

Terms of Supply

These Terms will apply to every Purchase Order sent by the Company to the Supplier. Unless expressly accepted in writing by the Company, any qualification of these Terms contained in any document issued by the Supplier shall be of no force or effect. These Terms constitute the entire agreement between the Supplier and the Company, and no variation of or addition to these Terms will be binding unless reduced to writing and signed by the Supplier and the Company or their duly authorised representatives.

1. Definitions

- 1.1 **Business Days** means any day except for a Saturday, Sunday and any public holiday in South Australia;
- 1.2 **Code of Conduct** means the Company's Code of Conduct as amended from time to time by the Company, located at <https://www.scf.com.au/terms-and-conditions/>;
- 1.3 **Company** means S.C.F Group Pty Ltd ABN 86 065 732 078 of 134 Richmond Road, Marleston, SA 5033 and any of its "subsidiaries" (as that term is defined in the Corporations Act), as applicable;
- 1.4 **Company's Premises** means the location for Goods to be delivered to the Company as specified in the relevant Purchase Order;
- 1.5 **Corporations Act** means *the Corporations Act 2001*(Cth);
- 1.6 **Goods means** goods supplied by the Supplier to the Company pursuant to these Terms;
- 1.7 **Purchase Order** means a purchase order for the supply of Goods and/or Services by the Supplier to the Company;
- 1.8 **Services** means services supplied by the Supplier to the Company pursuant to these Terms;
- 1.9 **Supplier** means the party providing the Goods and/or Services to the Company pursuant to a Purchase Order; and
- 1.10 **Terms** means these terms of supply.

2. Price

- 2.1 The contract price of the Goods sold and Services rendered to the Company will be as agreed in writing between the Supplier and the Company from time to time.
- 2.2 Unless agreed otherwise in writing by the parties, all prices quoted by the Supplier shall include the costs of delivery and any taxes, duties, levies and charges referred to in clause 14.

3. Payment

- 3.1 The contract price of Goods and Services shall be paid within 30 days of the end of the month following the date of the invoice upon the Company receiving from the Supplier a valid tax invoice, or on such terms as the Supplier and the Company may otherwise agree in writing.
- 3.2 The Company may set-off or deduct any amounts payable to the Supplier from any amounts payable by the Supplier to the Company, including without limitation any amounts payable by means of an indemnity or damages.

4. **Acceptance of Purchase Order**

- 4.1 Within 3 Business Days of receiving a Purchase Order (**Acceptance Period**), the Supplier must notify the Company in writing whether it accepts or rejects the Purchase Order.
- 4.2 If the Supplier does not notify the Company whether it accepts or rejects a Purchase Order within the Acceptance Period, the Purchase Order will be deemed to have been accepted by the Supplier.
- 4.3 The Company may in its discretion and with no recourse from the Supplier cancel a Purchase Order within the Acceptance Period.

5. **Variations**

Once accepted by the Supplier pursuant to clause 4, a Purchase Order shall only be varied if agreed in writing by the parties.

6. **Delivery, Title and Risk**

- 6.1 Once a Purchase Order has been placed by the Company, and accepted by the Supplier pursuant to clause 4, it cannot be cancelled unless agreed in writing by both parties.
- 6.2 If agreed to in writing by the Company, the Supplier may deliver part of a Purchase Order to the Company.
- 6.3 Subject to clause 6.2, failure by the Supplier to deliver any part of a Purchase Order shall entitle the Company to cancel the balance of the Purchase Order and the Company shall be entitled to treat the failure to deliver the entirety of the Purchase Order as a breach of contract relating to the total Purchase Order or any or all part orders of a Purchase Order.
- 6.4 Where a time for delivery of Goods and/or Services is agreed, time is of the essence, and the Supplier shall be liable for any loss or damages suffered by the Company arising out of, or in relation to, a delay in delivery by the Supplier.
- 6.5 Unless otherwise agreed in writing between the Supplier and the Company:
 - (a) the Supplier will be responsible and liable for the delivery and transport of Goods to the Company's Premises; and
 - (b) risk and title in the Goods will pass to the Company upon delivery of the Goods to the Company's Premises.
- 6.6 The Supplier must effect and maintain insurance with a recognised and reputable public insurance company for the Goods for their full insurable or replacement value (whichever is the higher) until the time the Goods are delivered to the Company.
- 6.7 All Goods and Services must be fit for the intended purpose.
- 6.8 Upon request, the Supplier must provide the Company with any reports or documentation in relation to Goods and/or Services supplied.

