

# Modular Building Systems Pty Ltd

## Terms and Conditions for Purchase Orders

### 1. PURCHASE ORDER TERMS AND CONDITIONS

1.1 If the Supplier's terms and conditions (including as printed on consignment notes or other documents) are supplied with the goods (Goods) or services (Services) described in the purchase order issued by MBS to which these terms and conditions are attached (Purchase Order) or included in any invoice, quotation or other document, then the Supplier's terms and conditions will be of no legal effect and will not constitute part of this Purchase Order Terms and Conditions or any contract for the supply of the Goods and/or Services concerned (even if any of representative of MBS signs the Supplier's terms and conditions or attaches them to this document).

1.2 Where a Purchase Order (which includes these Purchase Order Terms and Conditions) for Goods and/or Services issued by MBS to the Supplier from time to time relates to Goods and/or Services that are the subject of a separate written contract between the Supplier and Modular Building Systems, the terms of that contract apply to the extent of any inconsistency with these Purchase Order Terms and Conditions.

### 2. SUPPLY OF GOODS OR PERFORMANCE OF SERVICES

2.1 The Supplier must supply to MBS the Goods or perform the Services in accordance with the Purchase Order.

2.2 The Supplier must, in supplying the Goods or performing the Services, not interfere with MBS activities or the activities of any other person at the place for delivery of Goods or performance of the Services specified in the Purchase Order (Delivery Address).

2.3 The Supplier must ensure that the Supplier's employees, agents and suppliers are aware of, and comply with, (a) all applicable Commonwealth, State and local government laws including applicable statutes, regulations, by-laws, orders, awards, licenses, permits and proclamations, common law and equity (Law); (b) any guidelines, rules, requirements or Delivery Address specific conditions which MBS makes available to the Supplier from time to time; and (c) all lawful directions and orders given by MBS representative or any person authorised by Law to give directions to the Supplier.

2.4 MBS may cancel the Purchase Order should the Supplier fail to meet reasonable 'in full, on time' delivery of products and or services. The Supplier will be given a minimum of 3 working days notice that delivery is below expectations to enable the Supplier to rectify the situation. Should the Supplier fail to rectify the situation to MBS's satisfaction, MBS may cancel the Purchase Order with immediate effect and without further consultation. The only Price payable to the Supplier following cancellation of the Purchase Order will be for Goods or Services delivered to MBS in accordance with the Terms prior to the cancellation.

### 3. DELIVERY AND RISK AND TITLE

3.1 The Supplier must deliver the Goods to the Delivery Address by the date specified in the Purchase Order and must ensure that the Goods are suitably packed to avoid damage in transit or in storage.

3.2 A "Delivery Docket" must accompany all deliveries with details of Goods and or Services being delivered. MBS reserves the right to request proof of delivery.

3.3 At the time of delivery, MBS shall make every possible effort to check the Goods for quantity, quality and condition. Where physical checking is not possible or practical due to packaging or bundling, MBS shall receive goods subject to checking and the "Delivery Docket" will be stamped "Received Subject to Checking".

3.4 After receipt of Goods classified as "Received Subject to Checking", MBS reserves the right to advise the Supplier of any Goods found to be incorrect or faulty in regards quantity, quality and/or condition. MBS shall advise such discrepancies in the Goods received to the supplier within 24 business hours of opening and inspecting the delivery by issuing a "Non Conformance Report" with detailed description of the discrepancy for credit or redelivery.

3.5 Delivery of goods prior to "Due Date" specified in the Purchase Order doesn't entitle the supplies to be invoiced for Goods early.

3.6 Title to the Goods passes to MBS upon payment of the Price and risk in the Goods passes to MBS when the Goods are delivered to the Delivery Address.

3.7 Performance of the Services must be commenced and completed as specified in the Purchase Order, or, if not specified, each case as soon as reasonably possible.

### 4. QUALITY

4.1 The Goods and/or Services must: (a) match the description in, or referred to in, the Purchase Order and if the Supplier submitted MBS a sample of the Goods or demonstration of the Services, then the Goods and/or Services must be of the same nature and quality as the sample of demonstration given; (b) be fit for the purpose for which goods and services of the same kind are commonly supplied, and for any other purpose MBS specifies in the Purchase Order; (c) in the case of Goods be unencumbered, of merchantable quality and free of defects and unless

the Purchase Order specifies otherwise be new; and (d) all Services must be performed in a skilful and competent manner and with due care and diligence fully compliant with industry standards and legislative requirements.

