



Doc Title Purchase Order - Terms & Conditions		Rock on Ground Pty Ltd
Doc Number ROG-MA-FOR-003		Business Management System (BMS)
Doc Type Form	Author Ray Mell	Last Revised October 2014
Doc Revision No. 001	Approved by Darren Guild	Page 1 of 3

PURCHASE ORDER – TERMS & CONDITIONS

1. INTERPRETATION AND DEFINITIONS

Any word or words (“Part”) that are unenforceable for any reason shall be interpreted as if that Part, and only that Part, has been deleted and the remainder of this Agreement shall continue to bind the parties.

A definition containing multiple terms or words means all possible combinations of those terms or words and all of those individual terms or words.

The Vendor is deemed to have accepted the terms of this Agreement should it supply the Goods to ROG or if it commences any activity arising out of or in connection with that supply.

A rule of construction does not apply to the disadvantage of ROG because ROG was responsible for the preparation of this Agreement and may rely on its terms to limit or exclude its liability to the Vendor.

A reference to a person includes a natural person, partnership, body corporate, Government Agency or any other entity and includes the Vendor and ROG (unless there is an express exclusion).

A reference expressed in the singular includes the plural and vice versa.

A reference to a Law, Government Agency or Specifications is a reference to those things as they may change from time to time or come into existence from time to time.

A word or expression used in this Agreement that is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that act.

If any Law should limit, modify or prohibit the payment term described in clause 19 then the wording of clause 19 is deleted in its entirety and replaced with “*The Vendor shall ensure that the claim for payment is received by ROG on the last day of the month following delivery of the Goods under clause 5 (“Claim Day”). If the claim for payment is received by ROG before the Claim Day then the claim is deemed to have been received by ROG on the Claim Day. If the claim for payment is received by ROG after the Claim Day then the claim is deemed to have been received by ROG on the last day of the month in which it was received. ROG shall respond to the claim for payment from the Vendor by paying the Vendor the amount that ROG has determined is due within 45 days (or any lesser period described in the “Payment Terms” section on the Purchase Order) of receipt of the claim.*”

The Vendor is not entitled to interest on any amount that is paid late.”

Numbered headings do not affect the interpretation of this Agreement.

The meaning of general words is not limited by specific examples introduced by including, includes, such as, not included or similar expressions.

The word insolvent in this Agreement has the same meaning given to it in the *Corporations Act 2001* (Cth).

This Agreement constitutes the entire understanding between the parties in respect to the Goods and supersedes and takes precedence over any other agreement or arrangement between the parties (whether oral or written or partly oral and written).

The liability of ROG for any loss, cost, or expense that the Vendor may incur in complying with its obligations arising out of or in connection with this Agreement is included in the prices described on the Purchase Order.

Agreement means the Purchase Order and these terms and conditions

Address for Delivery means the address described as the “*Delivery Address*” on the Purchase Order.

Claim means any claims, actions, suits, matters, proceedings, demands, a payment claim, any loss, cost or expense or disputes of any type.

Day means calendar day.

Goods means the subject matter of the Purchase Order and includes any article of commerce or the supply of services or any part of either.

Government Agency means federal or state or local government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency, instrumentality or public authority (“Entities”) or any entity arising out of or in connection with the Entities.

Law means laws, acts, ordinances, rules, regulations, other delegated legislation or codes of practice of any Government Agency and the requirements and directions of any Government Agency.

Month means calendar month.

Purchase Order means ROG’s purchase order.

ROG means Rock On Ground Pty Ltd as further described on the Purchase Order.

Specifications means (unless the Purchase Order states otherwise):

- any information pertaining to the Goods:
 - available from the manufacturer;
 - contained on the Purchase Order; and
 - made known to the Vendor by ROG.
- any obligation of Law arising out of or in connection with the Goods and any applicable Australian Standard;



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3. the Goods are new and made from materials of good quality;
4. the Goods have been designed and manufactured to a high standard;
5. the Goods shall be delivered to ROG under clause 5 free from any defects; and
6. where the Goods include the supply of services then the Vendor shall undertake and complete those services to a standard equal to that which would be considered best practice for services of that type.

