
MM KEMBLA - TERMS OF TRADE WITH A SUPPLIER

1. Definitions

"*Agreement*" means the purchase order, tender document or other document detailing the supply of goods and services to MM, and these terms and conditions, which shall take precedence over any terms and conditions provided by Supplier.

"*Authorised Agent*" means any person or company authorised by MM to inspect, assist, test, negotiate or investigate the supply of goods and services.

"*MM*" means Metal Manufactures Limited or MM Kembla which is a division of Metal Manufactures Limited.

"*Supplier*" means the supplier of the goods and services described in the purchase order, tender or other document.

"*Price*" means the price set out in the Agreement excluding Goods and Services Tax (GST).

2. Supply

(a) The Supplier agrees to supply the goods and/or services described in the Agreement to MM at the price and quantity as set out in the Agreement and at the time and date set out in the said Agreement;

(b) Subject to the terms and conditions hereof MM will pay the Supplier the price as set out in the Agreement thirty (32) days after receipt of the Supplier's tax invoice or within any specific time frame set out in the Agreement, provided the goods and/or services are of acceptable quality;

(c) Where MM makes a claim against the Supplier, MM shall be entitled to withhold any payment due to the Supplier and set off such claim against any such payment

3. Quality and Acceptance of Goods and/or Services

(a) Before accepting any goods and/or services, MM or its Authorised Agent may conduct any test or inspection required or deemed reasonable upon the goods and services at MM's absolute discretion;

(b) MM or its Authorised Agent may reject any goods and/or services which it deems to be of inferior quality, quantity or contrary to the goods and/or services specified in the Agreement, and those goods and/or services which have been rejected are to be returned to the Supplier at the Supplier's cost. MM shall not be required to pay the Supplier's invoice until the goods have been inspected and accepted and MM has no liability to pay if the goods are returned to the Supplier;

(c) The Supplier warrants that the goods and/or services supplied shall be fit for the purpose for which they were intended and are of merchantable quality and the Supplier hereby indemnifies MM against all loss it may suffer including loss of profit and consequential loss arising out of a breach of any warranty or representations or the terms and conditions hereof and this indemnity shall survive termination of the Agreement. This warranty applies whether the goods are manufactured by the Supplier or otherwise. In any claim for negligence or breach of duty of care, the provisions of the Civil Liability Act are hereby excluded;

(d) Inspection or acceptance by MM of the goods and/or services shall not relieve the Supplier of liability for any defective goods and/or services supplied under this Agreement;

(e) The Supplier must at all times comply with any Australian Standards and/or any laws or regulations applicable to the goods and/or services which it supplies to MM.

4. Delivery

(a) Unless otherwise set out in the Agreement, the goods and/or services must be delivered to MM at the Supplier's cost as set out in the Agreement or as shall be directed by MM from time to time. Any delivery that varies from this must be expressly agreed in writing by MM prior to its delivery;

(b) The Supplier is responsible for all packaging and transport of the goods and/or services and all liability associated with transportation and delivery of the goods and/or services until they have been delivered to and accepted by MM pursuant to the Agreement and title in the goods shall not pass to MM until acceptance of delivery.

(c) The Supplier must notify MM if it is unable to supply all of the goods and/or services within the time specified in the Agreement and where the goods and/or services are not supplied pursuant to the Agreement MM reserves the right at its absolute discretion to accept or reject any such later or subsequent delivery of the goods and/or services;

(d) Where the Supplier is in breach of the Agreement, MM shall be at liberty to terminate the Agreement by written notice to the Supplier and recover from the Supplier any moneys paid by MM to the Supplier and any loss or damage MM may suffer as a consequence, including the total cost of obtaining alternate supply of the goods and/or services, loss of profit and any consequential loss suffered by MM;

(e) The Supplier hereby indemnifies MM from and against all losses, damages, claims, costs or expenses, including but not limited to loss of profit and consequential loss which MM may suffer, be exposed to or liable for, as a consequence of or arising out of a breach of the Agreement by the Supplier.

5. Damages

Any damages to be claimed by the Supplier against MM shall be limited only to the value of the goods and/or services to be supplied pursuant to the Agreement. The Supplier is not entitled to recover from MM and hereby indemnifies MM against any consequential loss or damage suffered by it due to any breach or termination of this Agreement by MM.

6. Confidentiality

The Supplier must preserve and keep confidential all and any information supplied to it by MM, including but not limited to information on any volumes or types of goods and/or services to be provided to MM and any other operational aspects of MM's business, unless MM consents to the release of that information by the Supplier, and such consent must be provided in writing.

7. Insurance Cover

Prior to commencing any work required to provide any goods and/or services to MM, the Supplier must effect appropriate insurance policies including, but not limited to public and product liability, workers compensation, motor vehicle and transit insurance and if so required by MM, must produce certificates evidencing same.

8. Termination

Unless otherwise set out in the Agreement, MM may terminate this Agreement by providing the Supplier with not less than sixty (60) days notice prior to the delivery of any of the goods and/or

services pursuant to the Agreement. If so terminated MM will not be responsible to pay the Supplier for any of the goods and/or services which were to be supplied. MM shall not be liable to the Supplier for any loss or damage direct or consequential which the Supplier may suffer as a consequence of this termination.

9. Governing Law

This Agreement is governed by the law of New South Wales, Australia.

10. Non-Assignment

The Supplier must not assign or otherwise deal with this Agreement without the express written consent of MM.

11. Dispute Resolution

Where the parties are in dispute as to any matter arising out of or in respect of the Agreement the parties shall meet in good faith in an attempt to resolve such dispute and where the dispute is unable to be resolved by agreement, the parties shall mediate the dispute in accordance with the model rules for mediation adopted by the Law Society of NSW from time to time. Where the parties are unable to agree on a mediator, the President for the time being of the Law Society of NSW (or his/her nominee) shall appoint an appropriate mediator. The parties shall equally bear the costs of the mediator and shall be responsible for their own costs in relation to such mediation.