

## **KDR Gold Coast Pty Ltd – Purchase Order Terms and Conditions**

### **1 SUPPLY**

1.1 The Supplier must supply and Deliver the Goods to KDGC at the Delivery Location or Pick-up Location (as applicable) by the Delivery Date or Pick-up Date (as applicable) for the Price in accordance with this Purchase Order.

1.2 The Supplier is taken to have carefully examined all documents and other information furnished by KDGC relating to the supply of the Goods and to have fully satisfied itself of all conditions, risks, contingencies and other circumstances which might affect the supply of the Goods including conditions at the Delivery Location or Pick-up Location (as applicable), and to have made due allowance for these in the Price.

### **2 WARRANTIES**

- 2.1 The Supplier represents and warrants that when the Goods are delivered to KDGC that they will:
- (a) be new in every respect and in good order and condition;
  - (b) comply with the description in this Purchase Order and with any relevant patterns or specifications;
  - (c) be of merchantable quality and fit for the purpose made known to the Supplier by KDGC or, if none was made known to the Supplier, fit for the purpose for which goods of that kind are ordinarily used;
  - (d) comply with all applicable Australian Standards;
  - (e) comply with the provisions of any legislation (including in relation to safety and environment) applicable to them;
  - (f) be free from defects for a period of 12 months on and from the Delivery Date or Pick-up Date (as applicable).
- 2.2 The warranties in clause 2.1 are in addition to any warranties which are or may be implied under any legislation applicable to the Goods that has not been expressly excluded in this Purchase Order.

### **3 PRICE**

- 3.1 The Price is fixed and will not be subject to adjustment for rise and fall, exchange rate variations or any changes in general or market specific economic conditions.
- 3.2 Except as expressly provided in this Purchase Order, the Price includes all taxes, duties, levies and fees (including GST) which are payable in relation to the supply and Delivery of the Goods. The Supplier must pay all such taxes, duties, levies and fees.
- 3.3 The Price will not be varied for any reason except where expressly agreed in writing, signed by an authorised representative of KDGC.

3.4 Upon Delivery of the Goods, the Supplier must invoice KDGC for the Goods. The Supplier must not invoice KDGC for Goods which have not been delivered. If GST is payable and included in the Price, the invoice must be in the form of a valid tax invoice. All invoices must be itemised and be in a form which clearly indicates any GST component already paid by the Supplier for which KDGC is entitled to claim an input credit.

3.5 KDGC will pay the Supplier the Price for the Goods which are delivered at the date of the invoice provided under clause 3.4 by the end of the next month which immediately follows the month in which an invoice for those Goods is received by the KDGC Contact.

3.6 KDGC may make payment by cheque, bank cheque, transfer or cash payment or in any manner otherwise agreed in writing by the parties.

3.7 Payment is not evidence of the value of the Goods or an admission of liability or that the Goods are satisfactory but a payment on account only.

3.8 KDGC may set off against any amount owing to the Supplier, any amount owed by the Supplier to KDGC under this Purchase Order.

### **4 VARIATION**

4.1 KDGC may direct the Supplier by a notice in writing to perform a Variation.

4.2 Within 14 days of KDGC issuing a notice under clause 4.1, the Supplier must advise KDGC how much the Variation will cost and the timeframe for it to be performed.

4.3 If KDGC accepts the terms of the Variation proposed by the Supplier in accordance with clause 4.2, the Supplier must proceed with the Variation.

### **5 GENERAL DELIVERY OBLIGATIONS**

5.1 The Supplier must at its own cost, package, market and label the Goods before Delivery to KDGC in accordance with any specification for packaging, marking or labelling or otherwise in a manner reasonably expected of the Supplier having regard to the nature of the Goods.

5.2 KDGC may refuse to accept Delivery if the Goods do not comply with this Purchase Order.

5.3 The Supplier is to provide detailed delivery dockets with every Delivery. The Supplier acknowledges that failure to comply with the delivery docket requirements may delay or preclude acceptance and payment for the Goods.

### **6 EXTENSIONS TO TIME FOR DELIVERY**

6.1 If the Supplier reasonably believes that the Goods (or part thereof) will not be delivered by the Delivery Date or made available by the Pick-up Date (as applicable), the Supplier must give KDGC immediate notice of that fact.

