to report such behaviour to Buyer or to Smiths Group plc. Smiths Group plc' Code of Corporate Responsibility and Business Ethics and mechanisms for making such reports are available on [www.smiths-group.com](http://www.smiths-group.com)

## 17. Termination

17.1 The Buyer shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller written notice whereupon all work on the Contract shall be discontinued and the Buyer shall pay to the Seller fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or consequential loss.

17.2 The Buyer shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith if:

- a) the Seller commits a material breach of any of the terms and conditions of the Contract; or
- b) the Seller has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Seller or notice of intention to appoint an administrator is given by the Seller or its directors or by a qualifying floating charge holder or a resolution is passed or a petition presented to any court for the winding up of the Seller or for the granting of an administration in the respect of the Seller, or any proceedings are commenced relating to the insolvency of the Seller, or
- c) the Seller ceases or threatens to cease to carry on its business; or
- d) the financial position of the Seller deteriorates to such an extent that in the reasonable opinion of the Buyer the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy.

17.3 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Buyer accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

## 18. Force Majeure

18.1 The Buyer reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Buyer including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

## 19. General

19.1 Each right or remedy of the Buyer under the Contract is without prejudice to any other right or remedy of the Buyer whether under the Contract or not.

19.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

19.3 Failure or delay by the Buyer in enforcing any provision of the Contract shall not be construed as a waiver of any rights under the Contract.

19.4 Any waiver by the Buyer of any breach of, or any default under, any provision of the Contract by the Seller shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

19.5 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by the law in force in Victoria, Australia.