

## K&amp;S CORPORATION LIMITED

**PURCHASING ~ TERMS AND CONDITIONS**

ABN 67 007 561 837 ACN 007 561 837  
(Incorporated in South Australia)

**1. Application**

These terms of purchase apply to purchase orders issued by K&S, other than pursuant to a written contract between K&S and the Supplier, to the exclusion of all other terms and conditions.

**2. Interpretation**

The following words have the following meanings:

- a. **K&S:** means K&S Corporation Limited or any of its wholly owned subsidiaries.
- b. **Supplier:** means the person, firm or corporation from whom K&S has ordered the Goods and/or Services under a purchase order.
- c. **Goods and/or Services:** means the goods and/or services ordered by K&S from the Supplier pursuant to a purchase order.
- d. **Purchase Terms:** means the terms on which K&S purchases the Supplier's Goods and/or Services and comprises these terms of purchase and any other terms written on or annexed to a K&S purchase order.

**3. Goods and Services****3.1 Ordering**

- a. K&S may from time to time place purchase orders with the Supplier for Goods and/or Services.
- b. K&S may elect to cancel a purchase order with respect to any undelivered Goods (other than those in transit at the time of cancellation) and/or unperformed Services at K&S' convenience.
- c. To the extent that cancellation under clause 3.1(b) covers non-standard Goods, or materials for the performance of Services, which have been manufactured or purchased at K&S' request, the Supplier shall, upon receipt of notice of cancellation, immediately cease manufacture and supply in accordance with the notice.

K&S shall pay the Supplier for the reasonable cost of such Goods and materials (after taking into account any amount which the Supplier could receive from their reuse or resale) and shall not be liable for any other loss, costs or damages sustained by the Supplier in relation to such cancellation.

### 3.2 Warranty

The Supplier warrants that the Goods and/or Services shall comply with any specifications provided by K&S and all relevant laws and standards and do not infringe any other party's rights and that:

- a. the Goods shall be new, of merchantable quality, free from defects in materials and workmanship and fit for the purpose for which they are sold;
- b. the Services will be performed in a skilful and workmanlike manner and with all due care and skill expected of an experienced and professional provider of the Services.

The Supplier shall indemnify K&S against any cost, loss or damage sustained by K&S as a result of a breach of this warranty. In addition, K&S may reject all non-conforming Goods and/or Services.

### 3.3 Delivery

On written direction by K&S to the Supplier, the Supplier must deliver the Goods and/or Services at the Supplier's cost to the location(s) nominated by K&S, by the date required by K&S.

### 3.4 Title and Risk

The risk in any Goods passes to K&S upon delivery. The title in any Goods passes to K&S upon the earlier of delivery and payment for the Goods.

### 3.5 PPSR

The Supplier must not register any Security Interest against K&S on the PPSR, without the prior written consent of K&S which may be given or refused in its absolute discretion.

### 3.6 Defective Goods and/or Services

If the Goods and/or Services are defective in any way in K&S' reasonable opinion, then, at K&S's absolute discretion:

- a. the Supplier must immediately replace or repair the Goods and/or re-perform the Services at the Supplier's cost; or
- b. K&S may return the Goods in part or in whole to the Supplier. The Supplier must fully refund any amounts paid for the part of the Goods that K&S does not retain; or
- c. K&S may decline to pay for the Services.

### 3.7 Non-exclusive and No Guaranteed Volumes

Unless specifically included in a purchase order, the engagement of the Supplier is on a non-exclusive basis and K&S does not guarantee any minimum revenue or volumes under the purchase terms.

### 3.8 Incidental Services

The Supplier must provide (without additional charge) any incidental or related services not specifically described in a purchase order which are necessary for the proper performance, use or enjoyment of those Services.

## 4. Compliance with Laws

The Supplier must comply with all laws (including, without limitation, WHS&E laws), regulations, codes of practice, and Australian Standards having application to the supply of the Goods and/or Services.

## 5. Prices, Invoices and Payments

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### 5.1 Prices

- a. The prices set out in any purchase order are all inclusive and the Supplier is not entitled to recover any fee, charge or expense in addition to the prices for the supply of Goods, the performance of the Services, the provision of any benefit or the performance of any acts, even if required to do so under this Purchase terms, unless specifically provided for in a purchase order.
- b. Unless specifically provided for in a purchase order, the prices payable for Goods and/or Services are fixed.

