

## **Blooming Constructions Pty Ltd Purchasing Terms & Conditions**

**1. INTRODUCTION:** These Standard Terms and Conditions of Purchase (this "Agreement") is made and entered by and between Blooming Constructions Pty Ltd, and/or its affiliated business units (collectively, "BLOOMING"), and the undersigned supplier ("Seller"). These Standard Terms and Conditions of Purchase (this "Agreement") shall govern the purchase and sale of all goods, materials, equipment and machinery ("Goods") purchased by BLOOMING from Seller. This Agreement shall govern all purchase orders ("Purchase Orders") for the purchase of Goods by BLOOMING from Seller. The terms and conditions set forth in this Agreement shall constitute the sole and exclusive agreement between BLOOMING and Seller relating to the purchase and sale of the Goods, unless otherwise agreed by the parties. BLOOMING hereby gives notice that it objects to and rejects any terms and conditions contained in any document which has been or may in the future be supplied by Seller to BLOOMING which are in addition to, different from or inconsistent with the terms of this Agreement, whether such terms are set forth in Seller's tender, proposal, order acknowledgement, invoice or otherwise. BLOOMING's acceptance of any Goods shall not be construed as an acceptance of any terms or conditions contained in any such document. Purchase Order Numbers must appear on all packing slips, bills of lading, freight bills, packages, invoices and correspondence.

**2. PURCHASE ORDER ACKNOWLEDGEMENTS:** Seller agrees to acknowledge individual Purchase Orders and contract releases within 24 hours of order placement. Acknowledgements will be in the form of email or phone call back to the originating buyer. Seller agrees that any discrepancies in unit price and total price as listed on BLOOMING purchase order will be advised in writing within 24 hours. If Seller does not advise BLOOMING of any pricing discrepancies within 48 hours of receipt of the Purchase Order, Seller accepts BLOOMING's purchase order unit pricing and total price as valid and binding, and will invoice accordingly.

**3. INSPECTION BY BLOOMING AND ACCEPTANCE OF GOODS:** BLOOMING reserves the right to inspect the Goods subject to any Purchase Order. It is understood and agreed that payment for the Goods subject to any Purchase Order shall constitute acceptance. BLOOMING may only charge Seller upon mutual agreement, the expense of unpacking, examining, repacking, storing and reshipping any goods found defective or not in conformity with the terms, requirements, and/or specifications of any Purchase Order. Such expenses shall be payable by Seller within thirty (30) days of receipt of BLOOMING's invoice for such expenses.

**4. DELIVERY OF DEFECTIVE GOODS:** If the Seller has done everything reasonably could but delivery is still not expected to be made on time, Seller will notify BLOOMING and will take all reasonable steps at Seller's own cost to expedite delivery and confirm the later delivery time. BLOOMING will be deemed to agree on the later delivery time upon receipt of such notice. Notwithstanding the terms of shipment, the risk of loss of the Goods shall remain with Seller until actual delivery of such Goods to BLOOMING's facility at BLOOMING's direction. Seller shall obtain BLOOMING's prior written approval for partial shipments prior to shipment. BLOOMING may retain all or any portion of Goods delivered under this Agreement and return, at Seller's sole cost and expense, those Goods not retained – all without waiver of any claim. All materials shall be suitably packed, marked, loaded, and shipped in accordance with the requirements of common carriers. All excess transportation charges resulting from Seller's failure to follow any routing instructions given by BLOOMING shall be for Seller's account. Damage to any material not so packaged will be charged to the Seller. Goods rejected and returned shall not be replaced by Seller without prior written authorization by BLOOMING. The Goods shall be subject to inspection and testing by BLOOMING before and after receipt. Goods or equipment rejected or not purchased by BLOOMING which utilize or carry any logo, insignia, name, trade name, trademark, trade dress, symbol, decorative sign, evidence of inspection or other related markings of BLOOMING or any of its related entities shall have the same removed, not obliterated, prior to any sale, use, or disposition, if such sale or disposition is permitted by

BLOOMING. Payment for any Goods prior to inspection shall not constitute their acceptance by BLOOMING.

