

Terms & Conditions of Purchase

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1 Definitions

- 1.1 **Elton Group** means Elton Group Pty Ltd ABN 59 099 878 878.
- 1.2 **Elton Group Supplied Materials** means, if applicable, all products and materials to be supplied by Elton Group or its supplier to the Supplier (and as specified in a Purchase Order) in order for the Supplier to provide the Services and supply the Products to Elton Group or its customers.
- 1.3 **Products** means all end products to be supplied by the Supplier to Elton Group or its customers and includes the provision of any Services.
- 1.4 **Purchase Order** means Elton Group's order for Products and Services in accordance with these Terms and Conditions.
- 1.5 **Services** means all services supplied or provided or to be supplied or provided by the Supplier to Elton Group or its customers.
- 1.6 **Supplier** means the relevant entity or person the subject of the Purchase Order which is to provide Products or Services to Elton Group or its customers.
- 1.7 **Tender Documentation** means, if applicable to the Supplier, the Request for Tender issued by Elton Group to the Supplier, including the Product Table(s) and pricing requirements under the Request for Tender.
- 1.8 **Terms and Conditions** means these terms and conditions.

2 Agreement & Purchase Orders

- 2.1 The Supplier agrees to supply the Products and Elton Group agrees to acquire and pay for the Products on these Terms and Conditions, the terms set out in a Purchase Order relating to prices, quantities, delivery, terms of payment, invoicing, shipping instructions and/or descriptions of the Products, and if applicable, the Tender Documentation (collectively, the **Contract**). To the extent of any inconsistency, the terms of a Purchase Order will prevail over these Terms and Conditions and the Tender Documentation (if applicable).
- 2.2 The Supplier is deemed to have accepted a Purchase Order upon the earliest of any acknowledgement of acceptance of a Purchase Order, commencement of supply of the Products by the Supplier, or upon the expiration of 2 business days after receiving a Purchase Order.
- 2.3 The Supplier agrees to promptly accept and perform a Purchase Order which has been issued in accordance with these Terms and Conditions.
- 2.4 The Contract sets out the entire agreement and understanding between Elton Group and the Supplier in respect of the Products and supersedes and prevails over any other arrangements, understandings, representations or warranties (express or implied). The Contract may only be varied by express written agreement between the parties. Without limiting the foregoing, Elton Group is not bound by any terms or conditions in any document issued by the Supplier, including in any sales order confirmation, quotation or response to Tender Documentation (if applicable), which is inconsistent with the Contract.

3 Cancellation & Variation

- 3.1 Elton Group may cancel any Purchase Order, in whole or in part, without further obligation or liability to the Supplier by written notice to the Supplier at least 3 days prior to the scheduled production date advised by the Supplier to Elton Group for the Products the subject of the Purchase Order. In any other case, if Elton Group cancels any Purchase Order it will only be liable for the Services actually performed up to the point of cancellation.
- 3.2 Elton Group may at any time upon written notice to the Supplier vary its order for Products, including quantity, specifications, delivery, materials and other descriptions relating to Products (as initially set out in a Purchase Order). If such variation results in an increase or decrease in the price of the Products set out in a Purchase Order and the Supplier notifies Elton Group of such changes within two days from the date of receipt of the notice from Elton Group, the Supplier and Elton Group will negotiate an equitable adjustment to the purchase price. No claim for an adjustment in price will be valid unless such changes are specifically requested by Elton Group and the amount of the adjustment in price is specifically agreed to in writing by Elton Group.

4 Prices, Invoice & Payment

- 4.1 Elton Group will pay the Supplier the price of the Products as set out in the Purchase Order. Elton Group and the Supplier agree that the price for the Purchase Order will be:
 - (a) if the Tender Documentation applies, the relevant price under the Tender Documentation (including, if applicable, that the pricing under the Tender Documentation is fixed until a minimum of 60 days' notice in writing to Elton Group of any price change has been received, and Elton Group may place orders at the existing pricing until the 60 days' notice has elapsed); and
 - (b) in any other case, either:
 - (i) the relevant price which has been provided to Elton Group by the Supplier in a quotation form or other applicable pricing document for such Products; or
 - (ii) if clause 4.1(b)(i) does not apply, the relevant price on the date the Purchase Order is accepted (or deemed to be accepted) by the Supplier, and the Supplier agrees to accept the price in a Purchase Order which is in accordance with the terms above.
- 4.2 Unless otherwise provided in a Purchase Order, the price is exclusive of GST but includes all other sales taxes, fees, duties and imposts (other than income tax) payable on or in connection with the supply of the Products. If Elton Group is subsequently required to pay any taxes, fees, duties or imposts relating to the production, sale or transportation of the Products ordered, the Supplier will promptly reimburse Elton Group for such taxes, duties and imposts.
- 4.3 The Supplier will issue a valid tax invoice to Elton Group on delivery of the Products.
- 4.4 Subject to any reduction for set-off or counter claim that may be made by Elton Group, Elton Group will pay undisputed amounts in any correctly rendered tax invoice within the time period stipulated in a Purchase Order or if not stipulated, within 30 days of the end of the month of receipt of such invoice.
- 4.5 Payment by Elton Group in accordance with clause 4.4 shall not constitute or be deemed to constitute any acknowledgement by Elton Group as to the adequacy of the Products delivered by the Supplier under these Terms and Conditions.

