

1. General**1.1 Definitions**

Smoke Control Systems:
Shall mean Smoke Control Systems Pty Ltd

Purchaser: Shall mean the company, firm or persons for whom work under this contract is performed and shall include executors, administrators, successors and permitted assigns.

Work: Shall mean all goods delivered and installed by Smoke Control Systems.

Site: Shall mean only such place or places nominated in the offer where work is to be performed.

GST and Taxable Supply:
Shall have the meaning given in *A New Tax System (Goods and Services Tax) Act 1999*

1.2 Conditions Part of Offer

These Conditions form part of the offer in which they are referred to or to which they are attached.

1.3 Precedence

If there is any inconsistency or variance between the provisions of the offer (including any special conditions) and these Conditions then the former shall prevail.

1.4 Variation of Conditions

Notwithstanding any acceptance by Smoke Control Systems of any order from the Purchaser that may contain any provision inconsistent with or purporting to vary or reject any of these Conditions, any contract arising from any such acceptance shall be subject to these Conditions unless and to the extent only that Smoke Control Systems expressly agrees in writing to any variation thereof.

1.5 Additional Documentation or Verbal Matter to be confirmed

No documentation, correspondence, verbal agreement or conversation shall form part of, affect or modify any aspect of the offer or contract unless otherwise accepted and confirmed by Smoke Control Systems in writing.

1.6 Partial Invalidity

In the event of one or more clauses of these Conditions or anything included in Smoke Control Systems offer being held by a Court of Law to be legally invalid or unenforceable the remainder of such conditions shall be in no way affected.

1.7 Separable Portions

The provisions of these Conditions shall apply to any separable portion or portions of the Work.

2. Offer and Order**2.1 Acceptance and Order**

Unless previously revoked by written notification to the Purchaser, Smoke Control Systems offer shall remain valid for the period as stated in the offer or, when no such period is stated, for thirty (30) days from the date thereof.

2.2 Extent of Offer

Smoke Control Systems offer includes only such work as is specified therein and unless otherwise stated, work will be performed within Smoke Control Systems normal working times.

Normal working time per week is subject to the relevant Award (e.g. Metal Industry Award or Business Equipment Industry (Technical Service) Award), as prevailing from time to time for the particular location where Smoke Control Systems personnel are employed. Working, travelling and/or waiting time outside the prescribed award times will attract the applicable penalty rates.

2.3 Variation in the Scope of Supply

The quoted price is based upon the scope referred to in the offer. Should there be any variation in the scope ordered from that offered, Smoke Control Systems reserves the right to amend the price accordingly.

2.4 Cancellation, Variation or Suspension

A contract may be cancelled, varied or suspended only by notice in writing and only if such notice is accepted in writing by Smoke Control Systems. In the event of such cancellation, variation or suspension the Purchaser shall compensate Smoke Control Systems for any costs or loss incurred including but not limited to loss of profit.

3. Specifications and Drawings**3.1 Not Part of Contract**

Unless expressly incorporated in the offer all descriptive and shipping specifications, drawings, dimensions and weights submitted with the offer are approximate only. In any event descriptions, illustrations and data contained in catalogues, price lists and other advertising matter are intended only to present a general idea of the work described therein and none of these shall form part of the contract.

3.2 Certified Drawings

After acceptance of an order Smoke Control Systems shall provide on request such certified drawings as in Smoke Control Systems opinion are reasonable and necessary.

3.3 Confidential Information

All drawings, specifications and other written information, samples and the like provided by Smoke Control Systems shall be regarded as confidential and shall not be disclosed to a third party except with the prior written consent of Smoke Control Systems.

3.4 Information to be provided

The Purchaser shall, within seven (7) days from the date of order, furnish to Smoke Control Systems sufficient information which, in the reasonable estimation of Smoke Control Systems, will enable work to proceed forthwith and without interruption.

3.5 Approval of Drawings

Drawings or other information requiring the Purchaser's approval shall be approved, amended or rejected and returned to Smoke Control Systems within five (5) days from the date of receipt or other such period as may be agreed in writing. Any delay beyond this period shall constitute grounds for extension of the contract period under Clause 5.4.

