

**SCHRAMM AUSTRALIA
PURCHASE ORDER TERMS AND CONDITIONS**

PLEASE NOTE: THESE TERMS AND CONDITIONS APPLY TO ALL OUR PURCHASE ORDERS AND ACCEPTANCE OF A PURCHASE ORDER PLACED BY US CONSTITUTES YOUR AGREEMENT TO BE BOUND BY THESE TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

Unless the context otherwise requires, in these Terms and Conditions:

“**Agreement**” means a contract or agreement between Schramm and the Supplier for the sale or supply of Goods to which these Terms and Conditions apply or are incorporated;

“**Australian Consumer Law**” or “**ACL**” means the *Australian Consumer Law* within the meaning of the *Competition and Consumer Act 2010* (Cth) and/or the *Fair Trading Act 2010* (WA);

“**Goods**” means all goods or services supplied or to be supplied by the Supplier to Schramm at Schramm’s request from time to time;

“**GST**” means the goods and services tax as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

“**Intellectual Property**” means all present and future rights in or in relation to copyright, trademarks, patents, designs, circuit layouts and any other intellectual property rights or licences;

“**Loss**” means any and all damage, loss, injury, harm, liability, action, claims, proceedings, expenses, disbursements and/or costs (whether direct, indirect, consequential, incidental or otherwise), including arising out of a claim by a third party;

“**Prescribed Event**” means any Acts of God, war, flood, fire, storms, natural disasters, riots, terrorism, strikes, criminal acts, accidents, industrial action, government restrictions and other facts, circumstances, matters or things beyond Schramm’s reasonable control;

“**Price**” means the price payable for the Goods as agreed between the Supplier and Schramm in accordance with an Agreement;

“**Purchase Order**” means a document so identified or other correspondence from Schramm to the Supplier requesting the provision or supply of Goods and includes any drawings, specifications or other documents that may be contained therein or annexed thereto;

“**Supplier**” means the person who is to supply Goods to Schramm under an Agreement in consideration of the Price (and who is ordinarily identified in a Purchase Order).

“**Schramm**” means Airdrill Pty Ltd (ACN: 109 184 447) trading as Schramm Australia and its successors and assigns;

“**Terms and Conditions**” means the terms and conditions set out in this document;

1.1 Unless the context indicates otherwise, in these Terms and Conditions:

- (a) a reference to the singular include the plural and vice versa;
- (b) a reference to any gender include the other genders;
- (c) a reference to a person includes a body corporate, firm or unincorporated association or authority;
- (d) a reference to a party includes that party’s executors, administrators, successors and permitted assigns;
- (e) a reference to any statute refers to that statute as amended from time to time;
- (f) a reference to a numbered clause includes a paragraph, sub-paragraph or sub-clause;
- (g) any other grammatical form of a defined word or phrase will have a corresponding meaning;

(h) if a day on or by which an obligation must be performed is not a business day, the obligation must be performed on or by the next business day;

(i) the headings contained in the Terms and Conditions are included for convenience only and do not affect the meaning or interpretation of these Terms and Conditions.

2. APPLICATION

2.1 Unless otherwise agreed in writing, these Terms and Conditions shall apply to all transactions and be incorporated into every contract between the Supplier and Schramm in relation to the supply of Goods.

2.2 The Supplier is taken to have accepted these Terms and Conditions if it accepts a Purchase Order from Schramm.

2.3 These Terms and Conditions shall prevail over the Supplier’s own terms and conditions to the extent of any inconsistency.

2.4 Under an Agreement, any special terms or conditions expressly agreed between the parties in writing shall take precedence over these Terms and Conditions to the extent of any inconsistency.

2.5 Unless otherwise agreed in writing, the Supplier shall, at its expense, deliver the Goods in accordance with the Purchase Order.

3. PRICE

3.1 Schramm agrees to pay the Price to the Supplier in accordance with the Agreement.

3.2 The Price shall not be subject to price escalation.

3.3 Unless otherwise stated, the Price and all other prices and amounts quoted, advertised or invoiced to Schramm are inclusive of any applicable taxes, duties, freight charges, testing fees and commissioning fees.

4. INVOICING AND PAYMENT

4.1 The Supplier must issue a valid tax invoice to Schramm for any amounts payable by Schramm under an Agreement.

4.2 Unless otherwise agreed or specified by Schramm, all amounts invoiced to Schramm must be paid in full within 30 days from the date of the invoice.

4.3 Schramm may deduct or otherwise set-off any amount which Schramm is owed, or claims to be owed, by the Supplier from the Price or any other amount owing by Schramm.

5. DELIVERY

5.1 Unless otherwise agreed in writing, the Supplier shall, at its expense, deliver the Goods in accordance with the Agreement.

5.2 The Supplier shall supply the Goods within the time specified on the Purchase Order. If no time is expressly agreed, then the Supplier shall supply the Goods within a reasonable time.

5.3 The Supplier shall take all reasonable care to ensure that the Goods are packaged adequately for delivery and shall be responsible for any damage or loss caused during transport resulting from improper handling or packaging by the Supplier.

