

COOGEE TITANIUM PTY LTD TERMS AND CONDITIONS OF PURCHASE – AS9100 ITEMS

1. Vendor's Obligations and Warranties

- 1.1 The Vendor:
- 1.2 shall be responsible for any discrepancies, errors or omissions in specifications, drawings or any particulars supplied by it and carefully check information of any kind provided to it by Coogee Titanium;
- 1.3 shall and shall ensure that its employees, agents and contracts do not make public or disclose any Confidential Information of Coogee Titanium except to the extent required by law to do so and subject to giving Coogee Titanium reasonable notice prior to disclosure;
- 1.4 shall ensure that Product packaging is suitable and environmentally friendly (biodegradable);
- 1.5 will grant Coogee Titanium, Coogee Titanium's customers, Government or Regulatory Authorities the right of access to review any related documentation or process as required.
- 1.6 warrants, without limiting its other warranties under this Agreement or otherwise, that:
 - (a) all Product will:
 - (i) be new, of merchantable quality, and fit for its intended purpose;
 - (ii) provide the full functionality and performance claimed for the Product (Certificates of Analysis, or equivalent);
 - (iii) operate in accordance with its specifications; and
 - (b) all services will be provided with due skill and care to the standard reasonably to be expected of a person performing the business of the Vendor.
- 1.7 Shall indemnify Coogee Titanium against all loss, costs, damages, or expenses arising out of any breach of its obligations under this Agreement.

2. Defects

The Vendor shall, at its cost and without prejudice to any of Coogee Titanium's other rights and remedies, rectify all defects occurring in the Work within the greater of 18 months of the date of receipt of delivery by Coogee Titanium or the period of warranty provided by the Vendor in relation to the Product or Services. Such rectification shall be effected as a matter of urgency. The Vendor shall fully indemnify Coogee Titanium against any loss, costs and expenses arising from Coogee Titanium rectifying any defect in the Vendors product, work or services including any consequential damage requiring rectification resulting from defects in the Vendors product, work or services.

3. Coogee Titanium Property

- 3.1 Legal title to and property in all material supplied by Coogee Titanium in respect of the Purchase Order shall remain with Coogee Titanium and shall not pass to the Vendor or its successors or assignees under any circumstances whatsoever. The Vendor may only use such material in performing its obligations under the Agreement and shall bear the risk of damage or loss and indemnify Coogee Titanium for all costs and expenses incurred or suffered as a result of such damage or loss including the cost of replacing such material.
- 3.2 All drawings, specifications, information and samples provided by Coogee Titanium shall remain Coogee Titanium's sole and exclusive property, shall be deemed to be Confidential information and shall not be disclosed by the Vendor to a third party except with the prior written consent of Coogee Titanium.

4. Intellectual Property Rights

- 4.1 The Vendor
 - (a) warrants that Coogee Titanium's use of the Products provided by the Vendor under this Agreement shall not infringe any author's moral rights under the Copyright Act 1968.
 - (b) shall indemnify Coogee Titanium, its employees and sub-contractors against any claims against, or costs, expenses, losses or damages suffered or incurred by Coogee Titanium arising out of, or in any way in connection with, any actual alleged infringement of any author's moral rights under the Copyright Act 1968.
- 4.2 For the purposes of this clause 4, Coogee Titanium's use of the material provided by the Vendor includes Coogee Titanium's right to reproduce, publish, copy, adapt, communicate to the public, materially distort, destroy, mutilate or in any way change the materials or part of the Works to which the materials or any other work provided by the Vendor under this Agreement relates:
 - (a) with or without attribution of authorship;
 - (b) in any medium; and
 - (c) in any context and in any way it sees fit.
- 4.3 The Vendor shall fully indemnify Coogee Titanium against any loss, costs (including legal fees) and expenses arising from any claim by a third party in respect of the Works including a claim that the use of the Product or any part of the Product constitutes an infringement of a registered design, trademark or copyright or patent (other than a part based on a design specified by Coogee Titanium). The Vendor shall at its expense either replace such infringing part with a non-infringing part, or modify such part so as to render it to be non-infringing (in either case, to deliver the same functionality and performance as the infringing part), or procure for Coogee Titanium the right to use such part.

5. Time and Delivery

- 5.1 The times and dates stated in the Purchase Order for delivery or completion including an extension of such time or date granted in writing by Coogee Titanium shall be binding and be of the essence of the Purchase order.
- 5.2 Delivery will not be accepted by Coogee Titanium prior to the date indicated on the Purchase Order, unless prior arrangements have been made. Unless otherwise specified in the Purchase, Product is to be delivered without additional charge to Coogee Titanium, to the forwarding address stated in the Purchase Order.