### 5.2 Invoice Timing

The Supplier will issue an invoice for the Goods or Services:

- a. in respect of Goods, on acceptance by K&S of all Goods under a purchase order; and
- b. in respect of Services, on completion of all Services, unless otherwise agreed in writing by K&S.

### 5.3 Payment of Invoices

K&S is not required to pay any amount to the Supplier unless it has received a correctly rendered tax invoice (within the meaning of the A New Tax System (Goods and Services Tax) Act (Cth)) for that amount. K&S must pay each correctly rendered invoice within 62 days of the end of the month in which the Goods and/or Services were supplied.

### 5.4 Correctly Rendered Invoice

For the purposes of these purchase terms, an invoice is not correctly rendered unless:

- a. the invoice is a Tax Invoice;
- b. the amount claimed in the invoice is correctly calculated under the purchase terms; and
- c. the invoice includes the relevant K&S purchase order number (if applicable) and is set out in a manner that identifies the Goods and/or Services which the invoice covers and itemises each amount claimed, to a level of detail satisfactory to K&S acting reasonably.

### 5.5 Disputed Invoices

Where K&S considers that an invoice is not correctly rendered K&S may issue to the Supplier a notice setting out the reasons and identifying any amounts which are in dispute. The Supplier must then cancel that invoice and reissue the invoice for the undisputed amount.

### 5.6 Set Off Rights

Without prejudicing any other rights available to K&S, K&S is entitled to set off against any amount due for payment by it to the Supplier any amount payable by the Supplier to K&S.

### 5.7 Payment does not affect other Rights or Obligations

Payment of money under this clause is not evidence that K&S has accepted any Goods or Services under the purchase terms or that the Supplier has carried out its obligations under the purchase terms.

## 6. Taxes

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With the exception of GST, the Supplier is responsible for all taxes arising from or relating to the purchase terms and must pay taxes which are imposed on the Supplier arising from or relating to the purchase terms, directly to the relevant Government Agency, except for any income tax or capital gains tax payable by K&S.

## 7. Confidential Information and Privacy

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### 7.1 Use of Confidential Information

The Supplier may only use the confidential information of K&S for the purposes of supply the Goods and/or Services under the Purchase terms.

### 7.2 Disclosure of Confidential Information

The Supplier may not disclose Confidential Information of K&S to any person except:

- a. representatives, legal advisers, auditors and other consultants of the Supplier who require it for the purposes of the purchase terms;
- b. representatives, legal advisers, auditors and other consultants of the Supplier who require it for the purposes of the purchase terms;
- c. with the prior written consent of K&S;
- d. if the Supplier reasonably believes it is required to do so by law or a stock exchange; or
- e. if the Supplier is required to do so in connection with legal proceedings relating to the purchase terms.

### 7.3 Return or Destruction of Confidential Information

Upon request by K&S, the Supplier must immediately deliver to the K&S or destroy (at the K&S' option) all documents or other materials containing or referring to the K&S confidential information which are:

- a. in the Supplier's possession, power or control; or
- b. in the possession, power or control of persons who have received Confidential Information from the Supplier.

### 7.4 Privacy

The Supplier must comply with:

- a. the Privacy Act 1988 (Cwth) and all other applicable privacy laws and such other data protection laws as may be in force from time to time; and
- b. any privacy code or policy which has been adopted by K&S and provided or made available to the Supplier

## 8. Intellectual Property Warranty

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### 8.1 IP Warranty

The Supplier warrants that:

- a. it will not infringe the intellectual property rights of any person in providing the Services or otherwise performing the purchase terms; and
- b. each Good, and their use, do not infringe and will not infringe, the intellectual property rights of any person.

### 8.2 Indemnity

The Supplier must indemnify K&S against all costs (including legal costs on a full indemnity basis), losses, damages and expenses that K&S may sustain or incur as a result of a breach by the Supplier of the warranties given in clause 8.1.

## 9. Sub-Contracting

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The Supplier must not sub-contract any of its obligations under the purchase terms without the prior written approval of K&S. K&S may give or withhold its approval in its absolute discretion and may impose conditions on its approval.

The Supplier is responsible for all acts and omissions of Subcontractors as if they were those of the Supplier and the Supplier indemnifies K&S against all costs, expenses and liabilities incurred by K&S in connection with the acts or omissions of any Subcontractors.