5 Delivery, Title & Risk

- 5.1 Subject to clause 5.2, the Supplier and Elton Group agree that delivery of the Products will occur on the following basis:
 - (a) Elton Group or its customer will arrange a carrier to collect the Products from the Supplier's premises. This includes that Elton Group or its customer may agree that the carrier will be arranged by the Supplier or be the Supplier's vehicle(s). If the carrier will be the Supplier's vehicle(s), such carrier will be regarded as an independent contractor for the purposes of these Terms and Conditions. The relevant carrier determined in accordance with this clause 5.2(a) will be the "Carrier" for the purposes of these Terms and Conditions;
 - (b) the Supplier is responsible for fully loading the Products on to the relevant Carrier for despatch, and must ensure strict adherence to the National Heavy Vehicle Regulations Load Restraint Guide 2018 for despatch of the Products by the Carrier to Elton Group, its customer or other relevant delivery location as specified in the Purchase Order; and
 - (c) risk and title to the Products passes to Elton Group on the Products being fully loaded on to the relevant Carrier in accordance with clause 5.2(b) (provided that title to the Elton Group Supplied Materials in the Products will have already been retained by Elton Group in accordance with clause 8 of these Terms and Conditions).
- 5.2 If the circumstances require, Elton Group may specify in its Purchase Order (or otherwise by agreement in writing with the Supplier) alternative arrangements for delivery to the arrangements set out in clause 5.1. If this occurs, the Supplier agrees to comply with the relevant delivery arrangements, and, unless specified otherwise, risk and title to the Products will pass on Elton Group or its customer receiving the Products unloaded at the relevant delivery point.
- 5.3 Regardless of the method or location of delivery, all Products will be received by Elton Group (or its customer) subject to its rights of inspection and rejection.

6 Acceptance of Products

- 6.1 Elton Group's (or its customer's) acknowledgement of receipt or delivery of Products shall not constitute acceptance of such Products or acknowledgement of the quantity of Products delivered or an acknowledgement that the Products comply with any specifications or the terms of the Contract.
- 6.2 Acceptance of Products shall occur only when Elton Group (either personally or through one or more of its agents or its customers), after having had a reasonable opportunity to inspect and test the Products, acknowledges its acceptance of the Products.
- 6.3 If any Products are found not to comply with the Contract, Elton Group may (at its discretion and without limiting any other rights) either personally or through one or more of its agents or customers:
 - (a) reject and return (or procure the return of) the entire delivery (at the Supplier's cost) without further inspection;
 - (b) complete inspection of all Products in the shipment and then reject and return any or all non-conforming Products (at the Supplier's cost);
 - (c) accept the Products at a reduced price; or
 - (d) require the Supplier (at the Supplier's cost) to urgently deliver to Elton Group at its nominated delivery location replacement Products that do comply with the Contract by whatever transport Elton Group requires (at the Supplier's cost and risk).
- 6.4 Elton Group shall not be obliged to accept or pay for any Products in excess of the quantity ordered in a Purchase Order or any Products that do not comply fully with the Contract.
- 6.5 Elton Group's acceptance of any non-conforming Products shall not constitute a waiver of any requirements under a Purchase Order or these Terms and Conditions for Products subsequently delivered.
- 6.6 Without limiting the foregoing, any rejected Products shall be collected by the Supplier at the Supplier's expense from the location of Elton Group or its customer to which they were ultimately delivered, and the Supplier shall be liable to Elton Group for any other expenses incurred by Elton Group in connection with such rejected Products and their return, including the cost of all Elton Group Supplied Materials. Such cost will include the cost of all Elton Group Supplied Materials in accordance with the Tender Documentation, as applicable. The management of the return of any such rejected Products to the Supplier's premises will be negotiated on a case-by-case basis between the Supplier and Elton Group, acting reasonably. Unless Elton Group directs otherwise, all such returned Products will remain the property of Elton Group.