3.6 Incorrect Information

The Purchaser shall be responsible for and bear the cost of any alteration to the work arising from any discrepancy, error or omission in any drawings, specification or other information supplied or approved by him.

3.7 Responsibility for approvals

In the absence of agreement to the contrary and subject to clause 16, it shall be the Purchaser's responsibility to obtain and provide any approvals, licences or permits as necessary for performance of the contract.

4. Performance & Tests**4.1 Performance**

Any performance figures given by Smoke Control Systems are based on Smoke Control Systems experience and are such as Smoke Control Systems expects to obtain on test. Subject to recognized tolerances applicable to such figures, Smoke Control Systems shall be under no liability for damages for failure to attain such figures unless Smoke Control Systems specifically guaranteed them in writing.

Where Smoke Control Systems has agreed to performance figures but fails to achieve such figures, Smoke Control Systems shall make good such failure as provided for in clause 14 hereof and Smoke Control Systems liability shall be subject to clause 15 hereof.

4.2 Inspection and Tests

Where inspection and tests are performed, they will be in accordance with Smoke Control Systems standard practice and will be carried out at the place of manufacture or installation or at some other place at Smoke Control Systems option. The cost of these tests and any other test specified in the offer are to be borne by Smoke Control Systems. Any further tests or witnessed tests required by the Purchaser will be carried out at his expense subject to Smoke Control Systems consent to perform these further tests. After seven days from the date of notification that Smoke Control Systems is ready to carry out any witnessed tests required, such tests may proceed in the absence of the Purchaser or his representative and shall be deemed to have been made in their presence.

Smoke Control Systems shall not be responsible for expenses incurred by the Purchaser in respect of his presence or that of his representative at witnessed tests.

If on any such tests, work shall be found defective due to faulty design, material or workmanship or found not be in accordance with the contract, Smoke Control Systems shall make good such defect or failure as provided for in clause 14 hereof.

5. Time/Date for Delivery, Installation or Completion

5.1 Base date

All times offered for delivery, installation or completion shall be calculated from the date Smoke Control Systems accepts an order, and sufficient information in accordance with clause 3.4 or is given access to site whichever is the later.

5.2 Offered Time

Any delivery, installation or completion date or period offered is a bona fide estimate only and is not to be construed as a fixed time unless expressly incorporated in the offer.

5.3 Delay

In the event of delay caused by reasons other than those covered in clause 5.4 hereof and if as a result of such delay the Purchaser suffers loss, the Purchaser is entitled for each complete week of delay to a refund of the consideration payable at the rate of 0.5% per week, but not more in aggregate than a total of 5% of the contract price of that portion of the Work which in consequence of such delay cannot be commercially and effectively used. Such payment shall be in full satisfaction of loss suffered by the Purchaser due to any such delay and shall be in lieu of any other right the Purchaser may have against Smoke Control Systems.

5.4 Extension of Time

The delivery, installation or completion period shall be extended in respect of any delay caused by the Purchaser, by industrial dispute including strikes and lockouts, circumstances such as fire, war, mobilisation, requisition, embargo, currency restrictions, insurrection, import restrictions, shortage of transport, general shortage of materials, restrictions in the use of power, an important item of work being rejected during the process of manufacture, by any cause beyond the reasonable control of either Smoke Control Systems or one of Smoke Control Systems subcontractors or as provided for in these Conditions.

5.5 Storage

If after a period of fourteen (14) days from the date of notification that the work is ready for delivery to site, delivery is delayed for any reasons beyond Smoke Control's reasonable control, Smoke Control Systems shall be entitled at Smoke Control Systems option to arrange suitable storage at Smoke Control Systems premises or elsewhere and shall take reasonable measures to protect the Purchaser's interest in the Work. The Purchaser shall accept all costs of storage, insurance, demurrage, handling and other charges as set out in invoices for payment in accordance with clause 13.

5.6 Partial Deliveries

Smoke Control Systems reserves the right to make partial deliveries against an order and to separately invoice same unless otherwise agreed in writing. Payment thereof will fall due in accordance with clause 13.

