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## NOV PURCHASE ORDER TERMS AND CONDITIONS

### 1. Definitions

In these Terms and Conditions:

“**ACL**” means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010*;

“**Agreement**” means any agreement for the purchase of Goods or Services by the Buyer from the Seller;

“**Buyer**” means NOV Australia Pty Ltd (ACN 004 449 478);

“**Delivery Date**” means the date that the Seller is required by the Buyer to deliver the Goods or provide the Services and which is specified in the Delivery Schedule, whether it is a single date or delivery schedule as provided or amended by the Buyer;

“**Delivery Schedule**” means the delivery schedule as provided by the Buyer or agreed between the parties;

“**Goods**” means all goods ordered by the Buyer from the Seller;

“**Purchase Order**” means an official written purchase order for Goods or Services sent by the Buyer to the Seller either by post, fax, email or other electronic means;

“**Seller**” means the Seller of the Goods or Services or any person acting on behalf of or with the Seller’s authority;

“**Services**” means any services ordered by the Buyer from the Seller;

“**Specifications**” means the specifications as the Buyer may specify from time to time relating to:

- a) the design, composition, manufacture, processing, production, testing, quality, performance, packaging, packing and supply of the Goods; and/or
- b) the design, composition, testing, quality, performance and supply of the Services;

“**Terms and Conditions**” means these terms and conditions of purchase.

### 2. General:

The Purchase Order is placed on the basis of the Terms and Conditions herein contained and no variation or alteration thereof shall have any effect or bind the Buyer unless agreed in writing by the Buyer. These Terms and Conditions shall constitute the entire Agreement and supersede all prior proposals, negotiations and correspondence. The Buyer objects to the inclusion of any other or additional terms by the Seller in the Seller’s acceptance of the Purchase Order. If the Seller includes or attaches any other or additional terms in the Seller’s acceptance or purported acceptance or commences performance or tenders the Goods or Services, an Agreement results upon these Terms and Conditions as stated herein, without inclusion of any other or additional terms and/or conditions.

### 3. Subcontracts

Except for articles proprietary to the Seller and except with the prior written consent of the Buyer, the Seller shall not subcontract any of the work relating to the Goods and Services under the Purchase Order.



#### **4. Buyer Furnished Material**

Title to any material furnished by the Buyer shall remain in the Buyer at all times and the Seller shall insure the same in the form satisfactory to the Buyer against loss or damage resulting from fire, malicious mischief and vandalism.

#### **5. Title to Goods**

Title to the Goods shall pass from the Seller to the Buyer upon the delivery of the Goods to the Buyer irrespective of the timing of the Buyer's payment for the Goods.

#### **6. Pricing**

Prices quoted for the Goods and Services are set. No price increases will apply unless the Buyer has requested a change to the Purchase Order. Prices include all taxes, duties, imposts, delivery and insurance to the destination specified by the Buyer, unless shown on a separate component of the price. The price for Goods and Services will not include any interest.

#### **7. Insurance**

Before providing any Goods or Services, the Seller must have appropriate, current and adequate insurance cover, including but not limited to public and product liability insurance. The Seller will be liable for any insurance premium excess payments caused by the Seller and claimed by the Buyer against its insurance policy.

#### **8. Packing and Shipping**

All Goods shall be packed and shipped in such manner as shall be nominated by the Buyer.

#### **9. Invoices**

Invoices will be rendered with each shipment and discount privilege will apply from the later of the Delivery Date specified in the Delivery Schedule, receipt of the Goods or the date of the invoice. The Seller shall maintain for a period of three (3) years after final payment under the Purchase Order, all records and accounts pertaining to work performed or goods supplied by the Seller. The Buyer shall have the right to audit, copy and inspect or cause to have audited, copied and inspected such records and account to all reasonable times during the course of such work or supply and for the above three (3) year period for the purpose of verifying the Seller's invoices and the Seller's compliance with the Purchase Order.

#### **10. Inspection and Rejection**

All Goods ordered will be subject to final inspection and approval by the Buyer after delivery, notwithstanding prior payment, it being expressly agreed that payment shall not constitute the final acceptance. The Buyer, at its discretion may employ either 100% inspection or an approved sample plan. Goods which fail to pass such sampling plans may be 100% inspected by the Buyer and the Seller shall be charged for inspection time or at the Buyer's option, the Goods shall be returned to the Seller for sorting, correction, replacement or credit as the Buyer elects. The Buyer may reject the Goods where they contain defective material or workmanship or do not conform to the Specifications or the samples. The Buyer will not be deemed to have accepted the Goods or Services until the Buyer has completed an inspection in accordance with this clause 10.



## **11. Property and Risk**

Property in and ownership of the Goods will pass to the Buyer upon the delivery of the Goods. The risk in the Goods and Services and all insurance responsibility for theft, damage or otherwise remains with the Seller until the Goods and Services are accepted by the Buyer.

## **12. Changes**

The Buyer may at any time by notice in writing make changes in drawings, design, Specifications, quantities and Delivery Dates and any necessary equitable adjustment shall be made in the Purchase Order price and/or the Delivery Schedule.