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- 6.7 The Supplier acknowledges and agrees that it will use its best endeavours to prioritise the replacement or repair of any rejected Products over any other manufacturing activities of the Supplier at that time.
- 7 Packing & Delivery**
- 7.1 All Products subject to a Purchase Order must be properly packed, marked and delivered with Elton Group's product labels provided to the Supplier (as applicable) and in accordance with all relevant laws and industry codes of conduct.
- 7.2 Without limiting any other clause of these Terms and Conditions, the Supplier must pack the Products so as to avoid damage during delivery, collection, loading and unloading. Any damage to any Product resulting from improper packaging will be the responsibility of the Supplier.
- 7.3 Unless specified in the Purchase Order otherwise, the price includes all standard packing associated with the Products. Any other charges for packing, boxing, transporting or storing Products will be as agreed between the Supplier and Elton Group in the Purchase Order.
- 7.4 The Supplier must promptly notify Elton Group in writing if the Supplier does not expect to meet the date specified for delivery in a Purchase Order.
- 7.5 If the Supplier fails to deliver the Products on the date specified for delivery in a Purchase Order, the Supplier shall (without limiting any other rights of Elton Group) be responsible for all premium freight charges, overtime charges and other associated costs required to supply the Products as soon as possible.
- 8 Elton Group Supplied Materials**
- 8.1 Elton Group may specify any Elton Group Supplied Materials to be supplied by Elton Group to the Supplier for the purposes of a Purchase Order (if applicable), and any other relevant terms applying to the supply of such Elton Group Supplied Materials.
- 8.2 Unless provided for in a Purchase Order or by these Terms and Conditions (including with respect to rejected and/or returned Products), all transportation costs in respect of the delivery of Elton Group Supplied Materials to the Supplier will be borne by Elton Group.
- 8.3 Notwithstanding anything in these Terms and Conditions, a Purchase Order or any other document to the contrary, title to the Elton Group Supplied Materials will remain with Elton Group at all times.
- 8.4 Without limiting clause 8.3, in respect of all Elton Group Supplied Materials at all times, the Supplier will:
- hold the Elton Group Supplied Materials on a fiduciary basis as Elton Group's bailee;
 - store the Elton Group Supplied Materials with reasonable care at the Supplier's address; and
 - use the Elton Group Supplied Materials only in accordance with the Contract and permit Elton Group and its representatives on reasonable notice and during business hours access to the Elton Group Supplied Materials for the purposes of inspecting the Elton Group Supplied Materials.
- 9 Security Interest**
- 9.1 Notwithstanding any other provision of these Terms and Conditions, the Supplier will not make or seek to make, and hereby waives any right it may have or have had to make, any registration in respect of Elton Group, the Products or the Elton Group Supplied Materials applied to Elton Group under the Personal Property Securities Act 2009 (Cth) (PPSA) or on the Personal Property Securities Register.
- 9.2 In consideration for Elton Group supplying Elton Group Supplied Materials to the Supplier under these Terms and Conditions, the Supplier:
- agrees to treat the security interest created under these Terms and Conditions as a continuing and subsisting security interest in the relevant Elton Group Supplied Materials with priority over any registered or unregistered general (or other) security and any unsecured creditor;
 - grants to Elton Group a purchase money security interest (PMSI);
 - agrees that the PMSI granted herein will continue to apply to any goods coming into existence from the Elton Group Supplied Materials;
 - agrees that the PMSI has attached to all Elton Group Supplied Materials now or in the future supplied to the Supplier by Elton Group; and
 - agrees that it will not deal with the Elton Group Supplied Materials in a way that will or may prejudice any rights of Elton Group under these Terms and Conditions or the PPSA, other than for the purposes of the Supplier performing the Services or supplying any Products to Elton Group.
- 10 Warranties as to Products**
- 10.1 In relation to the Products supplied under these Terms and Conditions the Supplier warrants that:
- Elton Group has the right to undisturbed possession of the Products;
 - the Products are free from any undisclosed security interests;
 - the Products are new, of acceptable quality and are free from any defect in materials or workmanship;
 - the Products are fit for any disclosed purpose, for any purpose for which the Supplier represents that they are fit and are fit for any purpose that is reasonably foreseeable that they will or may be used;
 - the Products correspond with any relevant description;
 - the Products comply with any applicable specifications; and
 - the Products (and their packaging) will comply with all applicable laws and industry standards and customs.
- 10.2 Any Products purchased under a Purchase Order not in accordance with any of the warranties set out in clause 10.1 above, may, at Elton Group's election be treated as a partial or total breach of these Terms and Conditions and Elton Group may avail itself of any and all remedies available to it including, but not limited to:
- cancellation of the Purchase Order in whole or in part;
 - rejection and return to the Supplier, at the Supplier's expense of all or any portion of the Products previously delivered;
 - replacement from the Supplier or other sources of the Products covered by the Purchase Order; and
 - retention of the Products and their repair at the Supplier's expense.
- 10.3 Without limiting clause 10.2, with respect to Services the Supplier warrants that the Services shall conform to the applicable specifications for the Services and any requirements made known by Elton Group. If the Services fail to conform to the specifications or those requirements then the Supplier shall, at Elton Group's request and at Elton Group's discretion, either:
- re-perform the Services;
 - refund all fees related to the Services; or
 - pay for complying Services to be provided to Elton Group by a third party.
- 10.4 The Supplier shall be liable to Elton Group for any and all reasonable expenses and liabilities suffered incurred by Elton Group in connection with Products not being supplied in accordance with the Contract (including the warranties in clause 10.1 above).
- 10.5 Without limiting the foregoing, the Supplier:
- warrants to Elton Group that it has read and understood these Terms and Conditions; and
 - warrants to Elton Group that all information supplied by or on behalf of it to Elton Group in connection with the supply of Products and the provision of the Services is true and accurate and not misleading or deceptive.
- 10.6 All warranties given by the Supplier shall benefit and endure to the benefit of Elton Group, its successors and assigns and its customers. Elton Group holds the benefit of such warranties in its own right and also on trust for its successors, assigns and customers.
- 11 Insurance**
- Without limiting any other term of the Contract, the Supplier will take out and maintain at its expense such policies of insurance and levels of coverage as reasonably required to ensure the Supplier maintains a prudent level of insurance for the Contract, having regard to the size and nature of the Supplier's business, with a reputable insurer.
- 12 Breach & Insolvency**
- If a party (being a **Defaulting Party**):
- fails to comply with the terms of the Contract;
 - an application or order is made, a resolution is made or proposed or other steps are taken for the winding up, dissolution, official management or voluntary administration of that party (other than a voluntary liquidation for the purpose of amalgamation or reconstruction);
 - enters into any arrangement, compromise, composition or assignment for the benefits of its creditors or any class of them;
 - has a receiver, a receiver and manager, administrator or other officer is appointed to that party or any part of its property, or a third party attempts to levy execution against that party's property or the goods;
 - ceases, suspends or threatens to cease or suspend the conduct of its business or disposes of or threatens to dispose of its assets other than in the ordinary course of business;
 - is or is deemed (including under any applicable law) unable to pay its debts as and when they fall due, or stops or suspends the payment of its debts;
 - in the case of a party being a natural person, that party commits an act of bankruptcy; or
 - any of the above will or are likely to occur in respect of that party,
- the other party (being the **Non-Defaulting Party**) may (without limiting or otherwise prejudicing any other rights it may have) at any time terminate any and all Contracts with the Defaulting Party.