6. Packing, Freight, Marine Insurance

6.1 Packing

Work to be delivered will be packed in accordance with Smoke Control Systems customary standard of packing, and the cost thereof will be included in the price(s). Any special packing, either required by the Purchaser or necessary due to work on site or delivery of work to site being delayed or interrupted for reasons as defined under clause 5.4, will be charged to the Purchaser at cost.

6.2 Freight

Unless otherwise stated the costs of freight are included in the total quote value. Values for air freight stated are indicative only; actual costs will be charged.

6.3 Marine Insurance

Work to be delivered will be insured in accordance with Smoke Control Systems standard practice. Any special or additional insurance required by the Purchaser will be charged to the Purchasers account at actuals.

7. Purchaser's Responsibility

Prior to the commencement of work at the site, the Purchaser shall, at his own expense, take all necessary measures to ensure that Smoke Control Systems personnel are able to commence work immediately upon their arrival at the Site and to further ensure that work proceeds in an uninterrupted manner. All preparatory work including materials and equipment, the responsibility of either the Purchaser or of others, is to be sufficiently complete and/or available to permit Smoke Control Systems personnel to perform the work concerned. The Site and adjacent areas are to be clear so as to permit unimpeded and unrestricted access. All necessary roads and other access ways suitable to accommodate the movement of the ordered products and/or special equipment to and on the site are to be readily available.

7.2 Where work is to be performed in enclosed areas, such areas shall have windows, doors or other openings of sufficient size to permit entry of large items.

7.3 Where required in the quote, the Purchaser shall supply free of charge all auxiliary services required by Smoke Control Systems including but not limited to the following:

- All unskilled labour such as handymen, transport workers etc. and such skilled workmen such as bricklayers, carpenters etc. in such numbers and for such periods as are required by Smoke Control Systems Project Manager. These personnel, together with their foreman, will receive their

