



TERMS and CONDITIONS of PURCHASE ORDER - PARTS

Acknowledgment and Acceptance of these Terms and Conditions

1. Vendor has read and understands these terms and conditions.
2. The Vendor is deemed to have accepted these terms and conditions on the happening of the first of the following events:
 - a) acceptance of these terms and conditions by the Vendor (including any form of confirmation of order issued by the Vendor);
 - b) in the case of the supply of goods, the commencement of manufacture or the setting aside of the goods for Delivery to the Nissan or the supply of any samples to Nissan;
 - c) in the case of services, the commencement of any work or services in connection with the Supplies;
 - d) the issuing of an invoice in respect of the Supplies; and
 - e) the Delivery of the Supplies to Nissan.

Interpretation

3. In these terms and conditions, unless the context otherwise requires, the following words have the following meanings:

'Agreement' means the purchase order for the Supplies specified in the front of this form as completed and includes these terms and conditions.

'Confidential Information' means all of Nissan's confidential information, including designs, process, components, inventions, techniques, methods, ideas, discoveries, developments, formula, specifications, trade secrets, customer lists, sales data, financial data, other knowledge, or any of the other details connected with this Agreement.

'Delivery' means for the supply of goods (including goods fabricated utilising materials and/or equipment supplied by the Vendor), the actual delivery of all the goods specified in this Agreement by the Vendor to Nissan at the address specified by Nissan.

'Nissan' means Nissan Motor Co. (Australia) Pty Ltd and/or Nissan Casting Australia Pty Ltd as is expressly specified as the Purchaser on the front of this Agreement.

'Supplies' means the goods:

- (a) to be supplied; or
- (b) as actually supplied;

by the Vendor to Nissan for the purpose of this Agreement.

'Supplier Code of Conduct' means the Supplier Code of Conduct published by Nissan and available at <https://www.nissan.com.au/procurement.html> as amended from time to time.

'Vendor' means the supplier of the Supplies specified on the front of this Agreement.

General

4. This Agreement constitute the entire agreement between the parties relating to the goods specified herein unless supplemented by a written agreement expressed to be in addition to these terms and expressly accepted and signed by an authorised representative of Nissan. The terms of the written agreement will prevail to the extent of any inconsistency with these terms. Any terms and conditions stated by Vendor in accepting or acknowledging these terms and any purchase order, additional to or differing from the terms stated by Nissan, will not be binding unless separately and expressly accepted in writing by Nissan.

Variations

5. No verbal understandings or variations in respect of supply, price, delivery or any other conditions from those stated herein will be recognised unless confirmed in writing and signed by an authorised representative of Nissan.

Advance Shipping Notice

6. The Vendor is to provide Advance Shipping Notice by EDI or in writing to the National Parts Distribution Centre, Dandenong, Victoria, prior to any order being dispatched to any of 'Nissan's premises.

Price, payment and placement

7. Unless stated in the purchase order, or otherwise agreed in writing, the price stated in this order will be deemed to be the 'into store' price at the specified location.
8. Unless expressly otherwise specified, this Agreement and all provisions herein must be fully performed and complied with before payment by Nissan will become due. No payment to Vendor will be construed as irrevocable acceptance by Nissan in case of defective work or goods.
9. Invoices must be sent promptly via post to Nissan, Accounts Payable, Locked Bag 2004, Brandon Park, Victoria 3150 or via email to apinvoices@nissan.com.au. An invoice must not cover more than one purchase order, the purchase order number and line items must always, as shown on the order, be marked on the invoice(s) and related correspondence. The date used to calculate payment will be based on the invoice date and Nissan Standard Payment terms of 60 days after the invoice date, subject to Nissan's Payment Terms Policy or unless otherwise stated. All taxes to be paid by Nissan, including any Goods and Services Tax or value added tax, must be separately itemised on the invoice. Invoices may be rejected for non-compliance with any of the provisions of this order and, number and items, as shown on the order, must appear on all invoices and in that event, discount and payments will date from the time the corrected invoice(s) are received by Nissan.

