

HIGGINS COATINGS PURCHASE ORDER TERMS & CONDITIONS

1. Application of Terms

- (a) These Terms and Conditions apply to ordered goods and/or services (**the Deliverables**) purchased by Higgins Coatings Pty Ltd ABN 50 005 632 708 (**the Purchaser**) from a **Supplier**.
- (b) Unless otherwise agreed in writing, these Terms & Conditions override any previous agreements, arrangements, representations or communications, and are accepted by the Supplier when fulfilling the order.
- (c) Where these Terms & Conditions are inconsistent with any **Special Requirements** set out on page 1, the latter shall take precedence.
- (d) The **Specifications** are mandatory performance requirements required by the Purchaser.

2. Price

- (a) Unless otherwise agreed in writing, the total price for the Deliverables is the Total Price set out in the order.
- (b) The Total Price is fixed and is inclusive of all costs for supplying the Deliverables unless the parties have agreed to unit costs or as stated otherwise.

3. Payment

- (a) Payment Terms are 30 days from the end of the month following submission of a valid Tax Invoice (quoting the order number) and providing the Deliverables have been supplied.
- (b) If the Purchaser disputes the amount of a valid Tax Invoice, it will pay the undisputed amount in accordance with clause 3(a) and the parties must deal with the disputed amount in accordance with clause 20.
- (c) The Supplier may be entitled to progress payments in respect to the supply of the Deliverables, but only by written agreement between the parties.

4. Supply of Deliverables

- (a) The Purchaser gives no representations for the supply of a minimum volume of Deliverables.
- (b) The Supplier must supply the Deliverables:
 - (i) With due care, skill and diligence reasonably expected of a competent provider of similar Deliverables;
 - (ii) In compliance with best industry practice and the reasonable directions of the Purchaser; and
 - (iii) In accordance with the manufacturer's guidelines and specifications.

5. Variations

The Purchaser may vary the terms of the order, by providing written notice to the Supplier. If the Supplier believes the Variation will impact the Delivery Details or Price, the Supplier will advise the Purchaser and await further written approval before proceeding with the Variation.

6. Delivery

- (a) The Supplier must supply the Deliverables in accordance with the Delivery Details.
- (b) The Purchaser has right of refusal for any goods or services not delivered in accordance with any Delivery Details or clause 4.
- (c) Any goods must be suitably packed to avoid damage.

7. Communication

The parties agree to communicate any issues arising in relation to performance under the order(s), providing reasonable time to remedy.

8. Occupational Health and Safety and Environment

- (a) The Supplier must ensure that the Supplier's representatives attending or working on any Purchaser or Purchaser client site will:
 - (i) Complete an induction prior to commencing any works onsite;
 - (ii) Prepare a risk assessment document for the scheduled works prior to commencement, if the works are outside of Supplier accepted and documented work processes;
 - (iii) Comply with all applicable Laws relating to Occupational Health and Safety or Workplace Health and Safety as well as any site security, safety, health and environmental requirements; and
 - (iv) Wear the required Personal Protective Equipment, commensurate with the level of risk on site.
- (b) The Supplier must ensure that all plant and equipment on site is properly maintained and serviced and complies with all relevant laws.

9. Purchaser or Third-Party Property

- (a) Any plant, equipment, or other property provided by the Purchaser or a Third-Party to the Supplier remains the property of the Purchaser or the Third-Party.
- (b) The Supplier must use any such Property efficiently, without waste, and in accordance with the manufacturer's or hirer's specifications or guidelines for use. The Supplier indemnifies the Purchaser against any claims arising from improper use.
- (c) The Supplier agrees not to allow any unauthorised person or entity to use, borrow, access or operate any plant or equipment provided by the Purchaser or its assigns, and indemnifies Higgins against any claims arising from such unauthorised use.

10. Site Conditions

- (a) The Supplier must undertake due diligence on the expected and possible physical and weather conditions at the Purchaser or Purchaser client site that could affect performance and accepts responsibility for unforeseen site conditions.
- (b) Conditions that differ substantially from those reasonably expected by a competent and prudent supplier, may entitle the Supplier to seek a Variation under clause 5. Approval or otherwise is completely at the Purchaser's discretion.

11. Title and Risk

- (a) Title in any Deliverables passes to the Purchaser on delivery.
- (b) Delivery or payment does not infer quality acceptance of the Deliverables.
- (c) The Supplier reserves the right to inspect and test, where practicable, goods and services whilst in the course of being produced, installed or rendered including at the premises of the Supplier.

