

## Terms and Conditions of Purchase

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### 1 Definitions

In these Conditions:

- (a) **Additional Terms** means any terms and conditions (including in a Quotation and/or Order) which are agreed by the Supplier and the Customer in writing to apply to a Contract.
- (b) **Business Day** means a day which is not a Saturday, Sunday or public holiday in Perth, Western Australia.
- (c) **Claim** means any action, suit, proceeding or demand.
- (d) **Conditions** means these Terms and Conditions of Purchase.
- (e) **Customer** means the Fero Entity which accepts a Quotation, or places an Order, in relation to the Goods and/or Services.
- (f) **Confidential Information** means any information (including but not limited to contract terms, drawings, data, technical information, specifications and customer details) which is disclosed by the Customer to the Supplier and which relates to the business of the Customer or a Fero Entity or is otherwise by its nature confidential.
- (g) **Due Date** is defined in clause 9(c).
- (h) **Fero Entity** means any one or more of Fero Group Pty Ltd ABN 44 009 073 572, Fero Group (Queensland) Pty Ltd ABN 62 124 166 105, Fero Reinforcing Pty Ltd ABN 14 131 546 631, Fero Strata Systems Pty Ltd ABN 73 107 003 485, Deltaflex Pty Ltd ABN 92 163 080 260, or any Related Party of any of the above companies.
- (i) **Goods** means the Goods which are purchased by the Customer from the Supplier subject to a Contract.
- (j) **GST** means the goods and services tax as imposed by *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (k) **Insolvency Event** means:
  - (1) an administrator is appointed to the Supplier;
  - (2) any step being taken (including an application or order being made, proceedings being commenced, a resolution being passed or proposed in a notice of meeting) for the winding up, dissolution, bankruptcy, or administration of the Supplier;
  - (3) the Supplier enters into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them;
  - (4) the Supplier is (or is taken to be under applicable legislation) unable to pay its debts as and when they arise;
  - (5) the Supplier stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts;
  - (6) a receiver, receiver and manager, or similar officer is appointed to any of the Supplier's assets;
  - (7) distress, execution or other similar order or process is made against it or any of the Supplier's assets; or
  - (8) the Supplier commits any of the acts of bankruptcy referred to in section 40 of the *Bankruptcy Act 1966* (Cth).
- (l) **Intellectual Property** means all intellectual and industrial property, whether registered or not, existing anywhere in the world including patents, designs, trade marks, plans, drawings, specifications, computations, files, copyright, trade secrets or confidential information.
- (m) **Loss** means any loss, liability, cost, charge or expense (including legal costs and expenses on a full indemnity basis) that a party suffers or incurs.
- (n) **Order** means any Purchase Order (including all documents attached to or incorporated by reference) which is issued by the Customer to the Supplier in respect of Goods and/or Services.
- (o) **Price** means the price (if any) which is specified in a Contract (whether in a Quotation, Order or otherwise).
- (p) **Quotation** means a quotation issued by the Supplier to the Customer in respect of Goods and/or Services
- (q) **Quotation Period** means the period specified in a Quotation during which the Customer may accept that Quotation.
- (r) **Rates** means the rates (if any) which are specified in a Contract (whether in a Quotation, Order or otherwise).

- (s) **Services** means Services which are performed by the Supplier for the Customer subject to a Contract.
- (t) **Special Order Goods** means Goods which are not standard stock and which need to be manufactured or fabricated by the Supplier to match the Customer's specifications.
- (u) **Supplier** means the person, business or entity who is supplying the Goods and/or performing the Services for the Customer pursuant to a Contract.

## **2 Contract**

- (a) Unless the parties agree in writing, these Conditions will apply to all Contracts for the:
  - (1) sale of Goods by the Supplier to the Customer; and
  - (2) performance of Services by the Supplier for the Customer.
- (b) A Contract will be formed between the parties upon the:
  - (1) Customer accepting a Quotation within the Quotation Period; or
  - (2) Supplier accepting an Order.
- (c) No Additional Terms will be included in a Contract unless the parties agree in writing.
- (d) Where any Additional Terms conflict with these Conditions, then these Conditions will take precedence over those Additional Terms, unless the parties specifically agree otherwise.
- (e) The Customer may amend these Conditions from time to time by giving notice to the Supplier. Any amendment to these Conditions will apply to any Contract entered into after the date of that amendment.