6. Risk, Title, Acceptance and Bailed Property

- 6.1 Risk in the Product shall remain with the Vendor until the Product has been accepted by Coogee Titanium.
- 6.2 If the Product does not perform, or is not substantially in accordance with this Agreement (including any specifications), Coogee Titanium may reject all or part of the Product. Services (excluding any services which give rise to goods) will be accepted as completed when Coogee Titanium confirms in writing that the Services have been completed to its reasonable satisfaction.
- 6.3 All right, title and interest in and to any product to be paid for by Coogee Titanium, shall vest in Coogee Titanium as soon as it is acquired or its processing commences in accordance with Coogee Titanium's Purchase Order. All such Coogee Titanium owned product in the possession of the Vendor shall be deemed to be Bailed Property and shall not be deemed to be a fixture or a part of the Vendor's real property. To the extent permitted by law, the Vendor waives its right to object to the repossession of Coogee Titanium owned product by Coogee Titanium in the event the Vendor is involved in bankruptcy proceedings, becomes insolvent or has a receiver, manager, administrator or liquidator appointed over any or all of its assets.
- 6.4 The Vendor bears all responsibility for loss and damage to any property and or product owned by Coogee Titanium and in the Vendor's possession or control for use in performing a Purchase Order, including responsibility for loss or damage which occurs despite the Vendor's exercise of reasonable care. Coogee Titanium will have the right to enter the Vendor's premises at reasonable times to inspect such property and or product and the Vendor's records pertaining thereto. Where permitted by law, the Vendor waives any lien that the Vendor might otherwise have on any of Coogee Titanium's property and or product for work done thereon or otherwise. Upon request the Vendor will immediately deliver such property and or product at Coogee Titanium's option CIF Coogee Titanium's premises, properly packed and marked in accordance with the requirements of the carrier and Coogee Titanium. The Vendor will cooperate with Coogee Titanium's removal of the property and or product from the Vendor's premises.

7. Price and Payment

- 7.1 Prices are, unless otherwise specified, fixed and not subject to variation except as permitted under this Agreement.
- 7.2 Subject to clause 9.3 prices in the Purchase Order include all Government taxes and charges.
- 7.3 If GST is payable in relation to a Taxable Supply made by Coogee Titanium, under or in relation to the Purchase Order the amount payable for that taxable Supply will be the amount payable under the Purchase Order plus GST. Terms defined in the GST Act have the same meaning given to those terms when used in this Agreement.
- 7.4 Invoices submitted by the Vendor must be a tax invoice as required by the GST Act and specify the Purchase Order number, Product item number and other Invoices submitted by the Vendor must be a tax invoice as required by the GST Act and specify the Purchase Order number, Product item number and other relevant details as required by Coogee Titanium. Invoices may only be rendered in accordance with the Purchase Order.
- 7.5 Subject to any contrary term of this Agreement, payment will be made on the last day of the month following the month in which the Vendor's invoice is received. If

