

CONFIDENTIAL



Terms and Conditions of Purchase Orders

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Horizon Electronics Company Pty Ltd
ABN 36 007 302 801

Purchase Order Terms and Conditions

1: Application

These terms and conditions apply to and form part of all purchase orders issued by Horizon Electronics Company Pty. Ltd. ("Horizon") for the purchase of goods and, where specifically referred to, services.

2: Essential Provisions

The purchase order contains essential provisions that the supplier of the goods and/or services ("the Seller") must comply with. If the Seller does not comply with an essential provision, the Seller will be in default of its obligations to Horizon. The essential provisions of the purchase order are:

- a. The Seller will provide a written acknowledgement and acceptance that the goods and/or services ordered are available and can be supplied in accordance with the delivery terms. Where the Seller is within Australia, the acknowledgement and acceptance is to be provided within seven (7) days of the date of the order and where the Seller is outside Australia, the acknowledgement and acceptance is to be provided within fourteen (14) days of the date of the order.
- b. All prices quoted in the purchase order shall exclude all taxes, charges and GST, and shall not be increased, unless agreed in writing by Horizon.
- c. The goods supplied by the Seller shall: -
 - i. Comply with a specification or drawing as referenced by the purchase order;
 - ii. Comply with a published data sheet for which the manufacturer and part number is referenced by the purchase order;
 - iii. If purchased after the review of a sample, comply in all respects with the sample and shall not incorporate any modification or variation without express written approval from Horizon.
- d. The goods and/or services supplied by the Seller shall comply with all applicable Federal and State laws and regulations relating to the product standards and safety for the goods and/or services.
- e. The Seller must comply with the timing, method and quantity requirements for the delivery of the goods and/or supply of services ordered.
- f. The goods supplied by the Seller shall be suitably packed so as to secure the goods against damage or the ingress of moisture or contaminants and prepared for shipment to enable the lowest transport and insurance rates to be obtained and otherwise comply with the carrier's requirements.
- g. The Seller shall be responsible for employing adequate procedures to guarantee conformance to these requirements. The goods and/or services must pass Horizon's quality control inspection and the Seller agrees to allow Horizon's inspectors access to the Seller's premises for the purposes of quality control inspection.
- h. Where the description of the goods includes "RoHS", the seller shall ensure that the supplied goods are compliant with ***"The Restriction of the use of certain Hazardous Substances in electrical and electronic equipment per Directive 2002/95/EC of the European Parliament and the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment"*** or as later amended. The seller agrees to indemnify Horizon Australia and its servants from any action or costs arising from non compliance of the supplied goods.
- i. If a breach of any essential provision occurs, the Seller will be in default and Horizon can take the steps described in the terms and conditions to remedy the default.

3: Remedies

If the Seller is in default, Horizon can at its absolute discretion: -

- a. Where the goods delivered are found to be defective in design, function, material or workmanship, Horizon shall have the right to notify the Seller and either: -
 - i. Carry out necessary repairs to the goods to correct such defect; or
 - ii. Return the goods to the Seller for a credit, repair or replacement.

The costs of Horizon exercising either of these options shall be at the Seller's expense.

- b. If the goods and/or services are not delivered within ten (10) days after the date specified in the purchase order, the order is automatically cancelled. Horizon may however, at its discretion, renew the purchase order in writing.
- c. If the goods and/or services supplied pursuant to the purchase order are not of the standard required by Horizon in the essential provisions, Horizon shall, in addition to other available remedies, be entitled to cancel the balance of the order and any other orders not yet supplied and be paid compensation by the Seller for any costs and losses involved, including the credit, replacement, repair and freight of the goods.
- d. Call on the indemnity provided by the Seller to Horizon.
- e. Exercise its right to damages and any other remedies available at law.

4: Indemnity

The Seller indemnifies Horizon and keeps Horizon indemnified from and against any claim, demand, cause of action, damage, loss, consequential loss, cost, expense (including legal expense) made against or suffered by Horizon arising out of or in connection with or as a result of: -

- a. The goods and/or services supplied or to be supplied under this purchase order;
- b. Any actual or threatened infringement of a third party's industrial and/or intellectual property rights relating to the goods; and
- c. Horizon breaching contracts or arrangements it has entered into in reliance upon the acknowledgement and acceptance of the Seller in clause 2a, where the Seller, for whatever reason, fails to comply with the availability or delivery conditions of the purchase order.

5: Termination

- a. The purchase order may be cancelled by Horizon in the event of the Seller at any time failing or being unable to comply with any of the terms or conditions either express or implied in relation to the sale of the goods or supply of the services in any way.
- b. Either party may terminate this purchase order forthwith by written notice to the other party if: -
 - i. A receiver, official receiver, liquidator, provisional liquidator, official manager, agent, receiver and manager or similar officer is appointed or application is made to a court for the appointment of such a person to the other party;
 - ii. The other party enters into or resolves to enter into a scheme of arrangement or composition with or assignment for the benefit of its creditors or it proposes a reorganisation, moratorium or other administration involving its creditors or resolves to wind itself up or otherwise dissolve itself or give notice of intention so to resolve;
 - iii. The other party is presumed to be insolvent within the meaning of the Corporations Act, 2001;
 - iv. Without the prior written consent of the party, ceases to carry on its business or threatens to do so; or,
 - v. The business of the other party is sold or otherwise comes under the control of any person other than the other party or is purported to be sold, mortgaged or otherwise alienated or encumbered.

6: GST

All prices quoted in the purchase order for any taxable supply will exclude any Goods and Services Tax (GST) payable. Notwithstanding any other conflicting provisions, Horizon is not obliged to pay for any taxable supply made by the Seller unless and until Horizon receives a GST tax invoice or adjustment notice for that supply.

7: Variation

- a. This contract is not assignable by the Seller without the written consent of Horizon.
- b. No variation of the purchase order shall be binding on Horizon unless made in writing and signed by a duly authorised officer of Horizon.

8: Privacy

The Seller and Horizon agree that they shall comply with all the provisions of the Privacy Act 1988 as amended and that they are bound by and fully comply with the National Privacy Principles dealing with the collection, use and storage of personal information about individuals.

9: Jurisdiction

The applicable law for the interpretation and enforcement of this purchase order is that of the State of Victoria, Australia, and the Seller hereby agrees to submit to the jurisdiction of the courts of Victoria for the purpose of settling any disputes hereunder.

Rev 1, 20/08/2008 Initial release