## 10. Insurance

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The Supplier must obtain and maintain in full force and effect at its expense, at all times while providing Goods and/or Services the following policies of insurance:

- a. public and products liability insurance cover in the sum of \$20,000,000 (or such higher sum as K&S requires from time to time) for any one occurrence;
- b. motor vehicle insurance for third party property damage in the sum of \$5,000,000 for any one occurrence, and compulsory third party insurance under applicable legislation if the provision of the Goods and/or Services involves the use of mechanically propelled vehicles;
- c. workers' compensation insurance under applicable legislation; and
- d. where required by K&S, professional indemnity insurance cover of \$5,000,000 (or such higher sum as K&S requires from time to time) for any one occurrence, and will maintain such insurance for a period of at least 7 years after the expiry or termination of this Purchase Terms.

and will provide evidence of the currency of such insurances upon request by K&S.

## 11. Indemnity

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The Supplier indemnifies K&S against all liability, loss, damage, costs and expenses incurred by K&S to the extent resulting from or arising out of or in connection with:

- a. any injury to or death of, a natural person and any loss of or damage to a third party's property to the extent caused or contributed to by the Supplier or its representatives;
- b. any breach of the purchase terms by the Supplier or its representatives;
- c. any loss of or damage to the property of K&S to the extent caused or contributed to by the Supplier or its representatives; or
- d. any willful, unlawful or negligent act or omission of the Supplier or its representatives.

## 12. Termination

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A party may terminate the purchase terms and/or a purchase order immediately by notice to the other party if:

- a. the other party commits a breach of the purchase terms and the breach is incapable of remedy;
- b. the other party commits a breach of the purchase terms that is capable of remedy and does not rectify that breach within seven days of receiving written notice of the breach;
- c. the Supplier is insolvent.

## 13. Ethical Supply Chains and Corruption

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- 13.1 It is a condition of the purchase terms that neither party attempt to engage in nor engages in any form of bribery, facilitation payment, anti-competitive behaviour or other similarly unethical conduct. Each party must ensure that its employees, agents and representatives comply with this condition. If a party becomes aware of any contravention or attempted contravention of this condition, it must immediately inform the other party and take disciplinary action against the individuals involved.
- 13.2 Both parties must at all times comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and improper payments including but not limited to the Criminal Code Act 1995 (Cth).
- 13.3 Each party represents, warrants and undertakes:
- a. that no form of Modern Slavery is used in their business or by its directors, officers, employees, agents, representatives, contractors or subcontractors;
  - b. to comply with all applicable employment and work health and safety laws;
  - c. to comply with all applicable statutory requirements relating to Modern Slavery;
  - d. to comply with applicable Modern Slavery reporting requirements including but not limited to the Modern Slavery Act 2018 (NSW), the Modern Slavery Act 2015 (UK) and legislation passed as a result of, or substantially similar to, the Modern Slavery Bill 2018 (Cth); and
  - e. to notify the other party promptly upon becoming aware of any incident, complaint or allegation that the party, or any entity in its supply chain, has engaged in Modern Slavery.

- 13.4 For the purposes of clause 13.3, 'Modern Slavery' means any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, human trafficking, and other slavery-like exploitation as prohibited or defined as a modern slavery offence under all applicable anti-slavery and human trafficking laws, statutes and codes from time to time in force including, but not limited to the *Criminal Code Act 1995* (Cth) (specifically Schedule 1 Divisions 270 and 271), the *Modern Slavery Act 2018* (NSW) (specifically section 5(1) and Schedule 2), the *Modern Slavery Act 2015* (UK) (specifically sections 1, 2 and 4), and legislation passed as a result of, or substantially similar to, the *Modern Slavery Bill 2018* (Cth). For the avoidance of doubt, Modern Slavery includes any conditions or practices similar to those prohibited under those laws, statutes, regulations and codes.

## 14. General

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### 14.1 Assignment

The Supplier may not assign or otherwise deal with its rights under the purchase terms or allow any interest in them to arise or be varied in each case, without the consent of K&S which consent must not be unreasonably withheld or delayed.

### 14.2 Variation and Waiver

A provision of the purchase terms or a purchase order or a right created hereunder, may not be waived or varied except in writing, signed by the part or parties to be bound.

### 14.3 Further Steps

Each party agrees, at its own expense, to do anything the other party asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- a. to bind the party and any other person intended to be bound under the purchase terms; and
- b. to show whether the party is complying with the purchase terms.

### 14.4 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, the purchase terms or any part of it.

### 14.5 Governing Law

The purchase terms are governed by the law in force in the State of Victoria. Each party submits to the non-exclusive jurisdiction of the courts of the State of Victoria.