



General Terms & Conditions of Purchase

H&R ANZ Pty Ltd.

Scope

Australia

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For the sake of simplicity and easier reading, only the masculine form has been used.



1. General

These General Purchasing Terms & Conditions (Conditions) shall apply between H&R ANZ Pty Ltd. & Seller at any stage of the procurement process concerned (e.g. in the request for quotation, the Purchase Order, or the contract). H&R does not accept any of the seller's terms & conditions of sale unless H&R has expressly agreed to any of them in writing prior to the date of H&R receiving the Order Confirmation.

2. Definitions

"Agreement"	has the meaning given in clause 4.
	'Business Days' means any day which is not a weekend day or a public holiday in Melbourne.
"Defective Products"	means: <ul style="list-style-type: none">a) in the case of services, are incomplete, unsatisfactory or are defective in workmanship; orb) in the case of Products are defective in design, performance, workmanship makeup, are the subject of a product recall or are otherwise not in conformity with this Agreement.
"Delivery Date"	means the date for delivery of the Product as determined by the parties.
"Documents"	means any drawings, technical documents, software programs or other data bearing media in whatever medium or format.
"H&R"	means H&R ANZ Pty Ltd. ACN 109 156 809 &/or its affiliates procuring Product(s) from the seller under the Agreement.
"Incoterms"	refers to Incoterms 2010 – The International Chamber of Commerce rules for the use of domestic & international trade terms, & which are incorporated into & form part of these Terms & Conditions to the extent that they do not conflict with any of the terms herein.
"Insolvent"	means in respect of a party, if it: <ul style="list-style-type: none">a) takes or has taken against it any action for the winding up of a party or the placing of a party under external administration or has an administrator or controller appointed over any of its assets;b) allows any judgment against that party to remain unsatisfied for 14 days without taking formal steps to have the judgment set aside; orc) has execution levied against any of that party's assets.
"Law"	means: <ul style="list-style-type: none">a) legislation, ordinances, regulations, by-laws, orders, awards, proclamations, directions and practice notes of the Commonwealth, a State or Territory or any government agency; andb) certificates, licences, consents, permits, approvals, qualifications, registrations, standards and requirements of organisations having jurisdiction in connection with the construction, installation, commissioning, testing and delivery of any Products under this Agreement.



“Loss”	means all actions, claims, costs (including legal costs on an indemnity basis), damages, expenses, interest, liabilities and losses.
“Order Confirmation”	means the confirmation of H&R’s order sent by Seller to H&R in accordance with clause 8.
“Product(s)”	means the products, equipment, component, material, hardware, software, services & other objects (tangible & intangible) which the Seller is required to supply under the Agreement.
“Purchase Order”	means a written order for the purchase of Product(s) submitted by H&R to Seller.
“Representative”	means an officer, employee, agent, contractor and subcontractor or any party (but excluding the other party to this Agreement).
“Seller”	means the Seller of the Product(s).

These Conditions apply to the purchase of all Product(s) (which includes services) by H&R.

3. Supply of Products

Seller must supply the Products in accordance with the terms of this Agreement.

4. Agreement

- a) This agreement, together with the Purchase Order constitutes the entire agreement between H&R and Seller relating to the purchase of Products by H&R from Seller.
- b) This Agreement applies to all Products provided by Seller and overrides any quotes, invoices or other documentation exchanged between the parties whether or not such documents expressly provide that they override this Agreement.

5. Documentation

- a) Any Documents provided to Seller by H&R shall remain H&R’s exclusive property & shall be returned to H&R on request. The Documents may not be copied, reproduced or distributed without prior express written approval by H&R.
- b) Documents specifically prepared as a result H&R’s order of the Product(s) & provided by Seller to H&R, shall be the exclusive property of H&R. With respect to other Documents provided by Seller, H&R shall have the unrestricted right to copy & use such other Documents for the purpose intended by H&R’s purchase of the Product(s).

6. Prices & Terms of Payment

The prices stated are fixed and unless otherwise agreed are as stated in the Purchase Order. All charges and duties shall be payable by the Seller as per the Incoterm stated on the Purchase Order. Payment shall be effected before the 30th day of the month following the month of receipt of invoice. If payment is delayed then Seller shall notify H&R & H&R shall thereafter expedite the payment.



7. Orders

- a) Seller must fulfil all Purchase Orders made by H&R for the Products.
- b) H&R may, at any time suspend, cancel or vary a Purchase Order by written notice to Seller.
- c) If H&R suspends, cancels or varies a Purchase Order, Seller must cease supply of the Product(s) requested under such suspended, cancelled or varied Purchase Order in the manner required by H&R and comply with any new Purchase Order as set out in that Purchase Order or otherwise directed by H&R.
- d) H&R is not obliged to exclusively purchase Products from Seller.

8. Order Confirmation

Seller shall confirm receipt of H&R's Purchase Order by sending an Order Confirmation within two (2) Business Days after receipt of the Purchase Order, & the contract for purchase shall have been formed immediately on receipt by H&R of the Order Confirmation.