## **3 Time**

- (a) Time will be of the essence for the supply of the Goods and/or the performance of the Services pursuant to a Contract and no extension or variation of a Contract will operate as a waiver of this provision.
- (b) Without limiting clause (a), the Supplier must ensure that it supplies any Goods and performs any Services in accordance with the timeframes (if any) specified in a Quotation or Order.

## **4 Inspections and Testing**

- (a) The Customer has the right to inspect or test any Goods or Services at any time prior to delivery of those Goods or the completion of those Services.
- (b) Any inspection or test carried out pursuant to this clause does not relieve the Supplier from any of its responsibilities and obligations in relation to provision of the Goods or performance of the Services.
- (c) The exercise of the Customer's rights in this clause 4 will be without prejudice to any other rights and remedies which the Customer may have in relation to the Goods and/or Services.

## **5 Marking, Packaging, Transportation and Delivery**

- (a) Unless otherwise agreed between the parties in writing:
  - (1) the Price includes the costs of packaging, marking, transporting and delivering the Goods, or the products of the Services, to the Customer's site;
  - (2) all deliveries must be made between 7.30am and 4pm, Monday to Friday; and
  - (3) the Supplier must, at the time of delivery, provide to the Customer a complete written list of the Goods and/or the products of the Services which are being delivered.
- (b) The Supplier must ensure that all Goods are packed, marked, transported and delivered as specified in a Contract. If a Contract does not specify a manner of packaging, marking, transportation and delivery, then the Supplier must ensure that all Goods are packed, marked, transported and delivered in a proper and suitable manner and in all cases in accordance with the proper requirements of the carriers.
- (c) The Supplier will be liable for any difference in freight charges arising from its failure to follow any transport instruction in a Contract or to properly describe the Goods transported.

## **6 Site**

If the Supplier is required to be present or perform work on or near premises specified by the Customer, then the Supplier:

- (a) must supply all labour, tools, equipment, materials and the like necessary to perform that work;

- (b) must not impede work in progress by Customer or third parties;
- (c) enters the premises on which the work is to be performed at its own risk;
- (d) indemnifies and must keep the Customer indemnified against any Loss arising out of or connected with performance of the Contract or presence of the Supplier, its personnel, agents and subcontractors on the premises including Claims against the Customer whether alleging negligence on the part of the Customer or otherwise;
- (e) must comply with, and must ensure that each of its personnel, agents and sub-contractors also comply with, all:
  - (1) safety and other regulations applicable to the premises; and
  - (2) instructions of the Customer, its personnel, contractors and other representatives; and
- (f) perform all work as an independent contractor.

## **7 Acceptance, Rejection and/or Returns**

- (a) Within 10 Business Days of the delivery of any Goods, or the performance of any Services, the Customer may reject those Goods and/or Services if they do not conform with the requirements, specifications or warranties in the relevant Contract.
- (b) If the Customer fails to give a notice within the timeframe specified in clause (a), then it will be deemed to have accepted the Goods and/or Services.
- (c) If the Customer rejects any Goods or Services pursuant to clause (a), then the Customer may:
  - (1) rectify the non-conformance itself, in which case the Supplier must pay the Customer for those rectification costs; or
  - (2) return the Goods or the products of the Services to the Supplier (at the Supplier's expense), in which case the Supplier must, at the Customer's election, either:
    - (i) refund the Price and/or Rates in respect of the rejected Goods or Services; or
    - (ii) replace or repair the rejected Goods or re-perform the rejected Services at its own expense.
- (d) The Customer's rights under this clause 7 are in addition to, and do not affect, any other rights that the Customer may have in relation to the Supplier's performance or non-performance of its obligations (including its rights under clause 19 of these Conditions).

## **8 Title and Risk**

- (a) Title to the Goods, or to the products of the Services, will pass from the Supplier to the Customer upon the Customer paying for those Goods and/or Services.
- (b) If the Customer obtains title to any Goods, or to the products of the Services, then the Supplier must ensure that the title is free of lien and encumbrance.
- (c) The risk in the Goods, or in the products of the Services, remains with the Supplier until those Goods, or products of Services, are accepted by the Customer pursuant to clause 7.