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- 6.2 If the Supplier gives notice under clause 6.1 KDGC may at its absolute discretion:
- (a) extend the time for Delivery of the Goods, by notifying the Supplier of a later Delivery Date or Pick-up Date;
  - (b) refuse to take Delivery of the Goods; or
  - (c) cancel this Purchase Order without liability to KDGC.

6.3 KDGC may, at any time, and for any reason whatsoever, by notice in writing to the Supplier extend the time for completion of Delivery of the Goods (but is not required to do so for the benefit of the Supplier).

6.4 The Supplier must take all reasonable steps necessary to minimise the effect of any delay on the supply of Goods.

**7 DELIVERY OF GOODS BY SUPPLIER**

- 7.1 This clause 7 applies if the Supplier is responsible for Delivery to the Delivery Location (Supplier Delivery).
- 7.2 The Supplier must deliver the Goods to the Delivery Location by the Delivery Date and during the Delivery Hours.
- 7.3 Unless otherwise specified in this Purchase Order, the cost of Delivery of the Goods to the Delivery Location (including all transport costs and reasonably appropriate insurance cover), and all packing, loading and unloading is included in the Price for the Goods.
- 7.4 If the Goods are not delivered to the Delivery Location by the Delivery Date, the Supplier will be in breach of this Purchase Order and KDGC may, without prejudice to its other rights, cancel the whole or part of this Purchase Order.
- 7.5 The Supplier must comply with all safety and other reasonable requirements of KDGC relating to the Supplier's conduct at the Delivery Location.

**8 PICK UP OF GOODS BY KDGC**

- 8.1 This clause 8 applies if the Supplier is responsible for making the Goods available for collection at the Pick-up Location (KDGC Pick-up).
- 8.2 The Supplier must make the Goods available for KDGC (or its nominated agent) to collect at the Pick-up Location by the Pick-up Date.
- 8.3 If the Goods are not made available for collection at the Pick-up Location by the Pick-up Date, the Supplier will be in breach of this Purchase Order and KDGC may, without prejudice to its other rights, cancel the whole or part of this Purchase Order.

**9 RISK AND TITLE**

9.1 The Supplier warrants that it has unencumbered ownership of, and title to, the Goods and the Goods are free of any liens, charges and encumbrances.

9.2 The Supplier warrants that unencumbered title in the Goods will pass to KDGC on the earlier of Delivery of the Goods or on payment by KDGC.

9.3 Notwithstanding the passage of title in accordance with clause 9.2, the risk and responsibility for the Goods shall remain with the Supplier until Delivery of the Goods.

**10 ACCEPTANCE OR REJECTION OF GOODS**

10.1 KDGC is not obliged to accept early Delivery of the Goods. If KDGC does not accept early Delivery of the Goods, the Supplier must, at its cost, hold the Goods in store until the Delivery Date. KDGC is not obliged to accept any Goods in excess of the quantity specified in this Purchase Order.

10.2 If KDGC or any of its representatives signs a delivery docket or other document required by the Supplier to acknowledge Delivery, KDGC will not be taken to have accepted the Goods as being in accordance with this Purchase Order (whether as to quality or quantity). This applies notwithstanding any terms and conditions appearing on any such acknowledgment of Delivery.

10.3 The Supplier must deliver all applicable safety data sheets (SDS) with the Goods.

**11 RETURN OF GOODS**

- 11.1 If, within a reasonable time of Delivery, it is apparent to KDGC that the Goods or any part of the Goods are not in accordance with this Purchase Order, KDGC may return those Goods to the Supplier (in which case the Supplier assumes the risk of the Goods on the date the Goods are returned to the Supplier).
- 11.2 If KDGC exercises its power under clause 11.1, the Supplier must pay KDGC:

- (a) any amounts paid by KDGC for the Goods so returned; and
- (b) any costs incurred or losses suffered by KDGC in connection with the delivery or return of those Goods.

**12 DEFECTIVE GOODS**

- 12.1 If the Goods are or become defective in any way during the 12 month period from the date of Delivery of the Goods, KDGC may at its absolute discretion, by notice to the Supplier (including if necessary uninstalling or removing the Defective Goods):
- (a) require the Supplier to replace or repair the Defective Goods at the Supplier's cost and within a reasonable period (including if necessary uninstalling or removing the Defective Goods); or
  - (b) reject the Defective Goods and in which case KDGC will be entitled to a full refund of any amounts paid for the Defective Goods.