Vendor means the person described as the Vendor on the Purchase Order.

2. GENERAL OBLIGATIONS OF THE PARTIES

The Vendor shall, in accordance with the terms of this Agreement, deliver the Goods to ROG at the Address for Delivery.

ROG shall, in accordance with the terms of this Agreement, pay the Vendor the aggregate of the prices stated on the Purchase Order.

3. PRICE

Except for any GST that may be applicable to this Agreement the prices stated on ROG's Purchase Order represent the total amount payable by ROG for the Goods. Where there is no price stated for the Goods ROG shall in its absolute discretion determine the reasonable cost of those Goods.

4. CHANGES TO AGREEMENT

This Agreement cannot be varied unless ROG records the variation in writing, signs the document and gives a copy of that document to the Vendor.

5. TITLE, RISK AND DELIVERY

Without limitation to any right that ROG may have title to the Goods passes to ROG at the point of shipment or dispatch. Risk remains with the Vendor until the Goods are received by ROG at the Address for Delivery and signed for by ROG acknowledging receipt. Risk in the Goods shall revert to the Vendor any time that ROG dispatches the Goods for delivery back to the Vendor.

6. INSPECTION AND DEFECTS PERIOD

The Goods are subject to inspection, testing and acceptance by ROG notwithstanding any acknowledgement of delivery under clause 5, prior payment, inspection prior to dispatch or payment under clause 19. Any Goods that are not accepted by ROG shall be returned to the Vendor.

In addition to the rights of ROG under the first paragraph of this clause 6 for a period of 12 months from delivery of the Goods in accordance with clause 5 the Vendor shall, at the discretion of ROG and without limiting any other right ROG may have, replace or repair the Goods if they do not comply with the terms of this Agreement. The Vendor is not obligated to replace or repair the Goods where the breach complained of is solely caused by the negligence of ROG.

7. COST OF PACKAGING AND DELIVERY

The prices on the Purchase Order include all:

- (a) packaging, dunnage, containers and all other things required to protect the Goods in transit; and
- (b) transport costs, and any Government Agency stamp duty, charge, tax, impost, duty or levy except for any GST that may be applicable to this Agreement.

8. INTELLECTUAL PROPERTY

The Vendor warrants that there has been no breach of a copyright, trade name, trademark, patent or other property right as a result of manufacturing, producing or selling the Goods.

9. TIME

Time is of the essence under this Agreement. The Vendor shall deliver the Goods to ROG within the time described on the Purchase Order or if no time is described within 14 days of receipt of the Purchase Order by the Vendor.

10. TERMINATION

ROG may, at any time, terminate this Agreement in whole or in part (including cancelling any of the Goods that have been ordered but not delivered or returning any of the Goods that have been delivered in accordance with clause 5) if the Vendor breaches any term of this Agreement or if the Vendor commits any act of bankruptcy or is insolvent, deemed or actual. The Vendor releases ROG from all Claims arising out of or in connection with any termination that ROG may direct under this clause 10.

11. WARRANTY

In addition to the terms expressed or implied by Law the Vendor warrants that the Goods:

- (a) conform to their description;
- (b) conform to any sample provided by the Vendor;
- (c) are free from all encumbrances;
- (d) are fit for the known purpose for which they are sold; and
- (e) conform to the Specifications.

12. COMPLIANCE WITH LAWS

The Vendor shall comply with all Laws. This Agreement is subject to the Laws and the exclusive jurisdiction of the courts of the state or territory where the Address for Delivery is located.

13. GST

All consideration to be paid or provided for a supply arising out of or in connection with this Agreement does not include an amount on account of GST and the recipient of the supply shall pay an additional amount equal to the GST at the same time as that other consideration.

If a party shall reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party or the representative member of any GST group of which that party is a member is entitled to in respect of the loss, cost or expense. Neither party is obligated to make a payment for a taxable supply arising out of or in connection with this Agreement until it receives a tax invoice for that supply.



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14. ASSIGNMENT

The Vendor shall not assign or otherwise deal with any right or interest arising out of or in connection with this Agreement without ROG's prior written consent.