- instructions from Smoke Control Systems Project Manager but will remain under the care and responsibility of the Purchaser who shall ensure that all necessary insurance as required by law or other regulations, are in force.
- All access equipment and scaffolding, other than ladders.
 - The provision of such things as lifting machinery or devices, timber, planking, strutting, temporary power, etc. as are necessary for the performance of work.
 - Adequate lighting of all work areas.
 - Suitable dry lockable storage space for the storage of machinery, equipment, materials and tools when requested in quote.
 - Suitable rooms adjacent to the site with adequate lighting, washing, toilet and drinking water facilities for use by Smoke Control Systems personnel. Under extreme climatic conditions, site facilities are to be either heated or air-conditioned.
 - Adequate telephone/communication facilities.
 - 240 volt, 50 cycle single phase power at 3 pin general purpose outlets at suitable locations.
 - Main and auxiliary electrical power necessary for the operation of all equipment, located within 1m of the designated product installation and capable of being isolated either by isolating switches, removal of fuses or other means to the satisfaction and approval of Smoke Control Systems Project Manager.
 - Alarm signal in the form of a normally closed contact within 1m of the designated product installation or as otherwise specified.
- 7.4** Where the Purchaser does not either provide or fulfil the above required obligations to the satisfaction of Smoke Control Systems, Smoke Control Systems shall be entitled to carry out work or procure the necessary item(s) or personnel at the expense of the Purchaser provided the Purchaser has been informed of the non-compliance and such reminder has gone unheeded.
- 7.5** The Purchaser shall not employ Smoke Control Systems personnel for any work not covered under this offer or any contract arising therefrom without first having obtained Smoke Control Systems written approval. If such approval is given Smoke Control Systems personnel will work under the orders and instructions of the Purchaser and the Purchaser accepts responsibility and all risks for such work and the safety of the personnel employed. The Purchaser shall indemnify Smoke Control Systems against any claim arising from such work. Any such work will be charged in accordance with Smoke Control Systems rates ruling at the time the work is performed.
- 7.6** Smoke Control Systems shall be given a minimum of one month written notice of the date on which access to the Site is available.
- 8. Purchaser's Representative**
The name, postal address and telephone number of a qualified person authorised to represent the Purchaser must be notified to Smoke Control Systems not later than two weeks prior to the date on which Smoke Control Systems personnel are required on site.
- 9. Control of Personnel**
Smoke Control Systems shall have the right to replace any or all of Smoke Control Systems personnel with other personnel of equal ability at Smoke Control Systems own expense and discretion at any time.
- 10. Risks**
- 10.1** From the date of commencement of Work to the date of transfer of risk to the Purchaser pursuant to this clause, Smoke Control Systems shall bear the risk for the works except where a loss or damage results from an Excepted Risk as defined below. Any loss or damage resulting from an Excepted Risk shall be borne by the Purchaser.
- 10.2** Property in and risk of accidental damage to or loss of equipment and material of any kind provided by the Purchaser shall at all times remain with the Purchaser except where such damage or loss has resulted from negligence by Smoke Control Systems.
- 10.3** Should Work be delayed or interrupted for any reason as defined within clause 5.4 for a period exceeding fourteen days, risk in the Work shall pass to the Purchaser and the Purchaser shall immediately pay Smoke Control Systems for the value of the Work carried out, thereafter the property in the Work shall transfer to the Purchaser.
- 10.4** Risk in the Work shall transfer to the Purchaser upon the date when the Work is complete except for minor defects and omissions and when all specified tests have been carried out, or when the Work is put into use by the Purchaser, whichever occurs earlier.
- 10.5 Excepted Risks include**
- any act or omission of the Purchaser or of anyone for whose acts or omission the Purchaser is responsible
 - natural catastrophes such as fire, flood, earthquake, cyclones and the like
 - war, warlike acts, riots and the like
 - nuclear fission or radioactivity from any cause.
- 11. Title**
- 11.1** Notwithstanding that the risk in the work sold shall pass to the Purchaser as provided for in Clause 10 hereof title and property in the work sold shall remain with Smoke Control Systems until such time as full payment is made to Smoke Control Systems for all amounts owing by the Purchaser and so that the Purchaser's total indebtedness to Smoke Control Systems under the terms and conditions of sale is discharged.
- 11.2** In the event that the Purchaser fails to make payment for the work in accordance with the terms of this contract then Smoke Control Systems shall have the right or recover from the Purchaser the work and for that purpose the servants or agents of Smoke Control Systems may enter upon the Purchaser's premises in order to effect recovery and use any reasonable means of force in order to effect recovery. Smoke Control Systems shall have the right to resell or otherwise dispose of the work so recovered without reference to the Purchaser.
- 11.3** Notwithstanding the provisions of the terms and in particular clause 13 hereof payment shall become due immediately upon the Purchaser (being a natural person) committing any act of bankruptcy or if the Purchaser (being a company) commits any act which entitles any person to apply to wind up the Purchaser or if a liquidator, administrator, controller, mortgagee in possession, receiver or like officer is appointed over part or all of the Purchaser's assets.
- 11.4** The Purchaser acknowledges that until his total indebtedness to Smoke Control Systems is discharged he holds the work sold as bailee of Smoke Control Systems and that a fiduciary relationship exists between Smoke Control Systems and the Purchaser.

12. Prices and Contract Price Adjustment

12.1 Price basis

Unless otherwise stated in the offer, price offered is based on the costs of material, labour, freight, insurance, exchange, duty and other costs and charges as are applicable on the Reference Date.

12.2 Sales Tax, GST and other Government Imposts

The prices offered are exclusive of Sales Tax, GST or other Government Imposts. Should Sales Tax, GST or other Government Imposts become applicable the Purchaser shall pay those amounts in addition to the prices offered in accordance with Clause 13.

If GST is payable in relation to a Taxable Supply the amount payable for that Taxable Supply will be the amount payable in accordance with this agreement plus GST.

12.3 Cost of Delay or Variation

If Work is delayed (including delays as defined under clause 7.4) or if work is varied by any act or omission of the Purchaser, his agent, or contractor for whom the Purchaser is responsible, Smoke Control Systems shall notify the Purchaser of any additional costs which may be incurred as a result of such delay or variation. Actual cost shall be for the Purchaser's account. All additional costs arising from delays or interruptions as defined in clause 5.4 Extension of time and/or clause 10.5 Excepted Risks shall be for the Purchaser's account. Without affecting the generality of this clause such costs shall include expenditure resulting from personnel being idle or standing by, retrenchment or re-employment of personnel, additional journeys, fixed site expenditure and any other costs resulting directly or indirectly therefrom.