**13 INSURANCE AND INDEMNITY**

13.1 Unless KDGC expressly agrees otherwise, the Supplier must procure and maintain the following Insurances:

- (a) **marine transit insurance**, covering all insurable risks of physical loss or damage to the Goods, and/or merchandise or any other property in which KDGC has an insurable interest occurring at any time while in transit or in storage in the ordinary course of transit up to the agreed Delivery Location or Pick-up Location (as applicable);
- (b) **public and products liability insurance** written on an occurrence basis with a limit of indemnity of not less than \$20,000,000 for each and every occurrence and, in the case of product liability, no less than \$20,000,000 in the aggregate during any 12 month period of insurance which covers the liability of the Supplier in respect of bodily injury to any third party, third party property damage and advertising liability;
- (c) **motor vehicle insurance**, covering all mechanically propelled vehicles that are registered, or capable of being registered, for road use and are at any time used in connection with this Purchase Order; and
- (d) **workers compensation insurance** as required by law in the State or territory the Goods are being provided.

13.2 The Supplier indemnifies KDGC against any action, liability, costs, damages or expenses suffered or incurred by KDGC as a consequence of any action or omission by the Supplier, its contractors, employees or agents, including in connection with supply of Defective Goods.

**14 CONFIDENTIALITY**

Without the prior written consent of KDGC, this Purchase Order must be treated as confidential and must not be disclosed to any person (unless required by law) or be used for advertisement, display or publication.

**15 DRAWINGS AND TOOLS**

All tools, patterns, materials, drawings, specifications and other data provided by KDGC in connection with this Purchase Order:

- (a) remain the property of KDGC (except that the Supplier is responsible for making good any damage done to them while they are in the possession of the Supplier);
- (b) must be used solely for the purpose of this Purchase Order;
- (c) must not be passed to or divulged to any third party except with the express consent of KDGC in writing; and
- (d) must be returned by the Supplier to KDGC on completion of this Purchase Order.

**16 INTELLECTUAL PROPERTY RIGHTS**

16.1 The Supplier warrants that it has all Intellectual Property Rights necessary to supply the Goods in accordance with this Purchase Order and indemnifies KDGC against any loss suffered or incurred by KDGC as a consequence of any claim by a third party that it has a right to any property or Intellectual Property Right in the Goods.

16.2 The Supplier grants KDGC a perpetual, non-transferable, royalty-free licence of any Intellectual Property Rights required in order to use, adapt, rectify, consume, sell or otherwise receive the benefit of the Goods in the manner reasonably intended by KDGC at the date of this Purchase Order.

**17 TERMINATION**

17.1 KDGC may suspend all or part of the supply of the Goods at any time for any period of time by giving notice to the Supplier. The Supplier must comply with the notice and recommence supply when notified by KDGC. The Supplier will not be entitled to any additional payment arising as a result of the suspension.

17.2 KDGC may terminate this Purchase Order immediately by notice in writing to the Supplier if the Supplier:

- (a) commits a material breach of this Purchase Order and does not remedy the breach within 7 days of being required to do so by KDGC (or any longer period as the parties may agree in writing); or
- (b) commits an Insolvent Event.

17.3 Despite any other provision of this Purchaser Order, KDGC may terminate this Purchase Order at any time and for any reason by giving notice in writing to the Supplier. Subject to any set off or deduction rights KDGC may have, upon termination KDGC's only obligation will be to pay the Supplier for Goods which have been delivered in accordance with this Purchase Order prior to the date of termination.

**18 MISCELLANEOUS**

18.1 In this Purchase Order:

- (a) headings are for convenience only and do not affect interpretation;
- (b) "includes" means includes without limitation;
- (c) a reference to a gender includes any gender;
- (d) a reference to "\$" is to be construed as a reference to Australian currency;
- (e) a reference to a party includes that party's successors and permitted assigns;
- (f) a reference to legislation includes any amendment to that legislation, any consolidation or replacement of it, and any subordinate legislation made under it; and

- (g) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.

