

TERMS AND CONDITIONS OF PURCHASE

1. Definitions

Unless otherwise required by the context of this Purchase Order, the following definitions shall apply:-

- 1.1 "Supplier" means the person, firm, corporation, or statutory authority named on the face of the Order.
 - 1.2 "Purchaser" means RINNAI AUSTRALIA PTY LTD (A.B.N. 74 005 138 769) 10-11 Walker St Braeside Vic. 3195.
 - 1.3 "Goods/Services" means goods and/or services referred to in the Order and includes all goods, chattels, plant equipment, machinery, consumables, stores and the like, and services supplied or performed by the supplier for the purposes of complying with the requirements of the Order.
 - 1.4 "Order" means this *Purchase Order* which shall incorporate these conditions.
 - 1.5 "Nominated Delivery Point" means 10-11 Walker St Braeside Vic 3195 or such other delivery point nominated in the Order.
 - 1.6 "Contract" means the contract between the Purchaser and the Supplier formed by the acceptance of the Order in accordance with these conditions.
 - 1.7 Confidential Information
 - (a) means data, instructions, plans, specifications, formulae, technology, computer software, designs, drawings, process descriptions, reports, developments, results, technical advice and trade secrets whether in documentary, visual, oral, machine readable or other form and samples of equipment and other tangible items owned, used or developed by the Purchaser, or any company related to the Purchaser in the course of its business or any information which the Purchaser indicates to be confidential; and
 - (b) includes all information and materials in any form, in the possession or under the control of the Supplier (whether created by the Purchaser or the Supplier or otherwise), related to the supply of the Goods/Services to the Purchaser.
- Words importing the singular include the plural and vice versa, words incorporating one gender shall include all other genders.

2. Acceptance of Order

- 2.1
 - (a) The Order represents an offer from the Purchaser to be accepted by the Supplier.
 - (b) If the Order specifies that acceptance must be communicated in writing to the Purchaser, acceptance must be so communicated within 14 days of the date of the Order.
 - (c) If the Order does not specify that acceptance must be communicated in writing to the Purchaser, acceptance is deemed upon supply of the Goods/Services in accordance with the terms of the Order.
- 2.2 The acceptance of this Order by the supplier includes acceptance of those terms and conditions as the sole basis of the sale to the exclusion of any terms and conditions of sale appearing on any document of the supplier. Modification of those terms and conditions expressed in any document of the Supplier will not apply to the Order unless expressly accepted in writing by the Purchaser.
- 2.3 No changes to this Order will be made without the written agreement of the Purchaser. Any variations to the Order proposed by the Supplier must be communicated in writing to the Purchaser before the delivery date specified on the Order. Such a communication will be deemed to be a non-acceptance by the Supplier of the Order.
- 2.4 The Supplier must not supply the Goods/Services after giving notice of proposed variations to the Order unless the Purchaser reissues a revised Purchase Order which is accepted by the Supplier by written notice to the Purchaser.
- 2.5 In the absence of an Order or revised Purchase Order accepted in accordance with this clause, the Purchaser will not be bound to accept any Goods/Services supplied or to reimburse the Supplier for any costs it has incurred.

3. Validity of Order

The Order is valid if signed on behalf of the Purchaser by an authorised signatory.

4. Price

- 4.1 The price(s) stated in the Order shall remain fixed unless otherwise agreed by the Purchaser in writing.
- 4.2 The price of any goods referred to in the Order as supplied from a Country other than Australia may be varied due to alterations in exchange rates provided that the Supplier notifies the Purchaser of the proposed variation prior to despatch of the goods, makes prompt payment and provides to the Purchaser written evidence of the payment date, amount and rate of exchange applicable to verify the proposed variation.

5. Quantity

The quantity of goods delivered pursuant to the Order shall not be greater or less than that specified therein unless otherwise agreed in writing by the Purchaser.

6. Delivery

Unless the Purchaser agrees otherwise in writing, the delivery date specified in the Order is the date for delivery of the Goods to the Nominated Delivery Point or the date for provision of the Services ordered.

7. Packing

- 7.1 All goods supplied pursuant to the Order shall be packed so as to ensure safe delivery to the Nominated Delivery Point.
- 7.2 The Supplier shall ensure that all dunnage, case timber and wooden pallets are treated for permanent protection from pests, in accordance with any legal requirements in the country of origin of the goods and those of Australian Department of Health and Australian Customs. In all cases, the original certificate(s) of compliance shall be forwarded with shipping documents.
- 7.3 The Supplier shall ensure that all dangerous or hazardous goods are packed and labelled in accordance with any legal requirements in the country of origin of the goods and those applicable in Australia. In all cases, the original certificate(s) of compliance shall be forwarded with shipping documents.
- 7.4 All packing slips and delivery documents must state the Purchaser's Order number relevant to the shipment.
- 7.5 The Purchaser shall not be liable for any packing charges unless stated in the Order.