12. Warranty

- (a) The Supplier warrants that the Deliverables:

- (i) Meet all legislative requirements;
 - (ii) Comply with any mandatory Regulations or Australian Standards;
 - (iii) Do not infringe the Intellectual Property rights of any third person;
 - (iv) Are new (unless otherwise specified);
 - (v) Are free of any encumbrances, and;
 - (vi) Comply with any Specifications or Special Requirements set out in the order.
- (b) Carry all consumer guarantees, terms and conditions that the Supplier would be entitled to if it were a "consumer" within the meaning of the *Competition and Consumer Act 2010* (C'th).
 - (c) Confer the benefits of any third-party manufacturer warranty to the Purchaser.

13. Defective Deliverables

- (a) If at any time during the period of a manufacturer's warranty, or otherwise 12 months after delivery, performance or installation, the Purchaser becomes aware of any **Defect** (including but not limited to defective design, performance or inferior quality or workmanship) in the Deliverables, the Purchaser may, without prejudice to any other right or remedy available, reject the Deliverables and provide notice for the Supplier to:
 - (i) Refund any payments made by the Purchaser in respect of any Defective Deliverables including the costs of returning goods to the Supplier;
 - (ii) Re-perform, repair or make good any Defective Deliverables (and in which case this clause 13 will re-apply to such items from the date of repair or replacement); or
 - (iii) Reimburse, or agree to set-off in the Purchaser's favour, any expenses it incurs in performing, making good or re-acquiring (including by others) any Defective Deliverables on behalf of the Supplier.

14. Insurance

- (a) The Supplier must carry at all times during the term of the order all insurance required by law.
- (b) The Supplier will provide any specific insurance coverage set out in the Special Requirements of the order.
- (c) If requested by the Purchaser, the Supplier must immediately provide certificates of currency for its insurance policies.
- (d) Unless otherwise agreed, the Supplier must have Public Liability insurance for \$20 million.

15. Indemnity

- (a) The Supplier is liable for and must indemnify the Purchaser and its representatives against any loss or damages suffered or incurred by the Purchaser in connection with:
 - (i) The Deliverables
 - (ii) A breach of these Terms and Conditions;
 - (iii) Damage to property;
 - (iv) The death or injury of any person; or
 - (v) Any clean-up costs directly or indirectly caused by the Supplier.

16. Subcontracting and assignment

- (a) The Supplier must not assign, transfer or subcontract the whole or part of an order except with the prior written consent of the Purchaser.
- (b) Where the Purchaser consents to a subcontracting arrangement, the Supplier:
 - (i) Must ensure any subcontractor complies with the Supplier's obligations under this agreement; and
 - (ii) Will remain liable to the Purchaser for any act or omission, default or negligence of any subcontractor as if it were the act, omission, default or negligence of the Supplier.

17. Intellectual Property

- (a) The parties agree that any design, materials, documents and methods of working developed for the purpose of this agreement are Intellectual Property rights belonging to the creator unless otherwise agreed in writing.
- (b) Each party warrants that any other designs, materials, documents and methods of working provided by one party to the other party, shall not infringe any other Intellectual Property right.
- (c) Each party shall indemnify the other party against such respective infringements outlined at clause 17(b).

18. Termination

- (a) The Purchaser may terminate an order at any time by written notice.
- (b) On termination or expiry of an order:
 - (i) The accrued rights and remedies of each party are not affected;
 - (ii) The Supplier must stop working on any incomplete or undelivered Deliverables;
 - (iii) If requested by the Purchaser, deliver to it all completed Deliverables which conform in quality to the order; and
 - (iv) The Supplier's sole and exclusive right in respect of the termination is limited to the payment of the price for any Deliverables which have been completed and delivered in accordance with the order.

19. Delay

- (a) Where an event outside the control of either party prevents or delays performance, the order may be suspended for as long as the delay continues.
- (b) The party becoming aware of the delay must notify the other party in writing as soon as possible, providing an estimate of the likely delay. All steps to resolve or abate the delay must be taken.
- (c) The Purchaser reserves the right to terminate an order for prolonged delay.

20. Dispute Resolution

- (a) In event of a dispute, the parties will attempt to negotiate in good faith within 14 days of receiving a written notice of dispute. Failing a resolution, the dispute must be referred to the party's respective management who will seek to immediately resolve the dispute. If the dispute cannot be resolved, either party may request the appointment of a mediator.
- (b) If the dispute is not resolved at mediation, then either party may commence legal proceedings.