9. Delivery Documents & Package

The price shall include the cost of packing and package or other protection required under normal transport conditions to prevent damage to or deterioration of the Product(s) while in transit to H&R. The Products shall be packed and marked in accordance with H&R's instructions advised to Seller from time to time and in accordance with any statutory requirements. The Purchase Order number and product numbers (if any) shall be set out in the shipping documents.

10. Delivery

- a) Seller must deliver the Products to H&R at the premises identified in the Purchase Order.
- b) Seller must use its best efforts to deliver the Products by the Delivery Date.

11. Terms of Delivery – Passing of Title

The terms of delivery shall be interpreted in accordance with the Incoterms. Title to the Product(s) shall be transferred to H&R when delivery has taken place in accordance with the terms of this Agreement.

12. Confidentiality

Seller is responsible for ensuring that Documents & other information provided by H&R orally or in writing, is not brought to the knowledge of third parties, without prior written authorization by H&R.

13. Obligation to Notify

Should Seller become aware of reasons to believe that the agreed delivery date cannot be met, Seller shall immediately notify H&R in writing, stating the cause of the delay and an estimated delivery date. Such notification shall not limit Seller's liability for delay according to this Agreement or applicable law. If Seller fails to give such notice in due time, H&R shall be entitled to compensation for all additional costs and expenses incurred as a result thereof which H&R could have avoided if the notice had been duly given.

14. Delay

- a) If, for any reason whatsoever, the Product(s) are not delivered by the Delivery Date, Seller must notify H&R:



- I. of the actual date of delivery of the Product as soon as it becomes aware of the date for delivery; and
 - II. any anticipated delay or failure in the supply of the Product.
- b) If for any reason delay causes H&R financial loss, then H&R shall, for each commenced week of delay, be entitled to claim liquidated damages amounting to five (5%) per cent of the relevant Purchase Order price. The liquidated damages shall not, however, exceed a total of forty (40%) per cent of the said price. H&R shall be entitled, but not obliged to cancel the whole or part of the Purchase Order if delivery is delayed by more than 2 weeks.

15. Inspection, Quality & Environmental Standards

- a) H&R shall be entitled to inspect the Product(s) & the production thereof, including the relevant quality assurance system, at the premises of Seller and its subcontractors.
- b) Seller undertakes to comply with the applicable requirements in the ISO 9001 quality system standards. In addition, the Product(s) shall meet the regulatory requirements imposed by the laws and regulations of any governmental entity having jurisdiction over the production, transport &/or sale (including re-sale) of the Products. The Product(s) shall also meet the technical standards, the environmental & any special market requirements stated in the Purchase Order or otherwise agreed upon between the parties. In addition, Seller shall comply at all times with H&R's directive regarding banned & restricted substances. If requested by H&R, Seller shall furnish a certificate for delivered Products stating that the Products conform to all requirements referred to in this clause.

16. Service Standards

- a) Seller must supply the Product to H&R:
- I. with due care and skill using that standard of diligence that would reasonably be expected from a prudent, expert and experienced provider of Products which are similar to the Products in Australia;
 - II. using appropriately qualified and trained Representatives of Seller; and
 - III. to the reasonable satisfaction of H&R.
- b) Seller shall and shall ensure that is Representatives, in supplying the Products:
- I. comply with the requirements of all relevant Laws; and
 - II. comply with all directions and advice from H&R and any of its Representatives.

17. Warranty

- a) Seller represents, undertakes and warrants to H&R that:
- I. the Products conform with all descriptions supplied by Seller and where Seller has given H&R a sample or demonstration of the Product, the Product corresponds with that sample or demonstration model in terms of quality, state and condition;
 - II. the Products are fit for the purpose for which Products of the same kind are commonly supplied and for any other purpose which H&R made known to Seller before entering into this Agreement;
 - III. the Products are free from defects and are of merchantable quality;



- IV. the Products comply with all Laws and best industry practices;
 - V. Seller and where applicable, Sellers Representatives hold all relevant licences, permits and authorities required in relation to the supply of the Product;
 - VI. the Products comply with this Agreement and any specific requirements set out in the Purchase Order;
 - VII. it will not engage in deceptive, misleading, illegal or unethical practices in relation to, or that are or might be detrimental to a Purchase Order, H&R or the public in connection with the Agreement;
 - VIII. it will not make or authorise representations or statements or engage in other conduct that is, or is likely to be false or misleading in respect of a Purchase Order or H&R;
 - IX. the supply of the Products, and the subsequent use or on-sale of the Products, will not infringe the intellectual property rights of any third person;
 - X. Seller has complete ownership of the Products free of any encumbrances and supplies the Products to H&R on that basis.
- b) The warranties given under clause 17a) survive any expiry or termination of this Agreement.