**5. TERMS OF PAYMENT:** Terms of payment shall be Net 30, following the date of receipt of the Goods at BLOOMING'S unless otherwise arranged.

**6. ACCEPTANCE OF CONTRACT BY SELLER:** This Agreement and any Purchase Orders issued hereunder constitute BLOOMING's offer to purchase from Seller. This Agreement shall supersede all prior negotiations, discussions, and dealings, and shall constitute the entire agreement between BLOOMING and Seller. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon BLOOMING unless made in writing and signed on its behalf by a duly authorized representative of BLOOMING and specifically references this Agreement. No conditions, custom, usage of trade, source of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound. Mistakes in prices, discounts, specifications, delivery schedules or other terms and any noticeable discrepancies in quantities or sizes are to be reported immediately by Seller to BLOOMING and Seller shall immediately remedy such mistakes by refunding incorrect charges to BLOOMING, or correcting such other discrepancies, unless otherwise directed by BLOOMING.

**7. REPLACEMENT OR SUBSTITUTION:** Seller may not replace Goods returned to them except upon written instructions from BLOOMING. Seller may not substitute or back order Goods subject to this Agreement without the consent of BLOOMING. BLOOMING retains the right to return any Good or piece of equipment that is deemed to be of unsatisfactory performance without penalty, for replacement or credit.

**8. TITLE; RISK OF LOSS:** Title and risk of loss of the Goods do not pass to BLOOMING until the Goods are delivered to it. Seller must insure Goods from and after delivery to carrier until delivered to BLOOMING.

**9. MATERIAL TERMS:** Seller acknowledges that all terms as to quantity, quality, and price, other specifications and time of delivery are material elements of this Agreement

and each Purchase Order and must be strictly complied with.

**10. SELLER'S WARRANTIES:** Seller warrants that the Goods subject to this Agreement are 1) of good acceptable working quality; 2) fit for the ordinary purpose for which such goods are used; 3) will pass without objection in trade under the contract description; 4) to the extent of the Seller's knowledge do not infringe upon or violate any intellectual property right of another party; 5) to the extent of the Seller's knowledge comply with applicable federal and state laws; and that 6) to the extent of the Seller's knowledge all warnings, labels or tags contain adequate and accurate information with respect to the use, safety, treatment, and handling of the goods. Seller warrants that for a period of one (1) year from the date a Good is delivered to BLOOMING, such Good will be free from any defects in material and workmanship, in conformity with any applicable specifications, and title to such Goods shall be unencumbered. Payment for Goods will constitute approval or acceptance of Goods or services by BLOOMING. s

**11. SITE INSPECTIONS:** Upon forty-eight (48) hours notice, Seller shall allow authorized representatives of BLOOMING (i) to inspect Seller's facilities and records at any time during normal business hours, and (ii) to make finished Goods or raw materials audits and prepare analytical data for quality control purposes with the assistance of the Seller's personnel. Seller shall not require BLOOMING's representatives to sign any documents prior to entering such facilities, and Seller agrees that any such documents shall be void.

**12. COMPLIANCE WITH APPLICABLE LAWS:** Seller represents, warrants and covenants that to the extent of the Seller's knowledge all of the Goods, merchandise, and materials delivered and/or services rendered hereunder will be and will have been produced and/or provided in compliance with all applicable laws, rules, regulations, orders, treaties and other requirements of federal, state and local governments and agencies thereof, and that the Seller, Seller's business and all property used therein do and will comply with all applicable laws, rules, regulations, orders, treaties and

other requirements of federal, state and local governments and agencies thereof. If any of the Goods are purchased for incorporation into products sold under a government contract or subcontract, the terms required to be inserted by that contract or subcontract shall be deemed to apply to this Agreement. All rating or certification requirements specified in such government contract or subcontract or of which the Seller has knowledge shall be complied with. Seller agrees to furnish BLOOMING with a certificate of compliance with any such laws and certification requirements in such form as may be requested by BLOOMING. Seller shall, at its sole cost, secure and maintain all necessary licenses, permits, authorizations or other approvals required for the operation of Seller's business or any property used therein, or as necessary for Seller's performance hereunder. Seller shall immediately notify BLOOMING in the event that Seller is not in compliance with any provision of this section.