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13 Confidential Information & Intellectual Property

- 13.1 All information furnished or made available by Elton Group to the Supplier in connection with the supply of Products or the provision of Services shall be held in the strictest confidence by the Supplier. The Supplier agrees not to use such information or disclose such information to others without Elton Group's prior written consent. The obligations in this clause will not apply to any information which:
- (a) at the time of disclosure was or thereafter becomes, generally available to the public by publication or otherwise through no breach by the Supplier of any obligation herein;
 - (b) the Supplier can show by written records was in the Supplier's possession prior to disclosure by Elton Group; or
 - (c) is legally made available to the Supplier by or through a third party having no direct or indirect confidentiality obligation to Elton Group with respect to such information.
- 13.2 Except as expressly provided otherwise, the Supplier acquires no rights, title or interest in any drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights and other information or industrial or intellectual property disclosed or otherwise provided to the Supplier by Elton Group (collectively "**Intellectual Property**"). The Supplier may only use the Intellectual Property if and then only to the extent necessary to perform its obligations under the Contract.
- 13.3 Except as otherwise agreed in writing by Elton Group, all intellectual property (including all copyright throughout the world) in any works or other materials (however embodied and including in relation to any tooling and molds) created by the Supplier in the course of the supply of the Products or the provision of Services for the purposes of a Purchase Order is the property of Elton Group and the Supplier hereby assigns to Elton Group all such intellectual property (including all copyright throughout the world) in any such works and materials and will execute all documents and do all things reasonably required by Elton Group to perfect such assignment and will ensure that it obtains from all individual creators of such works and materials consents to all acts and omissions in respect of such works and infringements of such creators' moral rights.
- 13.4 Where the Supplier has manufactured or altered a Product in accordance with a design which has been instructed by Elton Group, Elton Group will be responsible for any infringement of the Intellectual Property rights of any third party through any work required to be done in accordance with such instructions.