18. Defective Products

- a) Seller must only supply Products that conform in all respects with the requirements set out in clauses 16 and 17.
- b) Subject to clause 15, Seller acknowledges that H&R is not obliged to conduct any inspection or testing of the Products prior to use and Seller waives any right to require H&R to conduct an inspection of the Products on or after delivery.
- c) If H&R determines (through inspection, testing or otherwise) that any Products are Defective Products, H&R must provide Seller with the opportunity to inspect the Products following which H&R may reject the Defective Products and at H&R's option and request, Seller must:
 - I. refund to H&R any payments made by H&R in respect of any Defective Products that it rejects;
 - II. make good or replace free of charge any Defective Products that H&R rejects in a timely manner.
- d) When a defect has been remedied, Seller shall be liable for defects in the replaced or repaired Product under the same terms & conditions as those applicable to the original Product under clause 17.
- e) If Seller fails to fulfil its obligations above within the prescribed time, H&R may, without prejudice to other remedies available, undertake, or engage a third party to undertake, necessary remedial works at the risk & expense of Seller.
- f) The rights and obligations in this clause 18 are ongoing and survive the termination or expiration of this Agreement.

19. Liability & Indemnity

- a) Seller is liable for, and must indemnify H&R against, any liability or any Loss of any kind suffered or incurred by any of them (including as a result of a third party claim) arising directly or indirectly from:



- I. the breach of any warranty or any of the other terms of this Agreement by Seller;
 - II. carrying out a recall of Products supplied by Seller, where, in H&R's opinion, the recall is required either by Law or in connection with any allegation that the Products do not conform to the standards specified in this Agreement;
 - III. any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind caused or contributed to by the Products; or
 - IV. any negligence or wilful act or omission by Seller or any of its Representatives in connection with this Agreement.
- b) H&R holds the benefit of the indemnity in this clause 19 on trust for itself and its Representatives.
- c) Seller acknowledges that it is not necessary for H&R to incur an expense or make a payment before enforcing a right of indemnity conferred by this Agreement or to mitigate its Loss.
- d) This clause 19 survives the termination of this Agreement.

20. Insurance

- a) Seller must, at its own cost, take out and maintain with a reputable insurer:
- I. workers compensation insurance, as required by law;
 - II. public liability insurance in each case for a minimum cover of \$20 million for each claim (or such other maximum cover agreed in writing by the parties) unless varied with the consent of H&R; and
 - III. insurance for the full replacement value of the Products;
 - IV. product liability insurance in each case for a minimum cover of \$20 million in aggregate (or such other maximum cover agreed in writing by the parties) in any one policy year.
- b) Seller must ensure that its Representatives are similarly insured in respect to clauses 20a) I. and II.
- c) At H&R's request, Seller must provide H&R with certificates of currency for any relevant insurance policy and any other documentation necessary to satisfy H&R that Seller is complying with its obligations under this clause 20.

21. Termination

- a) Either party may terminate this Agreement, at any time on 60 days written notice to the other party.
- b) In addition to any other termination rights under this Agreement, either party (Terminating Party) may immediately terminate this Agreement by written notice to the other party (Defaulting Party):
- I. breaches this Agreement in a material respect and, in the reasonable opinion of the Terminating Party, the breach:
 - II. cannot be remedied;
 - III. can be remedied, but is not remedied by the Defaulting Party within 5 Business Days after the Terminating Party gives the Defaulting Party notice of the breach; or
 - IV. becomes insolvent.



- c) After receipt of a notice of termination under this Agreement, Seller must, unless otherwise directed by H&R, immediately terminate all work under this Agreement (or any existing Purchase Order, as applicable) and must:
 - I. terminate all orders and sub-contractors relating to the performance of the work terminated and settle all claims arising out of the termination of such orders and sub-contractors; and
 - II. transfer title of, and deliver to H&R all completed work which conforms in quality to the requirements of this Agreement.
- d) Upon termination by H&R under this Agreement:
 - I. Seller's sole and exclusive rights in respect of the termination are limited to the payment of the Price for any Products which have been completed in accordance with this Agreement and delivered to H&R up to the date of termination;
 - II. H&R is not liable to Seller in respect of any claims for Loss, interest on claims or for unamortised depreciation costs.

22. Export & Import

Seller is responsible for obtaining and maintaining any export license(s) required for delivery of the Product(s) to H&R according to the Purchase Order. Seller shall issue all other documents reasonably requested by H&R, regarding export & import of the Product(s).

23. Privacy

- a) In this clause, all terms used have the meaning given in the Privacy Act 1988 (Cth) as amended from time to time (Privacy Act).
- b) Seller must comply with the provisions of the Privacy Act in relation to any personal information provided to Seller by H&R.

24. General

- a) This Agreement is governed by the laws of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of that State and courts entitled to hear appeals from those courts.
- b) This Agreement supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the parties in respect of its subject matter.
- c) Waiver of any right arising from a breach of this Agreement must be in writing and executed by the party granting the waiver. A failure to exercise, a delay in exercising, or a partial exercise of, a right created under or arising from a breach of this Agreement does not result in a waiver of that right.
- d) A variation of any term of this Agreement must be in writing and signed by the parties.
- e) Unless otherwise provided in this Agreement, Seller must not assign, create an interest in or otherwise deal with its rights or obligations under this Agreement without the prior written consent of H&R, which may be withheld by H&R in its absolute discretion.
- f) Seller and H&R are independent contracting parties and nothing in this Agreement shall make either party the agent or legal representative of the other.