7. **Warranty period**

- 7.1 The Supplier provides a 24 month warranty in respect of all Goods supplied.
- 7.2 The Company may notify the Supplier in writing within 24 months of the Goods being delivered to the Company's Premises that some or all of the Goods are faulty, damaged (upon delivery) or defective (by reason of improper workmanship, material, fault or otherwise, unless caused by the improper use of the Goods by the Company).
- 7.3 In such instances, the Company may send the Goods back to the Supplier and demand in its discretion that the Supplier:
- (a) reimburses the Company the amount paid for the returned Goods;
 - (b) cancels the invoice in respect of the returned Goods or issues a revised invoice that excludes the returned Goods (in the event the Company has not yet paid for the Goods);
 - (c) provides a credit note in favour of the Company equal to the price paid by the Company for the returned Goods;
 - (d) repairs the Goods and promptly delivers the repaired Goods to the Company; or
 - (e) replaces the Goods and promptly delivers the replaced Goods to the Company, and the Supplier shall comply with such demand.
- 7.4 The Supplier shall bear the cost of return freight and re-delivery of Goods sent back by the Company pursuant to clause 7.3.

8. **Provision of Services**

In providing the Services, the Supplier shall:

- 8.1 perform the Services at minimum to a standard which would be expected of a competent, experienced and professional contractor in like position to that of the Supplier;
- 8.2 not subcontract the provision of the Services without the written consent of the Company;
- 8.3 accept and implement the Company's reasonable directions from time to time;
- 8.4 ensure that its employees and contractors performing the Services are of good fame and character and are properly qualified and briefed for the Services they are to perform; and
- 8.5 be liable for any acts of its officers, employees, agents or contractors in relation to any breach of these Terms or a Purchase Order as though such breach was committed by the Supplier.

9. **Re-supply of Services**

The Company may notify the Supplier in writing within 60 days of Services being provided if the Services or part thereof were not performed in accordance with the Purchase Order or clause 8.1. In such instances, the Company may demand in its discretion that the Supplier:

- 9.1 shall supply such Services again at no extra cost to the Company;
- 9.2 reimburse the Company any amounts paid for the supply of such Services (including any amounts in relation to transport services provided or failed to be provided by the Supplier or its officers, employees, agents or contractors);
- 9.3 cancels the invoice in respect of such Services or issues a revised invoice excluding the provision of such Services (in the event the Company has not yet paid for the Services); or
- 9.4 that the Supplier provides a credit note in favour of the Company equal to the price paid by the Company for such Services,

and the Supplier shall comply with such demand.

10. Termination of Purchase Order

- 10.1 The Company may at any time by written notice to the Supplier immediately terminate any Purchase Order or part thereof upon the happening of any of the following:
- (a) the Supplier committing a breach of these Terms or a Purchase Order;
 - (b) the Supplier ceasing to carry on business;
 - (c) the Supplier assigns (including by means of the Supplier suffering a change in “Control” as that term is defined in the Corporations Act) any rights under these Terms or a Purchase Order without first obtaining the written consent of the Company;
 - (d) any action is taken for, or with a view to, the liquidation (including provisional liquidation), winding up, official management, bankruptcy or insolvency (or equivalent) of the Supplier and such action remains pending for a period of 21 days thereafter, unless the Supplier satisfies the Company (in its absolute discretion) of the Supplier's solvency;
 - (e) the Supplier becomes insolvent or is unable or deemed to be unable to pay its debts or ceases or threatens to cease to carry on its business or a major part of its business or the Supplier enters into dealings with any of its creditors with a view to avoiding, or in expectation of, insolvency or stops or threatens to stop payments generally or a receiver or receiver and manager is appointed to, or an encumbrancee takes or proposes to take possession of, any material part of the assets of the Supplier;
 - (f) the Supplier enters into any arrangement, assignment or composition with or for the benefit of its creditors or any class of them;
 - (g) any distress, attachment or execution is issued, levied or enforced against the Supplier which is not satisfied or challenged in good faith by appropriate means within 14 days; or
 - (h) a person is appointed under any applicable law to investigate any part of the Supplier's business or affairs or an application is made for the appointment of such an inspector, or an administrator (or equivalent) is appointed to the Supplier or any steps are taken for such an appointment.
- 10.2 The Supplier shall have no recourse or claim against the Company in respect of any cancelled Purchase Order or part thereof pursuant to clause 10.1.