## **9 Prices, Invoices and Payments**

- (a) The Prices and/or Rates are fixed and are not subject to change unless agreed in writing by the parties. All Prices and/or Rates are in Australian Dollars (AUD\$).
- (b) Any invoice from the Supplier must be forwarded to the address in clause 22.a.(2)(2), or as otherwise designated by the Customer, and must specify the relevant Order number. Invoices not complying with this clause will be returned to the sender Supplier for correction and resubmission.
- (c) Subject to the Supplier's compliance with clause (d), the Customer must pay any non-disputed invoices within 30 days from the end of the month in which the Customer received that invoice.
- (d) The Supplier must not issue any invoice until the Goods and/or Services to which that invoice relates have been supplied or performed in full.
- (e) If the Customer disputes any invoiced amount then:
  - (1) it must pay the amount which is not in dispute;
  - (2) it must give notice of the dispute to the Supplier; and
  - (3) the parties must use their best endeavours to resolve the dispute promptly.

## **10 Taxes**

- (a) Unless otherwise noted in a Contract, the Prices and/or Rates are net of any applicable GST.
- (b) Any invoice provided to the Customer by the Supplier must be a valid tax invoice for the purposes of the GST legislation.
- (c) Where GST is payable in respect to the Price and/or Rates, notwithstanding any other conditions of supply, the Customer will be under no obligation to pay the Supplier for the Goods until the Supplier has complied with clause (b).

## **11 Insurances**

- (a) In addition to any insurance which the Supplier is by law obliged to effect, the Supplier must procure and maintain at its own expense, with a reputable insurance company, the policies of insurance which the Customer may reasonably require having regard to the nature of Goods being supplied and/or the Services being performed.
- (b) Without limiting clause (a), the Supplier must maintain insurance cover for all events that may cause loss of or damage to property or injury or death of a person in the supply of Goods or performance of Services. Such insurance must at least include Workers Compensation, Public Liability and Goods in Transit until delivered to the Customer.
- (c) The Supplier must ensure that every subcontractor it engages pursuant to a Contract also carries the policies of insurance required pursuant to clause (b).

## **12 Licences and Laws**

The Supplier must at its cost:

- (a) obtain all requisite licences, permits and authorisations required to supply the Goods, or perform the Services, under each Contract; and
- (b) comply with all applicable laws and regulations in relation to the supply the Goods, or performance the Services, under each Contract.

## **13 Intellectual Property**

- (a) To the extent that Intellectual Property subsists in the Goods and/or the products of the Services, the Supplier grants the Customer a royalty-free, perpetual, assignable, non-exclusive right to use that Intellectual Property solely with respect to the use of those Goods and/or the products of the Services as a part of normal business operations.
- (b) The Supplier warrants to the Customer and its successors that Customer's use of the Goods, or use of the products of the Services, will not infringe or contribute to the infringement of third party Intellectual Property.
- (c) The Customer retains the sole and exclusive ownership of all Intellectual Property which is supplied by the Customer to the Supplier in relation to a Contract. For the avoidance of doubt, this includes the Intellectual Property rights in any designs, drawings or specifications prepared by the Customer.

## **14 Data**

The Supplier must furnish all engineering and other data in accordance with a Quotation or Order and within the time stated. Approval of engineering or other data by the Customer does not relieve the Supplier of its responsibilities.

## **15 Confidentiality**

The Supplier must keep the Customer's Confidential Information confidential and not disclose or discuss such Confidential Information without the Customer's prior written consent.

## **16 Privacy**

The Supplier must comply with all relevant privacy laws in respect of any Personal Information supplied by the Customer in respect of a Contract. For the purposes of this clause 16, "Personal Information" means any information or opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

## **17 Warranties**

- (a) The Supplier warrants that the Goods will:
  - (1) conform with their description and specifications in the Contract;
  - (2) be of good merchantable quality and fit for the known purpose for which they are supplied;

- (3) be new (unless otherwise agreed between the parties);
  - (4) be free from all liens and encumbrances;
  - (5) comply with all laws; and
  - (6) be free from all material defects.
- (b) The Supplier warrants that the Services will be performed:
- (1) with all due skill, care and diligence;
  - (2) in accordance with good industry practice; and
  - (3) by qualified and properly trained personnel.
- (c) The warranties in this clause 17 are in addition to any other warranty which is specified in the Contract as being in favour of the Customer or is implied by law.