6. TITLE AND RISK

6.1 Any Goods shall become the property of Schramm once delivered to, or otherwise received by, Schramm.

6.2 Risk in any Goods shall remain with the Supplier until Schramm takes delivery or possession of the Goods.

7. WARRANTIES AS TO GOODS

7.1 The Supplier warrants to Schramm that:

- (a) any Goods supplied which are goods, shall be of merchantable quality, fit for the purpose intended and free of defects in materials, workmanship and design;

- (b) any Goods supplied which are services, shall be performed with due care and skill and in a proper workmanlike manner;
- (c) if Schramm supplies specifications or drawings to the Supplier, that the Goods are supplied strictly in accordance with such specifications or drawings; and
- (d) the Supplier will do all things reasonably necessary to ensure that Schramm receives the benefit of any warranty provided by a third party manufacturer of any Goods or any component parts of any Goods.
- 8. CONFIDENTIALITY**
- 8.1 The Supplier shall keep confidential, and shall not disclose to any third party, any information which was made known to the Supplier to be confidential or the Supplier should reasonably have known was confidential, unless required by law or with the consent of Schramm.
- 9. INTELLECTUAL PROPERTY**
- 9.1 Any Intellectual Property produced by the Supplier exclusively for the purposes of the supply of Goods under an Agreement shall become the property of Schramm.
- 10. INDEMNITY**
- 10.1 The Supplier, to the fullest extent permitted by law, indemnifies and shall keep indemnified, Schramm and each of its directors, employees and agents from and against any and all Loss or damage whatsoever caused by, incidental to, arising out of or in connection with:
- (a) a breach by the Supplier of an Agreement;
- (b) any negligent act or omission of the Supplier, its employees, agents or contractors in connection with an Agreement; and
- (c) any steps taken by Schramm to recover outstanding amounts owing by the Supplier including, without limitation, any legal costs (on a solicitor and own client basis).
- 10.2 Each indemnity given under these Terms and Conditions is a continuing obligation separate and independent from the other obligations of the Supplier under an Agreement and shall each remain in force notwithstanding termination of an Agreement.
- 11. SUPPLIER'S WARRANTIES**
- 11.1 The Supplier warrants and represents:
- (a) that any information provided by the Supplier to Schramm for the purpose of supplying Goods is, to the best of its knowledge, true and correct;
- (b) that it has not relied on any oral or written representation or statement made by or on behalf of Schramm or any other party that is not expressly included in writing in an Agreement; and
- (c) that the Supplier is not insolvent or bankrupt.
- 12. ORDER CANCELLATION**
- 12.1 Schramm may, at its discretion and at any time, cancel a Purchase Order or any part thereof.
- 12.2 In the event that Schramm cancels an order, its liability will be limited to paying the Supplier only for Goods supplied in accordance with the Purchase Order up to the date of cancellation and for costs of materials and other items ordered in connection with the Goods for which Supplier is legally bound to pay and title in all those materials and Goods shall pass to Schramm.
- 13. TERMINATION**
- 13.1 The termination of an Agreement shall not affect any accrued rights or liabilities of either party, nor shall it affect any provision of the Agreement which is expressly or by its nature intended to continue in force after such termination, including but not limited to any indemnity or limitation of liability provided hereunder.
- 13.2 Subject to the Agreement, either party may, by notice to the other party, terminate an Agreement where the other party breaches a term of the Agreement and:
- (a) such breach cannot be remedied; or
- (b) for a breach capable of remedy, the other party fails to remedy the said breach within 14 days' of being given notice of the breach by the party not in breach.
- 14. FORCE MAJEURE**
- 14.1 If Schramm is at any time prevented or delayed from performing any contractual obligation under an Agreement by reason of a Prescribed Event then:
- (a) the obligation is suspended during the period the Prescribed Event continues and such further period as is reasonable in the circumstances; and
- (b) if Schramm is prevented from or delayed in performing the obligation by the Prescribed Event for at least 60 days, Schramm may, by notice to the Supplier, terminate the Agreement.
- 15. GOVERNING LAW AND JURISDICTION**
- 15.1 An Agreement shall be governed by and construed in accordance with the laws in force in the State of Western Australia.
- 15.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia with regard to any dispute arising from or in connection with an Agreement.
- 16. VARIATION**
- 16.1 Schramm may amend these Terms and Conditions from time to time. If Schramm amends these Terms and Conditions, then the revised Terms and Conditions shall apply in relation to an Agreement formed after the date of the amendment.
- 17. SEVERABILITY**
- 17.1 If any provision or part of an Agreement shall be void, illegal, invalid or otherwise unenforceable, that provision or part shall be deemed to be severed to the extent of the invalidity and the remainder of the Agreement shall remain effective.
- 18. WAIVER**
- 18.1 No power or right under an Agreement is taken to be waived by a party except in writing signed by the party waiving the power or right.
- 19. MISCELLANEOUS**
- 19.1 A party may not assign its rights or interests under an Agreement without the written consent of the other party and any purported assignment without written consent shall be of no effect.
- 19.2 To the extent permitted by law, Part 1F of the *Civil Liability Act 2002* (WA) is excluded in relation to an Agreement.
- 19.3 Time is to be of the essence for all obligations of the Supplier under an Agreement.
- 19.4 If the Supplier is more than one person or entity, each person or entity (as the case may be) shall be jointly and severally liable under an Agreement.
- 19.5 Unless otherwise agreed, any notice required to be given under an Agreement shall be in writing.
- 19.6 Each party will do all things necessary to give full effect to an Agreement.