### 5. PRICE

5.1 MBS must pay the Supplier the price set out in the Purchase Order (Price) for the Goods and or Services which is inclusive of all taxes (except GST), duties and costs incurred by the Supplier in the supply of the Goods or Service (including all charges for packing, insurance and delivery of the Good).

5.2 The Supplier should clarify all price discrepancies prior to acceptance of the Purchase Order and delivery of Goods.

5.3 If GST is imposed on any supply made by the Supplier under or in connection with the Purchase Order, then the Supplier may recover from Modular Building Systems, in addition to the Price, an amount equal to the GST payable in respect of that Supply.

### 6. INVOICING

6.1 Upon delivery of the Goods and/or completion of the Services, the Supplier must provide to MBS a valid tax invoice which must include (as a minimum (a) a reference to the Purchase Order and the relevant contract if any; and (b) a detailed description of the delivered Goods and or Services performed, including the date, place and quantity of Goods delivered or Services performed, the Price of the Goods and or Services and the amount of any applicable GST.

6.2 MBS will pay correctly rendered Invoices at the agreed time according to the trading agreement that exists between MBS and the Supplier except (a) where MBS disputes the Invoice, in which case MBS may withhold payment pending resolution of the dispute; and (b) that MBS may reduce and withhold any payment due to the Supplier by any amount which the Supplier must pay MBS on any account whatsoever. This does not limit MBS right to recover those amounts in other ways.

6.3 Effective invoice date for terms of payment is the later of "Due Date" and Invoice Date.

### 7. MANUFACTURER'S WARRANTIES AND WARRANTY PERIOD

7.1 If, during the Warranty Period, any of the Goods and/or Services are found not to be in accordance with the Purchase Order or to be damaged, deficient, faulty, inadequate or incomplete (Defective), then MBS may either return the Defective Goods to the Supplier, reject the Defective Services or repair, re-perform or make good the Defective Goods and/or Services itself or by a third party.

7.2 If requested to do so by Modular Building Systems, then the Supplier must, at the Supplier's cost, repair or replace the Defective Goods or re-perform or make good the Defective Services or reimburse MBS for any expenses incurred in repairing, re-performing or making good any Defective Goods and/or Services.

7.3 The Supplier must ensure, at the Supplier's expense that MBS has the benefit of any manufacturer's warranty in respect of Goods supplied.

7.4 Neither the failure of MBS to in any way reject the Goods or Services; nor the making of any payment; nor the expiry of any warranty period will prejudice any right which MBS may have against the Supplier arising in any way in relation to failure by the Supplier to provide the Goods or perform the Services in accordance with the requirements of the Purchase Order or otherwise affect the Supplier's warranties, liabilities or obligations under any contract, at law or in equity.

### 8. INSURANCE

8.1 The Supplier must effect and maintain the insurances specified on, and otherwise comply with all of the provisions in, any document entitled "Insurance Requirements" provided to the Supplier by MBS before or at the time of the issue of the Purchase Order.

8.2 In the absence of the provision of the document referred to in clause 8.1 the Supplier must effect and maintain (and where possible have MBS interests noted on) policies of insurance covering such of public and product liability, motor vehicles, professional indemnity, property loss or damage in respect of the Supplier's plant and equipment used to manufacture the Goods or provide the Services, and for such sums insured, as a prudent supplier of goods or services of a similar kind would usually effect and maintain.

8.3 The Supplier must comply with all applicable laws relating to workers compensation.

9. **MISCELLANEOUS**
- 9.1 The Supplier must not, without prior consent in writing of MBS assign any or all of the Supplier's rights or obligations under the Purchase Order or subcontract the whole or any part of the supply of the Goods or performance of the Services. MBS may assign any rights under or novate the Purchase Order as it sees fit.
- 9.2 Without prejudice to rights and obligations arising prior to termination, MBS may terminate the Purchase Order at any time and for any reason by written notice to the Supplier provided that if the Supplier has complied with the Purchase Order, then MBS will pay the Supplier for the Goods delivered and Services performed prior to the date of termination.
- 9.3 MBS means Modular Building Systems Pty Ltd named in the Purchase Order and Supplier means the party identified as such in the Purchase Order.
- 9.4 Warranty Period means the Period of 24 months commencing at 4.00pm on the date of delivery of the Goods and/or the period of 12 months from the date on which performance of the Service is completed to the satisfaction of MBS.