12.4 Cost of Complying with Regulations

If after the Reference Date (as defined in paragraph 12.1 above), the cost to Smoke Control Systems of performing its obligations under the contract is varied by reason of the making or amendment of any Law or of any order, regulation or by-Law having the force of Law, the amount of such variation shall be added to or deducted from the contract price, whichever the case may be.

13. Payment

13.1 Valuation of Invoice

Smoke Control Systems shall submit to the Purchaser an invoice(s), the amount of which will be calculated as follows unless otherwise agreed:

- (i) An invoice will be raised for 50% of the offer value with the amount being due prior to commencement of manufacturing.
- (ii) An invoice will be raised for the balance of the offer on completion of the work as covered by the offer and will be due prior to issuing the Certificate of Compliance for the work.
- (iii) Where the work schedule is longer than 4 weeks a progress payment will be submitted for the percentage of work completed as determined by Smoke Control Systems. Payment of this progress payment is due within 14 days from date of invoice.

Where any amount otherwise payable to Smoke Control Systems pursuant to some other provisions of these Conditions or the offer or the contract arising therefrom can be taken into account in any invoice, Smoke Control Systems shall invoice such amounts as and when they occur.

13.2 Certification of hours worked

Where the nature of the offer is a schedule of rates, or where these Conditions or some other provisions of the offer provide for actual hours worked to be charged the Purchaser shall, at least fortnightly, certify the number of hours worked by Smoke Control Systems personnel as shown on Smoke Control Systems work records or other documents as provided for. Should the Purchaser fail to give such certification without reasonable cause, Smoke Control Systems will invoice on the basis of such uncertified records and the Purchaser shall be liable accordingly

13.3 Payment due

Unless otherwise stated in the offer, the price offered is strictly nett. Any payment due to Smoke Control Systems shall be made in accordance with clause 13.1.

The extension of credit facilities is in any case at the discretion of Smoke Control Systems and is subject to confirmation on the receipt of an order, however, in any event Smoke Control Systems retains the right to withdraw credit facilities at any time prior to delivery or completion of work without further notification

13.4 Delay or Default in Payment

Should the Purchaser delay in respect of any payment due to Smoke Control Systems then Smoke Control Systems shall have the right, in addition to all other rights to which Smoke Control Systems is entitled at law, to charge interest on the overdue amount at the rate of 13% per annum calculated from the date of invoice to the actual date of full and final payment.

Any payment by the Purchaser shall be credited first against any interest so accrued and the balance of payment if any, shall be applied in reduction of the outstanding balance of the contract price. In the event of the delay in any payment due to Smoke Control Systems, Smoke Control Systems may defer manufacture or delivery or cancel any outstanding balance of the order.

14. Warranty

14.1 Defects liability

Smoke Control Systems shall make good by repair or at Smoke Control Systems option by replacement within a reasonable time after notification by the Purchaser, defects caused by Smoke Control Systems failure to comply with the contract, or which appear in the work arising from faulty design, material or workmanship provided always that:

- such work has been properly handled and used and has been operated and maintained in accordance with instructions, if any, issued by Smoke Control Systems and
- such defects are not caused by incorrect use of operating material or lubricants, faulty civil or mechanical work, unsuitable operating conditions and other chemical, electrochemical and/or electrical influences which have not been provided for in the contract and
- such defects (whether apparent or not) occur within a period of twelve (12) months after risk has been transferred to the Purchaser in accordance with clause 10 and
- notwithstanding 14.3 such defects (whether apparent or not) occur within a period of ninety (90) days for batteries and
- Smoke Control Systems is notified in writing within seven (7) days of the alleged defect occurring and
- the Purchaser has fulfilled his contractual obligations.

14.2 Repair or replacement

Where in accordance with subclause 1 hereof, the purchaser has notified Smoke Control Systems of an alleged defect, he shall if Smoke Control Systems so requires promptly, and at his own expense and risk, return the defective part(s) to the factory (as specified by Smoke Control Systems) free-of-charge for repair. The removal of the defective part and the installation of any repaired or replacement part shall be performed by the Purchaser at his own expense. Where any defective part(s) has been replaced such part(s) shall become the property of Smoke Control Systems.