- Coogee Titanium pays the Vendor's invoice within 14 days of its receipt, the amount due and payable is the amount otherwise due less 2%.
- 7.6 Coogee Titanium may set off any amount due and payable by Coogee Titanium to the Vendor against any amount owing by the Vendor, however or whenever incurred.
- 8. No Inducement**
If the Vendor either directly or indirectly provides to an employee of Coogee Titanium either before or after the placing of the Purchase Order, any benefit of any character whatsoever which might reasonably be construed as an inducement for the employee to show favour to the Vendor in respect of any matter including the placing of the Purchase Order, then Coogee Titanium may at its option give notice to the Vendor that this Agreement is void and of no force or effect.
- 9. Liability Indemnity and Insurance**
- 9.1 The Vendor shall be solely responsible for all loss, damage, injury or death which may be sustained by any person, firm or corporation as a result of or by reason of its execution of the Work and shall hold harmless and fully indemnify Coogee Titanium and its officers, contractors, employees and agents against all loss, damage, injury, costs and expenses, actions, proceedings, claims and demands (including legal fees and disbursements) whatsoever which may be brought or made against them or any of them as a result of or arising out of the execution of the Work and agrees to accept and bear all costs which may be incurred in connection with such actions, proceedings claims and demands. The obligation of the Vendor to indemnify under this clause shall be reduced to the extent that a negligent act or omission of Coogee Titanium has directly caused the loss, damage or injury.
- 9.2 Except to the extent that liability cannot be legally limited or excluded and whether in contract, tort, negligence, under any indemnity, strict liability or otherwise:
- (a) Coogee Titanium's liability arising out of or in connection with the Agreement shall be limited to payment of the prices due and owing in accordance with clause 9.5 and
- (b) In no event shall Coogee Titanium be liable for economic loss, loss of profit, loss of revenue or loss of contract, indirect or consequential loss or damage.
- 9.3 The Vendor shall at its expense effect and maintain:
- (a) A public liability policy for an amount not less than \$10 million per occurrence;
- (b) an insurance policy covering loss of or damage to the Works;
- (c) If the Work involves any consulting or design, a professional indemnity policy for an amount of not less than \$5million per occurrence and
- (d) Such insurance as is legally required under any Workers' Compensation legislation applicable in the location where the Work is to be performed.
- 9.4 The policies in clause 11.3(a) and (b) must name Coogee Titanium as an additional insured and include a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured. All insurance policies must be on terms and with an insurer reasonably acceptable to Coogee Titanium. The Vendor shall provide satisfactory evidence of such insurance to Coogee Titanium upon request.
- 10. Site Access**
- 10.1 The Vendor will be given access to the site where Services are to be performed ("Site") for a period sufficient to enable it to execute its contractual obligations under this Agreement. Access shall be at a mutually convenient time.
- 10.2 Unless otherwise agreed in writing the Vendor shall provide at its own expenses all site facilities, constructional plant and other amenities as may be necessary for the performance of the work.
- 10.3 The Vendor shall comply with all occupational health and safety and security regulations applying on Site and when on Coogee Titanium premises, with all Coogee Titanium security, sexual harassment, occupational health and safety policies and all other workplace regulations and policies of Coogee Titanium.
- 11. Packing**
- 11.1 The Goods shall be supplied in the minimum number of pieces consistent with the requirements for safe transportation, installation, handling and storage. All Goods shall be packed in robust packages and be provided with adequate lifting and handling facilities. The packages shall have secure labels stating the Purchase Order number. Each package shall be provided with an inventory listing its contents.
- 11.2 Exposed surfaces of the Goods shall be protected with an easily removable corrosion preventative. Particular attention shall be given to prevention of condensation forming within sealed packages. All open orifices on equipment, such as pipework, pumps, valves etc., shall be protected against the weather and the ingress of foreign bodies. The methods and materials used in packaging shall ensure freedom from damage or corrosion and be ocean worthy or airworthy as applicable and suitable for shipment to Australia.
- 12. Termination**
- 12.1 If the Vendor defaults in the due observance or performance of any or all of its obligations under this Agreement and does not rectify such default within 14 days of being requested to do so, or if a liquidator, administrator, receiver and manager, controller or other like officer is appointed over all or some of the assets of the Vendor or there is a change in ownership of the Vendor, then Coogee Titanium may, at its option and without prejudice to any other rights Coogee Titanium may have against the Vendor, by notice in writing terminate this Agreement and retain or enforce any security given. Any monetary security so retained or the proceeds of enforcement of any security may be applied by Coogee Titanium against any loss and damage incurred by Coogee Titanium arising from such termination.
- 12.2 Coogee Titanium may at any time without cause, vary, cease or suspend the Work or terminate the Agreement by giving notice in writing to the Vendor. On receipt of a notice from Coogee Titanium, the Vendor shall immediately, vary, cease or suspend Work in accordance with and to the extent specified in the notice. If such notice is given, Coogee Titanium shall only be liable for the amount of any direct cost and normal overheads falling within the scope of the Purchase Order, as have accrued to the date of receipt of the notice from Coogee Titanium up to a maximum of the amounts that would otherwise have been payable under the Purchase Order.
- 13. General**
- 13.1 For the purpose of service of any document or notice in connection with the Purchase Order it shall be sufficient for either Coogee Titanium or the Vendor to forward such document or notice by ordinary mail transmission, telegram or facsimile to the address of the other party shown herein. The parties agree that they will conduct business electronically in relation to the purchase of Product and Services.
- 13.2 If the whole or any part of these Conditions is or becomes or is held to be illegal invalid or unenforceable, then the whole and each part of the clauses of these Conditions shall (to the extent necessary to avoid such illegality invalidity or unenforceability) be interpreted read down or severed without affecting the operation of the remaining clauses.
- 13.3 The Vendor shall not, without the prior written consent of Coogee Titanium, assign, transfer or subcontract the performance of any or all of the Vendor's obligations or benefits under this Agreement to a third party.
- 13.4 This Agreement may only be amended in writing signed by both parties.
- 13.5 This Agreement shall be construed and operate in conformity with the laws of the State of Victoria, Australia and the parties irrevocably submit to the jurisdiction of the courts of that state and the appeal courts from them.
- 13.6 The Purchase Order may include additional or special terms and conditions which are expressed to override, exclude or modify these Conditions. Where such terms are included they will take precedence in the following order:
- (a) these Conditions;
- (b) the terms of the Purchase Order;
- (c) any referenced document, plan or specification whether attached are incorporated by reference.