**13. INTELLECTUAL PROPERTY:** Seller warrants that to the extent of the Seller's knowledge the Goods and the sale and use of them will not infringe any Australian or foreign patents, trademarks, trade dress, copyrights, trade secrets or any other form of intellectual property, and Seller acknowledges that BLOOMING patents, trademarks, trade dress, copyrights, trade secrets or any other form of intellectual property that BLOOMING provides to the Seller are BLOOMING's exclusive property and Seller disclaims all rights to same. Where payment is made for experimental, developmental, or research work, as such, to be performed in accordance with special requirements of BLOOMING, Seller agrees to disclose and on request to assign to BLOOMING each invention, property right, confidential process or knowhow and trade secret resulting therefrom or other form of intellectual property and Seller shall disclaim all rights to same. All drawings, art work, special products, materials, information or data furnished by BLOOMING and all intellectual property resulting from this Agreement (as referenced in the foregoing sentence) are BLOOMING's exclusive property, shall be used by Seller only for BLOOMING's work. Seller agrees to hold all information and knowledge of intellectual property confidential. BLOOMING will market, distribute and/or sell Goods under its own trademark and trade name.

Upon the Seller's approval, BLOOMING can use the Seller's marks, names, other trade identities, copyrighted works or intellectual property, to the extent that Seller has incorporated such property in or used such property in manufacture of the Goods supplied by the Seller to BLOOMING. Fully executed Non-Disclosure Agreements are evergreen and do not expire.

**14. INSURANCE:** SELLER agrees to carry insurance covering product liability and general liability in amounts of not less than \$2,000,000.00 per occurrence. All such policies shall provide for at least thirty (30) days prior written notice to BLOOMING, of cancellation, non-renewal or material change in terms and conditions of coverage. At BLOOMING's request, Seller will provide BLOOMING with a certificate or certificates of insurance evidencing such coverage.

**15. FORCE MAJEURE:** BLOOMING and Seller shall not be liable for any delay or failure of performance due solely to strikes, lockouts, or other labour disputes, fires, acts of God or other causes beyond the affected party's reasonable control; provided, the affected party shall have given notice to the non-affected party of any such cause for delay or anticipated delay promptly following the commencement thereof and shall have used the affected party's best efforts to make or accept deliveries, as the case may be, as expeditiously as possible. If BLOOMING believes that the delay or anticipated delay in Seller's deliveries may impair BLOOMING's ability to meet its production schedules or may otherwise interfere with BLOOMING's operations and such delay may last for a period of time that exceeds ten (10) days, BLOOMING may at its option, and without liability to Seller, immediately terminate this Agreement and any Purchase Order and will pay the Seller for the expenses that it has incurred. In the event of a shortage, Seller agrees to allocate its total available supply of Goods among BLOOMING and Seller's other customers, if applicable, on a fair and equitable basis.

**16. CANCELLATION, TERMINATION AND SUSPENSION:** BLOOMING reserves the right to cancel all or any part of the undelivered portion of a Purchase Order. This Agreement shall continue in full force and effect for one year from the date last executed below, and shall then automatically renew on an annual basis for additional one-year terms unless either party provides written notice to the other of its intent not to renew this