14.3 Limitation of Liability

Smoke Control Systems shall not be liable for goods of a consumable nature, such as cables, antennas or those having a low rated service life such as electric lamps, electronic valves and glass components or where any unauthorised repair or alteration to the repaired equipment has been performed by the Purchaser. Furthermore Smoke Control Systems warranty shall not extend to cover the quality and suitability of equipment and/or material supplied by the Purchaser's personnel provided such faulty workmanship did not result from incorrect instructions of Smoke Control Systems.

14.4 Exclusions and 'consumer' rights

This express warranty is in lieu of any other rights that would otherwise be conferred on the purchaser under any law save that this express warranty does not exclude any conditions or warranties implied into this contract by the provisions of the Trade Practices Act 1974 or by any other Federal or State laws to the extent that such condition or warranties may not be excluded by express agreement.

15. Liability of Smoke Control Systems**15.1 Limitation of Liability**

Subject to clauses 5.3, 14, 15.2 and 16 Smoke Control Systems shall not be under any liability whether in contract, tort or otherwise from any cause whatsoever, whether occasioned by negligence or otherwise, for any injury, damage or loss, including consequential damage or the works delivered or installed pursuant hereto including any defects therein or anything connected therewith or any other work related thereto.

15.2 When Purchaser is a Consumer

If the basis of a contract is such that the Purchaser is a consumer as defined in the Trade Practices Act or in any other Law of the Commonwealth (or of any State or Territory) of Australia, the Purchaser's rights shall be governed by the provisions of the said Act or any such Law to the extent that such liability may not be excluded by express agreement.

16. Patents and Design Rights

In the event of any claim or claims in respect of any infringement of a Registered Design, Trademark or Copyright or Letters Patent, the specification of which is published prior to the date of the offer relating to any part of the work supplied by Smoke Control Systems (other than a part based on a design specified by the Purchaser) Smoke Control Systems will at their own expense either replace or modify such part with a non infringing part or procure for the Purchaser the right to use such a part provided that Smoke Control Systems is given full opportunity to conduct all negotiations in respect of such claim and such claim shall not be accepted by the Purchaser without the prior written consent of Smoke Control Systems. In no event shall Smoke Control Systems incur any liability for losses arising from the use or non-use of any infringing part. The Purchaser warrants that any design or instructions

furnished or given by him shall not be such to cause Smoke Control Systems to infringe any Letters Patent, Registered Design, Trademark or Copyright in the execution of the order. The patent and design rights held by Smoke Control Systems and relating to work offered or supplied by Smoke Control shall remain the absolute property of Smoke Control Systems and such designs and drawings shall not be reproduced or disclosed without Smoke Control Systems written consent. The Purchaser will not, without Smoke Control Systems previous written consent, copy or allow others to copy any drawings, equipment or part thereof supplied by Smoke Control Systems.

17. Bankruptcy, Liquidation

If the Purchaser

- (i) being a person, dies or commits an act of bankruptcy
- (ii) being a company, takes or shall have taken against it any action for the winding up of the company or the placing of the company under official management or receivership other than for purposes of reconstruction then Smoke Control Systems, at Smoke Control Systems option and without prejudice to any other rights Smoke Control Systems may have under the contract or at law, shall give notice in writing to the Purchaser and after fourteen (14) days from such notice may, unless otherwise provided by law,
 - (a) terminate the contract or suspend manufacture, delivery or installation of any equipment outstanding
 - (b) retain any security given or monies paid by the Purchaser and apply this against the assessed loss and damages incurred by Smoke Control Systems in the performance of the contract.

18. Service of Notices

For the purpose of service of any document or notice in connection with the offer or contract it shall be sufficient for either party to forward such document or notice by ordinary mail if within Australia or air mail beyond Australia, with appropriate postage prepaid, or by facsimile transmission, telegram or cable to the last known address of the other party.

19. Legal Construction

In the absence of agreement to the contrary, the contract shall be construed and operate in conformity with the laws of the State of New South Wales which is hereby deemed to be the proper Law of the contract.