15. WAIVER

No right of ROG arising out of or in connection with this Agreement can be waived unless ROG records the amended right in writing, signs the document and gives a copy of that document to the Vendor.

16. INDEMNITY

To the extent permitted by the Law the Vendor shall indemnify ROG against any Claim from any person:

- (a) arising out of or in connection with a breach of this Agreement by the Vendor; or
- (b) an act or omission of the Vendor arising out of or in connection with this Agreement,

except where the Claim is solely caused by the negligence of ROG.

The Vendor agrees that Part 1F of the *Civil Liability Act 2002* (WA) (or any other Law having a similar affect) is excluded for the purpose of any Claim that ROG may make against the Vendor.

17. INSURANCE

The Vendor, at its own cost, shall effect insurances against any risk or liability arising out of or in connection with the Goods including, public liability insurance, product liability insurance, workers' compensation and employers' liability insurance and comprehensive motor vehicle third party liability insurance. If requested by ROG the Vendor shall provide copies of its certificates of currency evidencing the insurances identified above.

18. CLAIMS FOR PAYMENT

ROG is obligated to respond and make payment in respect to a claim for payment only to the extent that a claim is made in accordance with this Agreement.

Subject only to a Law that cannot be modified by this paragraph the Vendor is not entitled to make a progress claim for the supply of Goods and may only claim payment from ROG once all the Goods have been delivered in accordance with clause 5.

Prior to making the claim for payment the Vendor shall request that ROG identify all of the information that ROG requires to be included in the claim so ROG may determine the amount due to the Vendor.

In addition to any specific information identified by ROG when requested by the Vendor to do so the payment claim shall be sent to the address specified on the Purchase Order and shall include a tax invoice which shall contain:

- (a) the order number on the Purchase Order;
- (b) a description of the Goods;
- (c) the quantity of each of the Goods;
- (d) the unit price of each of the Goods;
- (e) the total amount claimed by the Vendor in respect to the Purchase Order; and

- (f) where the Goods include the supply of services a brief description of the services that were provided and the location and date on which they were provided.

19. PAYMENT TERMS

ROG shall respond to the claim for payment from the Vendor by paying the Vendor the amount that ROG has determined is due by the due date.

Unless agreed by ROG Management and noted in writing by ROG Management on the Purchase Order, the due date for payment is 45 days from the end of the month in which the claim for payment is received by ROG.

The Vendor is not entitled to interest on any amount that is paid late.

20. ADJUSTMENT OF TAX INVOICE

Where the Vendor has given ROG a tax invoice for an amount other than the amount determined by ROG to be due then ROG may raise a credit request for the difference and send it to the Vendor. On receipt of the credit request the Vendor shall provide ROG with a credit note to the value of the difference.

21. SETOFF

ROG may set off against amounts payable to the Vendor under this Agreement or any other agreement any Claims ROG may have against the Vendor.

22. RIGHT TO SEARCH

When the Vendor provides services to ROG at any place that ROG owns, manages, occupies or controls the Vendor consents to ROG or its agents searching any person that the Vendor may use to undertake those services and any property that may accompany those persons.

To the extent that the Vendor is entitled at Law it consents on behalf of the persons referred to in the first paragraph of this clause 21 to allow ROG to undertake the searches referred to in that paragraph.

The Vendor warrants that any agreement it has or may have with any person that carries out the services referred to in the first paragraph of this clause 22 have provisions that enable ROG to lawfully exercise the rights referred to in that paragraph.

23. DISPUTE RESOLUTION

If a dispute between the parties arises out of or in connection with this Agreement ("Dispute") then the parties shall, before commencing any other proceedings, comply with the procedure in this clause 23.

A party claiming a Dispute has arisen shall send the other party a notice of Dispute in writing. Within 14 days of receipt of the notice of Dispute by the other party the parties shall meet and use reasonable endeavours to attempt to settle the Dispute.

If the parties are unable to resolve the Dispute within 28 days of the meeting, or other such time that they may agree in writing, then either party may commence proceedings in a court of competent jurisdiction in respect to the Dispute.