## **18 Liability**

Notwithstanding any other term of a Contract, or the provisions of any applicable law, the Supplier's liability to the Customer is unlimited in respect of any Loss suffered or incurred by, or Claims made against, the Customer which are covered by the indemnity under clause 19.

## **19 Indemnity**

The Supplier indemnifies the Customer against any Loss suffered or incurred by, or Claims made against, the Customer arising out of or in connection with a breach by the Supplier of its obligations and/or warranties under a Contract.

## **20 CANCELLATION**

- (a) The Customer may, at its option, cancel unshipped Goods or unperformed Services at any time by giving notice to the Supplier (**Cancelled Goods and Services**).
- (b) Unless the Cancelled Goods are Special Order Goods, the Customer will not be obliged to pay for those Cancelled Goods.
- (c) If the Cancelled Goods are Special Order Goods, then provided that:
  - (1) the Supplier ceases manufacturing, supplying or working on those Cancelled Goods in accordance with and to the extent specified in the notice;
  - (2) the Supplier does everything possible to mitigate any cost after such cancellation; and
  - (3) the Supplier supplies those Cancelled Goods to the Customer,

then the Customer must pay the Supplier's costs which were incurred in manufacturing those Special Order Goods (which must not exceed the Price) that have been properly incurred as at the date of the notice of cancellation.

## **21 TERMINATION FOR DEFAULT**

In the event of the Supplier:

- (a) breaching any of the terms, conditions or warranties contained in a Contract, and failing to remedy that breach within 5 Business Days of a notice from the Customer requiring that remedy; or
- (b) suffering an Insolvency,

the Customer, without prejudice to any other rights it might have, may immediately terminate any Contracts and will not be required to pay for any Goods or Services under those Contracts which have not been delivered or performed at the date of termination.

## **22 Notices**

- (a) Any notice or other communication including any request, demand, consent or approval, to or by a party to these Conditions must be in legible writing and in English addressed as shown below:
  - (1) if to the Supplier, in accordance with the details provided by the Supplier in any Quotation or, if no details are set out in a Quotation or no Quotation is given, the details in the Customer's records in relation to the Supplier; and

(2) if to the Customer:  
Address: 44 Chisholm Crescent, Kewdale, WA 6105  
Attention: Managing Director  
Facsimile: +61 8 9453 0050,

or as specified to the sender by the party by notice.

- (b) Any notice or other communication is regarded as being given by the sender and received by the addressee:
- (1) if by delivery in person, when delivered to the addressee;
  - (2) if by post, 2 Business Days after posting; or
  - (3) if by facsimile when received by the addressee in legible form,
- but if the delivery or receipt is on a day that is not a Business Day or is after 4.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day.
- (c) A facsimile transmission is regarded as legible unless the addressee telephones the sender within 2 hours after the transmission is received or regarded as received under paragraph (b) and informs the sender that it is not legible.

### 23 General

- (a) **Assignment:** The Supplier must not assign or transfer, or purport to assign or transfer, a Contract or any benefit under the Contract to any person, without the Customer's prior written consent (which must not be unreasonably withheld).
- (b) **Sub-contract:** The Supplier must not sub-contract the performance of a Contract in whole or in part, without the Customer's prior written consent (which must not be unreasonably withheld).
- (c) **Jurisdiction:** All Contracts will be construed in accordance with the law of Western Australia. Any disputes arising under a Contract are to be determined by the Courts of Western Australia.
- (d) **Variation:** a variation to the terms of the Contract must be in writing and signed by the parties.
- (e) **Waiver:** No party to a Contract may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.
- (f) **Entire agreement:** these Conditions and any Additional Terms contain the entire agreement between the Supplier and the Customer with respect to its subject matter and supersedes all prior agreements and understandings between them in relation to its subject matter.

Executed by  
[Supplier entity]  
by ►

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sign here ►

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Authorised representative

print name►

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insert date►

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