



1. In these terms and conditions unless a contrary intention is expressed the term "Purchaser" shall mean that company that is purchasing the goods and the term "Supplier" shall mean that person, firm, partnership, company or body (however Constituted) from whom the goods described in the Order shall have been requested.
2. The supplier shall supply and deliver to the Purchaser all goods specified in the order and for the price stated therein and within the time stipulated unless such goods, price or time shall have been varied with the consent of the Purchaser in writing. Variation in time shall not form the basis for a claim for extra costs and shall not alter this order in any way.
3. Unless the order (including these conditions of purchase) expressly states to the contrary, the stated purchase price and where any price is to be calculated at a rate, such rate shall be on a fixed price basis and shall not be varied due to any rise in the cost of labour and/or materials and/or any other costs or expenses incurred or to be incurred by the Supplier including, but not limited to, freight rates, customs duties and sales tax.
4. All goods supplied must be accompanied by a delivery docket listing the goods in sufficient details to enable checking to take place at the time of delivery. No responsibility for payment will be accepted by the Purchaser unless delivery dockets have been signed by an accredited representative for the Purchaser. The signing of any delivery dockets by or on behalf of the Purchaser shall not infer that the Purchaser has accepted the goods as regards their quality or quantity. The signing of any delivery dockets by or on behalf of the Purchaser shall not infer that any contrary terms or conditions to those presented here are accepted or acknowledged. The quantity of merchandise delivered by Supplier to Purchaser shall not be greater than the amount specified on the purchase order unless an additional amount is first ordered by the Purchaser in writing. In the event that the goods are delivered in excess of the final order they may be returned by the Purchaser at the Suppliers expense.
5. All goods shall be delivered carriage paid to the address stipulated on order and until the delivery is acknowledged by an accredited representative of the Purchaser all goods shall be at the sole and absolute risk of the Supplier. The Purchaser shall retain the right to change alter or amend the sequence in which the goods are to be delivered and the times at which the delivery shall be accepted.
6. In addition to any inspection which may be carried out before the goods are delivered, all goods subject to this order whether paid for or not shall be inspected by the Purchaser after delivery and where such goods or any part of them do not conform with the provision of this order and/or where any implied condition or warranty as set in the relevant state and federal legislation is breached by the Supplier the Purchaser without prejudice to any or all of his rights or privileges under these terms and conditions or under law may reject any such goods or part thereof. The Purchaser does not indemnify the Supplier against any loss or damage suffered or incurred by the Purchaser or the supplier as a consequence of failure, non-performance or rejection of goods or services supplied by the supplier. The purchaser does not accept any liability or responsibility for any loss or damage resulting from the aforesaid failure, non-performance, rejection or negligent act of the supplier. The Purchaser shall notify the Supplier of any such rejection and the goods so rejected shall be collected by the Supplier at his cost and until collection shall be at the Suppliers risk. The provisions of this clause shall apply to goods found defective at a time later than the time of inspection aforesaid where such defect is of nature that it was not apparent upon reasonable examination after delivery.
7. The Supplier, except insofar as this order may expressly state to the contrary, shall provide at his own cost and expense all labour, materials, tools, implements, plant and everything necessary for the complete and proper performance of this order. All goods shall be in all respects in strict accordance with all the terms, specifications, requirements, conditions and documents stated in or attached to and forming part of this order and shall be to the satisfaction of the Purchaser and shall conform with requirements applicable of all authorities and standards governing the manufacture and safe use of such goods.
8. The Supplier warrants that upon delivery the goods to be supplied under the terms of this order will be and the Supplier will do all things necessary to ensure that they become the sole and absolute property of the Purchaser and that none of the goods shall be subjects to any mortgage, charge, lien or encumbrance whatsoever whereby the Purchaser could or might be able to be dispossessed of the same and that no patent, trade mark or copyright has been infringed by the manufacture or supply of the goods or any part of them.
9. If the Supplier, either as principal or by any agent or employee enter upon any premises or property of or in the possession of the Purchaser in order to do any work or perform any obligation hereunder including but not limited to construction erection inspection delivery servicing or repairing the Supplier hereby indemnifies the Purchaser and shall save and hold the Purchaser harmless at all times hereafter from and against all liability, claims and demands on account of personal injuries including death or property loss or damage to others (including Supplier and employees and invitees of Supplier and of Purchaser) arising out of or in any manner connected with the performances of such and caused by the neglect or wilful act or omission to act of the Supplier or a supplier of the Supplier or employees or invitees of either of them and the Supplier shall at its own expense defend any actions based therein and shall pay all legal costs and all costs and other expenses arising therefore. The Supplier shall also procure and carry the Insurance of Employees on such work that may be



required by any workers' compensation Act or similar liability Act. The Supplier shall procure and maintain such other insurance in connection with such work as the Purchaser shall specify.

