

# STANDARD TERMS AND CONDITIONS OF PURCHASE



## 1. DEFINITIONS

The following definitions apply unless otherwise stated:

"Good(s)"	Goods(s) set out in our order.
"Service(s)"	Service(s) set out in our order.
"Product(s)"	Good(s) and/or service(s) and includes any deliverable resulting from a service.
"CMAP", "Us", "We", "Our"	The legal entity called <b>Clark Masts Asia Pacific Pty Ltd, ACN 81 126 241 469</b>
"Supplier", "You", "Your"	Person or Company supplying the Product(s) set out in our order.
"Order"	Any purchase order, change order, subcontract or contract supplied by CMAP for the Product(s).

- 1.1 Every order we issue is an offer to acquire products from you subject to these terms and conditions ('standard terms') and any written special conditions that we include with our order. Where you accept our order, there is a contract on this basis. Any terms and conditions in our quote, offer document, order acceptance or any other document you supply are excluded.
- 1.2 The singular includes the plural and vice versa.
- 1.3 A person includes a firm, body corporate, unincorporated association or authority and reference to a person includes their executors, administrators, successors, substitutes and assigns.
- 1.4 A reference to '\$' is a reference to Australian currency.
- 1.5 'Including' and similar expressions are not words of limitation.
- 1.6 Headings are for convenience only.
- 1.7 'Privacy Laws' means the Privacy Act 1988 (Cth), as amended, and all associated legislation and regulations.

## 2. DELIVERY

- 2.1 You must supply products as, where and when specified in our order or otherwise directed by us (at any time) in writing. You must keep us informed of any delays or other matter which may affect the delivery of products.

## 3. CANCELLATIONS

- 3.1 We may cancel an order by written notice to you:
  - (a) at any time prior to supply; or
  - (b) after supply, if products are not in accordance with our order (including where wrong quantities are delivered) or if you otherwise breach this contract.

## 4. QUALITY

- 4.1 You must, and all products you supply must, strictly comply with all applicable laws, regulations, codes and Australian Standards, and with our order (including any performance criteria).
- 4.2 Goods must be new, fit for the purpose for which they are acquired, free from damage and defects in workmanship and materials and of merchantable quality. Services must be performed to a high standard of professional care and skill by appropriately trained and qualified personnel.
- 4.3 Without limiting clause 4.2, you must assign to us the benefit of any warranty or guarantee given by the manufacturer in respect of goods.
- 4.4 We may reject products which do not comply with our order or these standard terms, even if we have previously inspected and / or accepted them. Where products are rejected, you must, at our option within 5 days:
  - (a) replace, repair or re-supply the products at your expense; or
  - (b) refund to us any amount we paid for the rejected products.
- 4.5 A Material Safety Data Sheet (MSDS) must be supplied where relevant. MSDS must be provided in electronic copy before despatch or a copy must accompany the goods.

## 5. PRICE AND PAYMENT

- 5.1 The price for products is the price stated in our order.
- 5.2 Unless the order expressly states otherwise, it includes: (a) any applicable GST; and (b) all packing, insurance and delivery charges and all taxes and duties.
- 5.3 You may only invoice us after all products have been delivered or completed to our satisfaction. Your invoice must:
  - (a) be correctly addressed;
  - (b) identify our order number;
  - (c) be a valid tax invoice for GST purposes; and
  - (d) where we request it, be accompanied by documentation substantiating the amount claimed.
- 5.4 We will pay all correctly rendered and undisputed invoices by electronic funds transfer or cheque within:
  - (a) 30 days of the date of invoice; or
  - (b) the trading terms are offered by the supplier if longer than 30 days of the date of invoice.
- 5.5 If we dispute an invoice (a) payment is suspended until the dispute is resolved and (b) you must give us any information or document we request in relation to the invoice or the dispute.
- 5.6 As well as any of our other rights, we may deduct from your invoice any amount you owe us (including under any indemnity).

## 6. TITLE AND RISK

- 6.1 Title to and risk in products passes to us on delivery.
- 6.2 You warrant that:
  - (a) you have complete ownership of the products free of any encumbrances;
  - (b) we will receive clear and complete title to the products free from any encumbrances; and
  - (c) no claim of infringement of moral rights will be brought against us by your employees or agents.
- 6.3 Any intellectual property rights created from your performance of this contract vest in and are assigned to us on creation.

## 7. OUR MATERIALS

- 7.1 Any tools, patterns, designs, drawings, dies or other material used in supplying or manufacturing products and that is paid for or supplied by us ('our materials') is our property.
- 7.2 While our materials are in your possession, you:
  - (a) hold them solely as our bailee;
  - (b) must store them securely and maintain them in good repair;

- (c) must use them only for the purpose of performing this contract; and
- (d) must return them to us on demand.

#### **8. CONFIDENTIALITY**

- 8.1 You must keep our confidential information (which includes information about our members and employees) confidential and not directly or indirectly disclose, use, record, memorise, reverse engineer or copy it for any purpose other than to perform this contract, without our prior written approval.

#### **9. PRIVACY**

- 9.1 You must (a) comply, and must ensure that your employees comply, with all requirements set out in Privacy Laws; and (b) handle the collection, disclosure, storage and use of personal information in a manner consistent with the National Privacy Principles in the Privacy Laws.

#### **10. INDEMNITY AND INSURANCE**

- 10.1 You indemnify us, our officers, employees, agents and customers against all loss, damage, claim, expense or liability incurred in connection with:
  - (a) your performance or breach of this contract;
  - (b) any products you supply;
  - (c) a claim by a third party that the products infringe their intellectual property rights; and
  - (d) any negligent or wilfully wrong act or omission by you, your employees, agents and contractors.
- 10.2 You must effect and maintain appropriate insurance policies, taking into account the products you supply. You must provide us with proof of your insurance upon request.

#### **11. SUBCONTRACTING**

- 11.1 You must not subcontract the whole or any part of your obligations under this contract without our prior written approval, which we may grant or withhold at our sole discretion. You will remain principally liable for the performance of this contract and the acts and omissions of any subcontractor.

#### **12. TERMINATION**

- 12.1 As well as our other rights, we may terminate this contract where:
  - (a) you fail to supply products by the date required in our order;
  - (b) you breach this contract; or
  - (c) you become or threaten to become insolvent or bankrupt or enter into a compromise or arrangement with creditors or any form of external administration.
- 12.2 This contract may only be varied with our written agreement.
- 12.3 You may not assign this contract without our prior written consent which we may grant or withhold at our sole discretion.
- 12.4 These standard terms plus our order constitute the entire agreement between us and you in relation to its subject matter.
- 12.5 The parties are independent contractors. No relationship of employment, agency, partnership or joint venture is created by this contract.
- 12.6 Our delay or failure to exercise a right under this contract is not a waiver of that right or any other rights. Our consent to a breach of this contract is not a consent to any subsequent breach.
- 12.7 If a provision of these standard terms is unenforceable for any reason, it shall be read down to the point of severance. These standard terms must not be construed to our disadvantage merely because we prepared them.
- 12.8 This contract is governed by the law of Victoria, Australia. You submit to the jurisdiction of the courts of Victoria and waive any right to claim that those courts are inconvenient forums.