



Terms and Conditions of Purchase

1. Definitions

Parties means Associated Kiln Driers Pty Ltd and/or any of its subsidiary companies as the **Buyer**, and **Supplier** means the person whose name appears on the Order issued by the Buyer as the person from whom the Goods or Services (as applicable) are ordered.

Order means a written order for Goods or Services provided by the Buyer in the form of a purchase order

Goods means any physical item which is required to be supplied by the Supplier to the Buyer under this Order.

Services means the services that the Supplier is required to perform under this Order, and include all things, resources, services, and tasks which are reasonably necessary for or incidental to provision of the services;

Fees mean the fees, purchase price or other amounts payable by the Buyer to the Supplier under this Order, as specified in the Order details;

Loss means any damages, losses, costs, charges, interest, penalties, fees, fines forfeitures, assessments, expenses and liabilities whether present, unascertained, immediate, future or contingent, and whether based in contract, tort, statute or otherwise.

2. Fees and payment

- 2.1 Fees are fixed and can only be varied if the Buyer agrees in writing.
- 2.2 There will be no other charges other than those specified on the on the Order. Unless specified on the Order, all packing, cartage and other costs of delivery and all taxes and other duties shall be at the cost of the Supplier.
- 2.3 The Supplier must submit an invoice for all Fees in the form of a valid tax invoice and specify any GST payable.
- 2.4 Subject to this clause, the Buyer will pay the Supplier invoice within 30 days from the end of month the invoice has been received.
- 2.5 The Buyer will be entitled to withhold any taxes that are required by law to be withheld from any payment to be made to the Supplier.
- 2.6 If the Buyer disputes in good faith any part of an invoice, it will notify the Supplier in writing the amount in dispute and may withhold payment of the disputed amount until such time as the dispute is resolved in accordance with clause 3 of these Terms and Conditions.

3. Dispute Resolution

- 3.1 Either party may submit a written notice to the other that a matter arising from these Terms and Conditions is disputed. On receipt of a notice claiming a dispute has arisen the parties will endeavour in good faith to resolve the dispute. If the Parties do not resolve the dispute within 10 business days of receipt of a notice of dispute, then the parties must submit the dispute to mediation, to be conducted in Melbourne, Victoria. The Resolution Institute Mediation Rules apply to the mediation. The parties must pay the mediator's remuneration in equal shares. Each party must pay its own cost of the mediation. The Buyer will promptly pay any part of the disputed amount that is agreed or determined to be payable.

4. Supply of Goods

- 4.1 Full unencumbered title to the Goods passes to the Buyer upon the earlier of payment by the Buyer for the Goods or delivery of the Goods to the Buyer.

- 4.2 Risk of loss or damage to the Goods passes only upon delivery of the Goods, irrespective of whether payment has already been made.
- 4.3 The Supplier will deliver the Goods to the delivery location, and in accordance with the delivery requirements set out in the Order. The Supplier must not split delivery of the Goods over multiple deliveries unless agreed to or directed by the Buyer.
- 4.4 The Supplier must ensure that all Goods are securely packed in a prudent manner and in accordance with any instructions from the Buyer, and applicable laws, to protect the Goods from damage, contamination, theft, or unauthorised tampering whilst in transit, and to allow proper storage and stock control.
- 4.5 If the Order specifies a delivery date or delivery time, the Supplier will deliver the Goods on the specified delivery date and time. If no delivery date and time is specified, the Supplier will deliver the Goods within a reasonable time from the date of Order.
- 4.6 The Buyer may, acting reasonably, direct the Supplier to vary the delivery location, date, or time for the Goods. The Supplier must use all reasonable endeavours to comply with the direction and must notify the Buyer immediately if the Supplier is not able to comply with the directions. The Buyer will reimburse the Supplier all substantiated and unavoidable additional costs incurred as a result of following the Buyer's directions and documented on an itemised invoice.
- 4.7 The Supplier must ensure that the vehicles used to deliver the Goods, and their drivers, comply with all applicable laws, including in respect of heavy vehicle safety, mass, and load regulations, driving hours and fatigue management.
- 4.8 If the Buyer rejects a delivery for cause, the Supplier must collect and remove the rejected delivery at its cost and arrange for redelivery of compliant Goods and Services as soon as practicable.

5. Inspection and non-compliance

- 5.1 The Buyer may carry out such testing and inspection of the Goods and Services at any time after they have been supplied to verify whether they comply with the requirements of the Order.
- 5.2 The Supplier must immediately notify the Buyer if the Supplier becomes aware that any of the Goods or Services does not comply with the requirements of this Order, including any product or safety recall affecting any Goods.
- 5.3 If any Goods or Services do not comply with the requirements of this Order (and such non-compliance is not caused by the default of the Buyer), the Buyer may:
- (1) in respect of Goods, return them to the Supplier and require their immediate repair or replacement. The Supplier is responsible for freight, packing and all other costs associated with the return of the Goods to the Supplier;
 - (2) in respect of Services, require the Supplier to remedy or re-perform the Services at no additional cost to the Buyer; and
 - (3) in respect of Goods or Services, terminate this Order for cause, in which case the Supplier must refund all Fees paid by the Buyer for the non-compliant Goods or Services.