Agreement at least 60 days before this Agreement would otherwise renew. This Agreement may be terminated by BLOOMING (i) immediately upon written notice when there are no outstanding Purchase Orders under this Agreement or (ii) upon 30 days' prior written notice to Seller; provided that any Purchase Orders outstanding at the time of termination shall continue to be governed by the terms of this Agreement until such Purchase Orders are completed or otherwise terminated in accordance with this Agreement. This Agreement may be terminated by BLOOMING or by the Seller at any time immediately upon written notice in the event of the other party's material breach of any term or provision of this Agreement, any Purchase Order, or upon the occurrence of any of the following events: a. such other party makes an assignment for the benefit of creditors, or is subject to any voluntary or involuntary provincial or federal receivership, insolvency, or bankruptcy proceedings, or becomes unable, or admits in writing its inability to meet its obligations as they mature; b. the cancellation, suspension or other revocation of licenses, permits or authorizations necessary for such other party to conduct its business in accordance with this Agreement; c. Such other party makes any materially false or misleading statement, representation or claim; d. Such other party fails to prosecute the work so as to endanger performance of this Agreement; e. Dissolution or liquidation of such other party; or f. Such other party's failure to pay any indebtedness which is due and payable and which failure is not remedied within 60 days following written notice.

**17. CANCELLATION FEES:** BLOOMING will be responsible for any cancellation fees or charges in the event of any change of mind and in particular, if the seller has already incurred cost and expenses to fulfil such Purchase Order. Notwithstanding anything to the contrary in this Agreement, upon termination, cancellation or expiration of this Agreement, Seller shall immediately cease use of any of BLOOMING's intellectual property, trade secrets and formula(e) and shall have no further right to use the same vice versa BLOOMING will immediately cease use of any of the Seller's marks, names, other trade identities, copyrighted works or intellectual property. If this Agreement is cancelled due to an event caused by the Seller or resulting from the Seller's acts or omissions,

BLOOMING may complete Seller's performance by such reasonable means as BLOOMING determines, and Seller shall be responsible for, and shall indemnify BLOOMING against any damages and reasonable costs, including, without limitation, attorneys' fees incurred by BLOOMING as a result thereof only to the extent of such Purchase Order. Any amounts due Seller for Goods, work and other items delivered or provided by Seller in full compliance with the terms of this Agreement prior to such event shall be subject to set-off of BLOOMING's additional costs of completion this Agreement and other damages incurred by BLOOMING as a result of Seller's actions or omissions, as approved or recognised by the court. For purposes of calculating any volume incentive, any Purchase Orders cancelled by BLOOMING as a result of late delivery or other breach of this Agreement will be counted as made, delivered and purchased by BLOOMING. BLOOMING reserves the right from time to time, upon written notice to Seller, to suspend and reinstate execution of the whole or any part of this Agreement without invalidating any provision of this Agreement.

**19. PROPRIETARY INFORMATION:** All information that is furnished by one party to another party pursuant to this Agreement ("Proprietary Information") will be subject to the following restrictions. Each party agrees that it will use all Proprietary Information disclosed to it by the other only in the manner contemplated in this Agreement and for no other purpose, disclosing Proprietary Information only to those of its director, officers, employees, agents, independent contractors or advisors ("Representatives") as will be directly concerned with performance under this Agreement, and provided such Representatives do not disclose any Proprietary Information to any third party and have agreed in writing to keep such Proprietary Information confidential in accordance with this Section. Except as provided above, each party agrees that it will not disclose Proprietary Information to any other person or entity without the express, prior written consent of the other party. Each party agrees that it will protect the confidentiality of Proprietary Information, but with no less than reasonable care, and will return all copies (in any medium recorded) of Proprietary Information to the disclosing party immediately upon written request. The parties agree that Proprietary Information shall be considered commercial secrets qualified for protection

under applicable law, including but not limited to the Trade Secrets Act and other applicable intellectual property laws. The obligations of confidentiality under this section shall survive the termination or expiration of this Agreement for a period of five (5) years.

**20. FINANCIAL INFORMATION:** Should BLOOMING have reasonable concerns about Seller's financial condition and/or ability to supply hereunder, Seller shall supply information requested by BLOOMING which BLOOMING reasonably requires to address such concerns within ten (10) business days of such request, including but not limited to financial statements, cash flow projections, and other relevant financial information. BLOOMING shall maintain the confidentiality of any non-public financial information provided pursuant to this section.