10. By acceptance of this order either verbally or in writing or as expressed or implied by virtue of acts done or undone or otherwise the Supplier acknowledges that he agrees to all the terms and conditions herein and that any additional terms or conditions contained in his acceptance or confirmation of this order or in his delivery docket or as otherwise stipulated shall be null and void and of no affect as regards this order.
11. The supplier agrees that the terms and conditions of this order (together with any special conditions of order agreed to in writing by the parties and forming part of this order) may only be rescinded or altered by the Purchaser in writing. The Supplier further acknowledges that such terms and conditions constitute the entire Agreement between the parties and shall supersede all previous communications either oral or written and that any such previous communications are hereby withdrawn in the event of any conflict between any special conditions or order and these terms and conditions the special conditions or order shall prevail.
12. Payment shall be 30 days EOM unless otherwise agreed in credit application.
13. Time is of the essence in respect of deliveries to be made hereunder and the Purchaser may at its option and without limitation of or prejudice to any of its other rights cancel all or any part of this order if deliveries are not made within the times specified. The purchaser will give notice to the supplier prior to such in which time the supplier may choose to respond.
14. The Purchaser shall have the right to cancel this order at any time before actual production of the goods hereby ordered has commenced and in the event of such cancellation the Purchaser's liability shall be limited to actual expenditures incurred by the Supplier on this order. The Purchaser shall also have right to cancel this order if the Supplier's rights hereunder are assigned without the written consent of the Purchaser or in the event that the Supplier becomes insolvent or makes an assignment for the benefit of creditors or being a company is wound-up or has a liquidator or provisional liquidator appointed or makes any arrangement or compromise with its creditors generally or is placed under official management or has a receiver appointed to the whole or any part of its assets or property.
15. The purchaser and its agents do not accept or acknowledge liability for any claims of losses, damages, costs, actions, demands and suits whatsoever (including in the case of liquidation legal costs and disbursements) arising out of or suffered or incurred in connection with:
  - a. any claim for injury to any person or property caused in whole or in part by executing this order or making a delivery hereunder.
  - b. any claim with respect to any of the goods or arising out of a defect in the goods or arising from any claim of unfair competition or any adverse claim or statutory or non-statutory rights; or
  - c. any litigation pursuant to any claim referred to above
16. Any reduction in the Supplier's costs resulting from a reduction in freight rates, customs duties and/or sales taxes from these in force at the date hereof to be paid to or allowed to the Purchaser by the Supplier for reduction of the purchase price.
17. No charges for packing shall apply unless expressly agreed with the Purchaser prior to this order being executed. Packing slips showing the relevant Purchase Order Number must accompany all deliveries.
18. Insurance of goods in transit to destination shall be the responsibility of the Supplier unless otherwise stated in the Purchase Order.
19. Where goods supplied are manufactured by the use of Tools Dies Patterns Templates or Drawings, such supplied by the Purchaser are acknowledged by the Supplier to be the property of the Purchaser and the Supplier shall therefore:
  - a. Not at any time use such Tools, Dies, Patterns, Templates or Drawings etc for the purpose of manufacturing goods to supply to any other company or person unless expressly authorised so to do by the Purchaser,
  - b. Return such Tools Dies Patterns Templates or Drawings etc. Immediately upon being so requested by the Purchaser.
  - c. Not at any time disclose any commercial or technical details of product or manufacturing techniques of the Purchaser to another party and shall keep such material confidential.
20. Where this Order relates not only to the supply of goods but also the carrying out of works upon a site then in addition to these terms and conditions the Purchaser's standard set of sub-contract terms and conditions shall apply. A copy of the Purchaser's standard set of sub-contract conditions is attached herewith or is available upon request at the Purchaser's registered office.



21. Waiver by the Purchaser of any specific fault or defaults by the Supplier or failure of the Purchaser to cancel this order or any part thereof when a right to do so arises shall not constitute a waiver by the Purchaser of any of the conditions of this order save and except such defaults as are specifically waived and then only in respect of the actual defaults in respect of which such waiver is given. In the event of payment for the
22. The agreement constituted by the acceptance of this order shall be construed and take effect in all respects and to all purposes in accordance with the laws from time to time in force in the state where this order is executed which shall be deemed to be the proper law of this agreement.
23. The supplier warrants that any goods supplied will be or will have been manufactured in a professional manner using only the best materials.
24. Where any goods supplied to the purchaser require upgrading or rework or recertification, due to the goods being incorrectly supplied to the specifications and details of the purchase order, such upgrading rework or recertification shall be charged to the Supplier at the purchaser's full cost centre rate unless the supplier chooses to either resupply, carry out the upgrade or rework or recertification, as the case may be, at its own cost.
25. Any express statement of a right of the purchaser under these conditions of purchase is without prejudice to any other right of the purchaser, expressly stated in this agreement or arising at law or under statute.
26. The terms and conditions within this document constitute the entire agreement between the purchaser and supplier. No alterations or amendments are acknowledged unless signed by a director of Berg Engineering.