6. Cancellation

- 6.1 The Buyer may cancel an Order or any part thereof at any time by giving written notice to the Supplier to that effect.
- 6.2 Except where such notice is due to any breach by the Supplier of any of the terms of this Order, in the event of cancellation the Buyer will pay to the Supplier:
- (a) if the Supplier holds finished goods and the time for delivery of those goods is not more than 30 days after the date of the cancellation, the full purchase price of such goods. Such payment is to be made on delivery of the goods on the delivery date;
 - (b) if the Supplier holds raw materials or has placed orders for raw materials which cannot be cancelled and such raw materials have been purchased or ordered solely for the purpose of the Order and can only be used for such purpose, the cost to the Supplier of such raw materials. If the Buyer so requests, the Supplier must deliver such raw materials to the Buyer, and payment is to be made on delivery of the raw material; and
 - (c) if the Supplier holds goods other than raw materials or finished goods which have been produced solely for the purpose of the Order, the actual cost to the Supplier of such goods. If the Buyer so requests, the Supplier must deliver such goods to the Buyer, and payment made on delivery of the goods.

7. Site Access

- 7.1 The Buyer will give the Supplier reasonable access to the Buyer's sites as is necessary for the Supplier to perform its obligations under this Order (including to deliver the Goods).
- 7.2 The Supplier must comply (and ensure that its Personnel comply) with all site rules (including in respect of health and safety, security, environment) as notified by the Buyer from time to time. The Buyer may, without liability to the Supplier, refuse or revoke access if the Supplier breaches any site rules.

8. Warranties

- 8.1 The Supplier warrants that:
- (1) it has and will maintain all licences, authorisations and permits required to perform its obligations under this Order.
 - (2) the Goods will be free from all security interests when delivered to the Buyer;
 - (3) the Goods and Services will comply, in all material respects, with the requirements set out in this Order and any Specifications associated with this Order;
 - (4) the Goods and Services will be of acceptable quality, and will be fit for the purpose for which they are typically used; and
 - (5) the performance of the Supplier's obligations under this Order and the use, reproduction, disclosure and exploitation of Goods and Services by the Buyer do not and will not infringe the Intellectual Property Rights of any person.

9. Indemnity

- 9.1 The Supplier hereby indemnifies the Buyer from and against any Loss suffered or incurred by the Buyer arising from or in connection with any of the following:
- (1) any claim by any person alleging that the Goods or Services, or their use, or the Supplier's performance of its obligations under this Order, infringes the Intellectual Property Rights of any person;
 - (2) fraud, or fraudulent misrepresentation or wilful misconduct by the Supplier or its Personnel;
 - (3) damage or loss to any real and tangible property of any person caused by any act or omission of the Supplier or its Personnel; or
 - (4) death of or injury to any person, caused by any act or omission of the Supplier or its Personnel.
- 9.2 A party's liability under the Agreement (including under an indemnity) is reduced proportionately to the extent that the Loss suffered by the other party is caused by the breach of this Agreement or the negligent act or omission of the other party.
- 9.3 Each indemnity contained in this Order is a continuing obligation notwithstanding any settlement of account or the occurrence of any other thing, and it is not necessary for a party to incur expense or make payment before enforcing or making a claim under an indemnity.

10. Insurance

- 10.1 The Supplier must ensure at all times that it holds valid insurance including product liability insurance, public liability insurance, and motor vehicle insurance for any vehicles that may be used on the Buyer's premises. In each case the insured sum must be for an amount equivalent or greater than what would be prudent for a reasonable business of the type operated by the Supplier. On request from the Buyer, the Supplier will provide evidence of the insurances required pursuant to this clause in the form of certificate of currency (in a form acceptable and in substance to the Buyer) from the Supplier's insurance company.

11. Confidential Information

- 11.1 All specifications and other information provided by the Buyer to the Supplier in connection to this Order are confidential to the Buyer and will be used by the Supplier solely for the purpose of performing its obligations under this Order and shall remain the property of the Buyer and be returned to the Buyer on demand. This clause will survive the expiration or termination of this Order.

12. Modern Slavery

- 12.1 **'Modern Slavery'** means conduct which would constitute an offence under the *Modern Slavery Act 2018* (Cth) and *Criminal Code Act 1995* (Cth) (**Modern Slavery Laws**). This includes but is not limited to trafficking of persons, illegal forms of child labour, slavery, forced labour, deceptive recruiting, debt bondage or offences involving non-citizens working in Australia without the correct visa.
- 12.2 The Supplier warrants, and undertakes to:
- (1) comply with all Modern Slavery Laws;
 - (2) have processes in place to review and understand the risks of Modern Slavery practices occurring in its operations and supply chains;
 - (3) have processes in place to ensure it conducts business in alignment with the principles and objectives of the Modern Slavery Laws, including appropriate training of its directors, officers, and employees; and
- 12.3 On request by the Buyer the Supplier must promptly and accurately complete questionnaires relating to the sources of its products, materials and business practices including its compliance with the Modern Slavery Laws.
- 12.4 The Supplier must notify the Buyer as soon as it becomes aware of any actual or suspected:
- (1) Modern Slavery concerns occurring in its own business operations or the operations of any member of its supply chains; and/or
any breach, or potential breach, of the Modern Slavery Laws.

13. Relevant Jurisdiction

- 13.1 This Order shall be governed by and construed in accordance with the laws of the State in which the Buyer is incorporated, and the parties submit to the exclusive jurisdiction of the courts of that State.