**21. CHANGES:** BLOOMING reserves the right from time to time to change any specifications, drawings, delivery dates, quantities and items covered by this Agreement and any Purchase Order. If such change would materially affect the price or delivery date, BLOOMING and Seller shall mutually agree upon an equitable adjustment in the price and/or delivery date to reflect the effect of such change; provided the Seller shall have notified BLOOMING in writing of any claim for such adjustment within thirty (30) days from the date of such notice from BLOOMING. Seller shall not suspend performance of this Agreement while BLOOMING and Seller are in the process of making such changes and any related adjustments. No substitutions shall be made without the prior written approval of BLOOMING. Seller agrees that it will not make any process or manufacturing changes which might affect the performance, characteristics, reliability or life of the Goods without prior written approval of BLOOMING.

**22. SELLER'S INSOLVENCY:** BLOOMING will have the right to cancel this Agreement without obligation or to require assurances of performance satisfactory to it in the event of the insolvency of the Seller.

**23. WAIVER:** Any waiver of strict compliance with the terms and conditions of this Agreement by BLOOMING must be in writing and signed by BLOOMING. Any such waiver will be strictly limited to its stated terms and shall not constitute a waiver of BLOOMING's rights under any other provision of this Agreement, nor shall it be a waiver

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of BLOOMING's right to strict compliance with the terms and conditions of this Agreement during future performance under the Agreement.

**24. CUMULATIVE RIGHTS:** BLOOMING's rights and remedies under this Agreement are cumulative and not exclusive of any rights or remedies to which BLOOMING is entitled to by law. The exercise of BLOOMING of any right or remedy under this Agreement or under applicable law will not preclude BLOOMING from exercising any other rights or remedies to which BLOOMING is entitled to under this Agreement or by law.

**25. SEVERABILITY:** The invalidity or unenforceability of any provision of this Agreement under any present or future law, rule, regulation or ordinance will not affect any other provision of this Agreement, and the remaining provisions of this Agreement shall continue with the same force and effect as if such invalid or unenforceable provision had not been inserted in this Agreement.

**26. AMENDMENT; TERMINATION:** No modification or termination of this Agreement shall be binding upon BLOOMING unless it is in writing and is signed by BLOOMING and the Seller.

**27. GOVERNING LAW; CONSENT TO JURISDICTION:** This Agreement shall be governed by and construed in accordance with the law of the State of Victoria, Australia. BLOOMING and Seller agree that any legal action or proceeding under or with respect to this Agreement shall be brought exclusively in the courts of Victoria, Australia, and both parties hereby irrevocably submit to the exclusive jurisdiction of such courts. The Seller expressly consents to personal jurisdiction in any of the above-mentioned forums and agrees to waive all defences based on improper venue or inconvenient forum should an action be brought therein.

**28. CONFLICT MINERALS:** BLOOMING shall have the right to audit Seller's due diligence and supply chain due diligence to confirm Seller's certification pertaining to conflict minerals. Supplier shall not provide any tantalum, tin, tungsten or gold or their derivative metals or minerals (the "minerals") mined from Democratic Republic of the Congo, Angola, the Republic of the Congo, Uganda, Rwanda, Burundi, Tanzania, Zambia, South Sudan and the Central African Republic where such minerals directly or indirectly finance or benefit illegal armed groups. Upon request, Supplier shall

provide Customer with evidence of Supplier's due diligence performed in compliance with this provision.

**29. STATEMENT OF EQUAL EMPLOYMENT OPPORTUNITY:** BLOOMING is committed to providing an inclusive work environment that is fair and equitable, free from unlawful discrimination, harassment, bullying

and victimisation. BLOOMING expects all of its Suppliers to follow the same moral principles as mandated by government regulations. During the performance of this Agreement (or any Purchase Order) the Supplier shall, in its dealings with its employees, have due regard to Commonwealth policies on employment including equal employment opportunity, access and equity, affirmative action, occupational health and safety, and workplace diversity.