## **13. Delivery**

Except as hereinafter specified, delivery of the Goods to the Buyer shall be strictly in accordance with the Delivery Schedule and shall be free of charge. Time is of the essence for the delivery of the Goods. If the Seller's deliveries fail to meet the Delivery Schedule with the result that Buyer elects to call upon Seller for express shipments or partial shipments, or both, the Seller will allow the resulting excess shipping charges. Parts fabricated beyond the Buyer's releases are at the Seller's risk. Invoices covering material shipped in advance of that specified in the Delivery Schedule will not be paid unless otherwise agreed until their normal maturity after the Delivery Date specified in the Delivery Schedule. Notwithstanding the provisions of the preceding paragraph, neither party shall be liable for delays or defaults due to causes beyond their control and without their fault or negligence provided, however that when the Seller has reason to believe that deliveries will not be made as scheduled, written notice setting out the cause of the anticipated delay shall be given immediately to the Buyer.

## **14. Warranties**

The Seller warrants:

- a) that it has the necessary skills, ability and capacity to provide the Goods or supply the Services;
- b) that the Buyer will have and enjoy quiet enjoyment of the Goods;
- c) that it can supply the Goods free from any encumbrance in favour of any third party;
- d) the quality of the materials and workmanship of the Goods and Services and that the Goods and Services are free from defects;
- e) the Goods and Services comply with all applicable standards and safety regulations;
- f) the conformity of the Goods and Services to any Order; and
- g) that the Buyer will be assigned and have the full benefit of any manufacturer's warranties.

In addition to the Terms and Conditions, all implied warranties and conditions set out in Part 3-2 of the ACL (as amended) will apply to the Purchase Order. The Seller warrants to provide a full cash back guarantee including reimbursement for any damages or costs associated with the failure and re-supply of the Goods and Services to the Buyer.

## **15. Patent Indemnity**

The Seller agrees that it will indemnify the Buyer and/or its agents or customers from any loss, damage or any liability which may be incurred on account of infringement patent rights with respect to the Goods or other articles or materials furnished by it and will at its own expense defend any action, suit or claim in which such infringement is alleged.



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## **16. Termination and Cancellation:**

The Buyer reserves the right to terminate the Purchase Order or any part or to cancel all or any part of the undelivered portion of the Purchase Order at any time without cause or otherwise without limiting the generality of the foregoing if the Seller does not comply with these Terms and Conditions or any other terms and conditions endorsed hereon or if the Seller becomes insolvent or commits an act of bankruptcy or if the Seller being a Company goes into liquidation or if a receiver or receiver and manager or official manager is appointed or if the Seller assigns its assets for the benefit of creditors. The Buyer's liability on termination shall be limited to payment for the delivered portion of the Purchase Order and the Seller shall be liable for any additional costs incurred by the Buyer in cancelling the portion of the Purchase Order and engaging in purchase orders with other parties.

## **17. Engineering Information**

All drawings, Specifications, documents and other information provided by the Buyer to the Seller shall be the sole property of the Buyer and shall not be utilised for other purposes by the Seller without the prior written consent of the Buyer.

## **18. Patent Rights**

Where payment is made for experimental development or research work as such, to be performed in accordance with special requirements of the Buyer, the Seller agrees to disclose and on request to assign to the Buyer each invention property right, confidential process or expertise, and trade secret resulting therefrom. All proprietary rights embodied in designs, tools, patterns, drawings, information and equipment supplied by the Buyer under the Purchase Order are reserved and their use is restricted to the work to be performed hereunder.

## **19. Seller's Indemnity**

The Seller agrees to defend, indemnify and hold harmless the Buyer and any of its agents and/or employees, against any fine, penalty, loss, cost, damage or liability, arising from its breach or non-compliance with these Terms and Conditions and the Purchase Order or due to the negligence of the Seller or any other fault of the Seller.

## **20. Taxes**

Unless otherwise provided herein, the Seller will pay and the compensation and prices set forth herein includes all sales, value added, goods and services tax, use and other taxes and all duties, fees or other assessments of whatever nature imposed by governmental authorities, applicable in connection with the Purchase Order. The Seller will provide valid tax invoices in accordance with legislation and applicable law and other appropriate documentation to the Buyer to substantiate any GST included in the Purchase Order prices.

## **21. Export Compliance**

As the Buyer is ultimately an American owned company, the Seller recognises that the provision of the Goods and Services may be subject to United States export control laws, rules and regulations and accordingly the Seller agrees to comply with any licensing and reporting requirements. In connection herewith, the Buyer may require the Seller to declare the origin of any of the Goods or technology provided hereunder.

## **22. Governing Law**

The Purchase Order shall be governed by the laws of the State in which the Purchase Order is issued.

## **23. Health and Safety**

In order to meet the requirements of the Buyer's health and safety system, all Goods, materials and Services provide to the Buyer must comply with the relevant occupational health and safety legislation regulations, codes of practice and Australian standards.