- 18.2 No waiver by KDGC of a breach of this Purchase Order by the Supplier constitutes a waiver for any subsequent or continuing breach by the Supplier.
- 18.3 This Purchase Order is governed by the law of the State or Territory in which Delivery is to be made as specified in this Purchase Order. Each party irrevocably submits to the non-exclusive jurisdiction of the courts this jurisdiction and any courts which have jurisdiction to hear appeals from any of those courts. A party must not object to the jurisdiction of a court merely because the forum is inconvenient.
- 18.4 The United Nations Convention on Contracts for the International Sale of Goods is excluded and does not apply to this Purchase Order.
- 18.5 If any provision or part of any provision, of this Purchase Order is invalid or otherwise unenforceable that provision or that part of the provision will be severed from this Purchase Order and the remainder of this Purchase Order will continue to be effective and valid notwithstanding such severance.
- 18.6 The Supplier must not, without the prior written approval of KDGC, assign, sub-contract or deal with its interest under this Purchase Order to a third party. Any such approval will not relieve the Supplier of its obligations under this Purchase Order.

## 19 DEFINITIONS

In these terms and conditions unless the context otherwise requires:

**Australian Standards** means any Australian Standard (as amended or replaced) issued by Standards Australia applying directly or indirectly to the Goods;

**Defective Goods** means Goods which are not in conformity with this Purchase Order or are otherwise defective in design, performance, workmanship or makeup;

**Delivery** means the physical receipt of possession and control of the Goods from the Supplier by KDGC, or an agent nominated by KDGC (whether by way of Supplier Delivery or KDGC Pick-up), in satisfaction of the Supplier's obligations under this Purchase Order, and Deliver and Delivered have corresponding meanings;

**Delivery Date** means the date (if any) specified in the Fee Estimate as the date by which the Supplier must deliver the Goods to the Delivery Location (for Supplier Delivery);

**Delivery Hours** means the hours specified by KDGC in the Special Instructions;

**Delivery Location** means the place specified by KDGC in the Fee Estimate;

**Fee Estimate** means the fee estimate, quote or other document setting out the key commercial terms as agreed by the parties in writing;

**Goods** means the Goods described in the Fee Estimate and includes all manuals, spare parts and operating instructions needed by the KDGC for the proper use of the Goods and identified in the Fee Estimate, and all other things which can reasonably be inferred from the description of the Goods in the Fee Estimate;

**GST** has the meaning given in the *A New Tax System, (Goods and Services Tax) Act 1999*, and includes any payment made under or in accordance with the *GST and Related Matters Act (Qld) 2000*;

**Insolvent Event** means any one of the following circumstances where the Supplier:

- (a) is (or states that it is) an insolvent under administration or insolvent (each defined under the *Corporations Act 2001 (Cth)*);
- (b) is in liquidation, provisional liquidation, under administration or wound up or has had a controller appointed to its property;
- (c) is subject to any arrangement, assignment, moratorium or composition, protected from creditors under statute or dissolved;
- (d) has an application or order has been made, resolution passed, proposal put forward, or any other action is taken which is preparatory to or could result in any of (a), (b) or (c) above;
- (e) is the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001 (Cth)*; or
- (f) something having a substantially similar effect to (a) to (e) happens under the law of any jurisdiction in relation to the Supplier which KDGC reasonably believes may prejudice the Supplier's ability to supply Goods or to pass title in Goods to KDGC;

**Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trademarks, designs, patents, inventions and other results of intellectual activity in any field whether or not registrable, registered or patentable;

**KDGC** means KDR Gold Coast Pty Ltd (ACN 150 236 936);

**KDGC Contact** means the individual designated as such in the Fee Estimate;

**KDGC Pick-up** means that KDGC or its nominated agent is responsible for taking Delivery of the Goods from the Supplier as specified in the Special Instructions;

**Pick-up Date** means the date (if any) specified in the Fee Estimate as the date by which the

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Supplier must make the Goods available for collection by KDGC (for KDGC Pick-up);

**Pick-up Location** means the place specified by the Supplier in the Special Instructions;

**Price** means the amount payable by the Supplier for the Goods as specified in the Fee Estimate;

**Purchase Order** means the document issued by KDGC called a "Purchase Order" which includes these terms and conditions and the Fee Estimate;

**Special Instructions** means the special instructions specified (if any) in the Fee Estimate;

**Supplier** means the supplier of the Goods specified in the Fee Estimate;

**Supplier Delivery** means that the Supplier is responsible for Delivery of the Goods to KDGC at the Delivery Location as specified in the Fee Estimate;

**Variation** means:

- (a) the inclusion of other Goods as Goods to be supplied by the Supplier under this Purchase Order;
- (b) a change in the character or quality of the Goods to be supplied under this Purchase Order; or
- (c) an increase or decrease in the quantity of Goods to be supplied under a Purchase Order.