11. Code of Conduct

The Supplier agrees to comply with and must procure that its officers, employees, agents or contractors comply with the Company's Code of Conduct at all times.

12. Inductions

The Supplier agrees and acknowledges that:

- 12.1 if requested by the Company, the Supplier and any of its officers, employees, agents or contractors must complete a safety and information induction session (as determined by the Company) prior to entering the Company's Premises; and
- 12.2 the Supplier any of its officers, employees, agents or contractors must follow all directions and instructions given by the Company while on the Company's Premises.

13. Goods and Services Tax (GST)

- 13.1 If GST is payable in relation to a supply made under or in connection with a Purchase Order then the Company shall pay an additional amount to the Supplier equal to the amount of that GST at the same time as any other consideration is to be first provided for that supply.
- 13.2 The Supplier must provide as a precondition for payment by the Company of the GST, a tax invoice to the Company.

14. **Taxes**

The Supplier must pay all taxes, duties, levies and charges imposed or levied in Australia for the supply of Goods or Services pursuant to a Purchase Order.

15. **Limitation of Liability**

The Company is only liable to the Supplier under these Terms and any Purchase Order for the amounts payable to the Supplier for the purchase of Goods or Services by the Company.

16. **Indemnity**

The Supplier shall indemnify and keep indemnified the Company, its officers, employees, agents and contractors (**Indemnified Party**) against all costs, claims, demands, expenses and liabilities of whatsoever nature, including, without limitation, claims of death, personal injury, damage to property and consequential loss (including loss of profit) which may be made against an Indemnified Party or which an Indemnified Party may sustain, pay or incur as a result of or in connection with;

16.1 a breach of these Terms or a Purchase Order by the Supplier;

16.2 Goods delivered being faulty, damaged or defective; or

16.3 Services that were not provided in accordance with the Purchase Order or clause 8.1.

17. **Intellectual Property**

17.1 The Company shall have title to any patent, trade mark, design, copyright, know-how or other intellectual property rights (whether registered or not) (**Intellectual Property Rights**) in or in relation to Goods or Services supplied under these Terms and any Purchase Order.

17.2 The Supplier agrees to sign any documents and do all things reasonably required by the Company to vest any Intellectual Property Rights in or in relation to the Goods or Services with the Company.

17.3 The Supplier must not breach any Intellectual Property Rights of any third party as a result of supplying the Goods and/or Services.

18. **Confidentiality**

18.1 If the Supplier receives any confidential information from the Company the Supplier may not use or disclose such information unless it receives the prior written consent of the Company, unless such information enters the public domain (other than as a result of a breach of this clause 18) or the use or disclosure is required by law.

18.2 For the avoidance of doubt, the contents of any Purchase Order and information provided by the Company to the Supplier in relation to any Purchase Order is confidential information.

19. **Special Conditions**

If the Purchase Order contains any special conditions, such special conditions will prevail in the event of any inconsistencies with these Terms.

20. **Severability**

The whole or any part of a clause of these Terms or a Purchase Order shall be capable of severance without affecting the rest of these Terms.

21. **Relationship**

The Supplier is a contractor to the Company and the Supplier shall not by virtue of these Terms or any Purchase Order be, or for any purpose be deemed to be, and must not represent itself as being, an employee, partner or agent of the Company.

22. **Consent**

If the consent of the Company is required under these Terms or a Purchase Order, such consent may be withheld or given subject to conditions in the Company's absolute discretion.

23. **Governing Law**

23.1 The Supplier must comply with all relevant laws when providing Goods or Services to the Company.

23.2 These Terms shall be governed by the laws of the State of South Australia (excluding its conflict of laws provisions) and the Company must submit to the non-exclusive jurisdiction of the courts of or exercising jurisdiction of that State and the Company waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

24. **Waiver**

If the Company elects not to exercise any of its rights arising as a result of a breach of these Terms or a Purchase Order, that will not constitute a waiver of any rights of the Company relating to any subsequent or other breach.