14 Limitation of Liability

To the extent permitted by law, and except as otherwise expressly agreed in writing as part of a Contract, no party will be liable for any claim or loss which does not naturally flow from a breach of the Contract or from the matter that gives rise to the claim, including loss of profit, loss of opportunity, loss of reputation or any punitive damages. Elton Group will have no liability arising out of or in connection with these Terms and Conditions in excess of the amount paid under the applicable Purchase Order regardless of whether such claim is for breach of contract, tort or otherwise.

15 Waiver

A right of Elton Group arising under or in connection with a Contract can only be waived in writing signed by Elton Group. Delay or failure by Elton Group in exercising a right does not constitute a waiver of that right (wholly or in part), nor will a waiver of a right (wholly or in part) operate as a subsequent waiver of the same right or any other right.

16 Assignments & Subcontracting

Neither these Terms and Conditions, nor any Purchase Order, nor any interest under either of them, may be assigned or subcontracted by the Supplier without prior written approval of Elton Group.

17 Setoff

All claims for money due or to become due from Elton Group shall be subject to deduction or set-off by Elton Group by reason of any counterclaim arising out of this or any other transaction with the Supplier.

18 Inspection

- 18.1 The Supplier must provide all reasonable access and assistance required to enable Elton Group to evaluate the Supplier's compliance with the Contract.
- 18.2 Without limiting clause 18.1, the Supplier will provide all reasonable assistance and make available any relevant records to Elton Group for review, inspection and reproduction on reasonable request by Elton Group.

19 Force Majeure

- 19.1 Neither Elton Group nor the Supplier (**Affected Party**) shall be responsible for any failure to perform any obligation under a Contract due to unforeseen circumstances or to causes beyond the Affected Party's reasonable control, including but not limited to acts of God, war, riot, embargoes, and acts of civil or military authorities, fire, floods, accidents or strikes (**Force Majeure**).
- 19.2 If the Affected Party is prevented in whole or in part from carrying out its obligations under any Contract as a result of Force Majeure, then the Affected Party shall give prompt notice to the other party of its inability to meet its obligations under such Contract, whether temporary or permanent and the expected duration of the Force Majeure.
- 19.3 The Affected Party must remedy the Force Majeure to the best of its ability so as to resume performance of its obligations under the Contract as soon as reasonably practicable.
- 19.4 Should either party be prevented from carrying out its obligations as a result of Force Majeure, then the Affected Party shall take all action reasonably practicable to mitigate any loss suffered by the parties as a result of Force Majeure.
- 19.5 Any failure by either party to carry out any of its obligations, except the obligation to pay money, under any Contract shall not be deemed to be a breach of the Contract if such failure is caused by Force Majeure and the Affected Party will be allowed such further time as is reasonable to fulfil its obligations under the Contract.
- 19.6 If the Force Majeure continues for more than 90 consecutive days, the party other than the Affected Party may, at its sole discretion, immediately terminate these Terms and Conditions and any Contract by giving written notice to the Affected Party.

20 Governing Law

These Terms and Conditions are governed by and construed in accordance with the laws of the State of Victoria, Australia (regardless of the place in which the Products are to be delivered). The Supplier submits to the jurisdiction of the courts of the State of Victoria and of the courts competent to hear appeals from the courts of that State.

21 Acceptance

- 21.1 The Supplier declares that the information provided by it in support of or in connection with the Contract is true and correct and not misleading.
- 21.2 The Supplier agrees to be bound solely by the Contract and further agrees that any terms or conditions of supply that may be incorporated in or form part of any acceptance of quotation, delivery documentation, invoice or other document issued by or on behalf of the Supplier shall have no legal force or effect.