8. Confidentiality

- 8.1 The Supplier covenants and agrees with the Purchaser that it will at all times keep the confidential information absolutely secret and confidential and that it will not directly or indirectly disclose it to any person at any time.
- 8.2 The Supplier shall ensure that any of its employees, agents and contractors who have access to the confidential information enter into a confidentiality agreement with the Supplier if required by the Purchaser.
- 8.3 The Supplier will not copy, reproduce, make records of or take extracts from the confidential information.

9. Tooling, Drawings, Etc.

- 9.1 Unless otherwise specified in this Order, the cost of tools and other items or materials required to produce the goods or provide the services shall be included in the purchase price.
- 9.2 Special dies, tools, patterns, drawings or artwork used in the manufacture of the Goods or provision of the Services, the cost of which is met by the Purchaser, will remain the Purchaser's property, will be kept in good condition and, where necessary due to normal wear and tear, repaired or replaced by the Purchaser without expense to the Supplier, and will not be used by the Supplier in the production, manufacture or design of any other articles, nor of larger quantities than those required on this Order, except with the Purchaser's prior written consent and will at the termination of this contract be returned to the Purchaser or disposed of as the Purchaser directs.
- 9.3 The items referred to in paragraph 9.2 are subject to the covenants contained in paragraph 8.

10. Freight

- 10.1 The Supplier will bear the cost of freight or delivery to the Nominated Delivery Point unless otherwise agreed by the Purchaser in writing and unless the cost thereof is detailed in the Order.
- 10.2 Where the Nominated Delivery Point is not the Purchaser's store, the Supplier shall prior to the despatch of the goods, request the Purchaser's written shipping instructions and shall comply therewith.

11. Insurance

- 11.1 Where the Goods are sold F.I.S., the Goods are at the Supplier's risk until delivered to the Nominated Delivery Point. The Supplier will at its expense insure the Goods until they are delivered to the Nominated Delivery Point. Upon receipt of the Goods, the Purchaser will at its expense insure the Goods thereafter.
- 11.2 Where the Goods are sold F.O.B., the Goods are at the Supplier's risk until they reach the Nominated F.O.B. point specified in this Order. The Supplier will at its expense insure the Goods until they reach the Nominated F.O.B. point. The Purchaser will at its expense insure the Goods thereafter.

12. Payment

Unless expressly stated in this Order, payment shall be made by the Purchaser to the Supplier 30 days after the end of the Month during which delivery of goods or performance of service(s) has been accepted by the Purchaser. The Supplier shall issue its invoice to the Purchaser within seven days of delivery of the goods or performance of the service(s). Each invoice shall state the Order number and any associated delivery docket or packing slip references. The Supplier, at the Purchaser's request, shall provide monthly statement of all transactions between the parties.

13. Standard of Acceptance

- 13.1 The Goods will be fit for the purpose for which goods of the same kind are commonly supplied and for any other purpose made known to the Supplier, be of merchantable quality and be free from defects of material and workmanship. In addition, the Goods will carry any applicable manufacturer's warranty which will pass between purchasers without liability to earlier purchasers. Further, the Goods will in all respects conform with the drawings and specifications supplied by the Purchaser to the Supplier and current at the time of delivery.
- 13.2 The Purchaser shall be entitled at any time to inspect the Supplier's manufacturing works and any of the Purchaser's good in the Supplier's store. Any such inspection will not affect the requirements contained in paragraph 13.1.
- 13.3 The Supplier shall at its expense comply with any instruction given to it by the Purchaser with respect to the manufacture and packing of the goods or any of them.
- 13.4 No goods shall be deemed accepted by the Purchaser until they have been inspected by it and found to conform with the Order and the standards referred to in clause 13.1. The Purchaser shall be entitled to return to the Supplier, at the Supplier's cost, any goods not accepted by it and the Supplier shall at the Purchaser's option and at the Supplier's expense, repair or replace the goods or issue a credit in respect thereof to the Purchaser.

14. Termination

- 14.1 If the Supplier breaches any of the terms of the Contract, the Purchaser may, without prejudice to its rights under the Contract:
 - (a) Cancel the Contract in respect of any Goods not delivered or Services not performed;
 - (b) Return any or all Goods already delivered;
- 14.2 In the eventualities described in paragraph 14.1 the Supplier will have no claim whatsoever against the Purchaser and will if the Purchaser elects to return Goods, in addition to any other liability, pay the costs of removing the Goods from the Purchaser's premises.

15. Assignment

The Supplier shall not without the prior consent of the Purchaser assign whether in whole or part the benefit of the Contract or any rights or obligations thereunder.

16. Entire Agreement

The Order when accepted by the Supplier contains the entire agreement between the Purchaser and the Supplier. The variation of any provision of the Order and the Contract shall be ineffective unless in writing and signed by the Purchaser's authorized officer.

17. Governing Law

The Contract between the Supplier and the Purchaser shall be subject to the laws of the State of Victoria and the Commonwealth of Australia. The parties submit themselves to the jurisdiction of the Courts of Victoria and the Commonwealth of Australia for all proceedings arising in connection with this Order which proceedings shall be issued in Victoria.