Accounts

10. Packing slips must accompany deliveries.
11. Unless otherwise agreed, the Vendor will arrange insurance of goods delivered to Nissan's store as stated in the instructions issued by Nissan. Nissan is not obliged to insure rejected goods, or excess goods returned.
12. Invoices must be rendered within seven days of delivery.
13. No charges for packing and/or freight other than as shown on this order will be accepted unless previously authorised by Nissan.
14. Nissan's purchase order number must appear on all correspondence, packing notes, invoices, etc, relating to the goods covered by the purchase order.

Deliveries

15. Deliveries by the Vendor will only be recognised against firm orders placed by Nissan and will be made in the times and for the quantities specified in such orders, or in delivery schedules issued relative to such order. Nissan reserves the right to accept, at its sole discretion, in whole or in part, any such shipments in excess of quantities or outside the specifications included in Nissan's Purchase Order and/or Release.
16. Should Nissan agree to accept partial or late deliveries in lieu of a single delivery, Vendor agrees to pay, at no expense to Nissan, all additional freight charges, expenses, and damages incurred as a result of the failure to accomplish a timely single delivery.
17. Vendor must (and must procure its representatives) comply with any directions, procedures or policies advised or notified by Nissan or its representatives to it with respect to the packing, securing, loading or unloading of any goods or entry into, use of or egress from any of the Nissan premises where the goods are delivered.

Force Majeure

18. Neither Nissan nor the Vendor shall be liable for any failure or delay to comply with the terms and conditions of the Agreement when such failure or delay is caused by or arises from any event which is unforeseen by, beyond the control of and occurs without fault or negligence by the party prevented or delayed in performing the obligation. It includes but is not limited to:
 - a) earthquake, act of God, natural disaster, fire flood, storm, explosion, volcanic eruption, riots, civil commotion, malicious damage, sabotage, war, act of public enemy, revolution, government restrictions, unavoidable accidents;



- b) radioactive, biological or chemical contamination or warfare, currency restriction, embargo or a failure of a public utility or computer disruption or the effects of a virus or other malicious code;
 - c) epidemic or pandemic;
 - d) a change of law.
19. The Vendor must promptly notify Nissan of the cause or event that is preventing or delaying it from performing or carrying out its obligations under this Agreement.
20. In the event of a failure by the Vendor to perform or carry out any or all of the terms and conditions hereof arising from any of the causes or events set forth in clause 17, Nissan shall be entitled to obtain the Supplies covered by this Agreement elsewhere for the duration of the failure and without any obligation to the Vendor, to reduce accordingly the quantity or amount of Supplies ordered from the Vendor under this Agreement.

Acceptance, Return and Rejections

21. Nissan will give to the Vendor, an acknowledgement of receipt of goods on arrival, but such acknowledgement will be subject to Nissan reserving the right to inspect the goods at its convenience. Payment to Vendor will not constitute acceptance or agreement by Nissan that the goods conform to the terms and conditions of this Agreement.
22. Deliveries in excess of quantities ordered and /or scheduled for delivery and/or items specified in this Purchase Order, may be returned by Nissan and not admitted for payment.
23. Nissan may reject so much of the goods as fail to satisfy the requirements of clause 37(a). If such goods are rejected prior to payment being made, then only the balance (if any) of the goods as are in accordance with these terms and conditions, will be admitted for payment.
24. In the event that goods are rejected following payment of the said goods by Nissan, the Vendor, will immediately credit the account of Nissan with the value of the goods so rejected and immediately refund the purchase price, but at all times the provisions of this clause will not deprive Nissan the right to deduct any such amounts from any moneys then or later due to the Supplier.
25. Nissan may return any such excess goods and /or rejected goods to the Vendor at the Vendor's expense and risk. Any expense incurred in such returns will be an amount recoverable from the Vendor and, without affecting the generality of the foregoing, may be deducted by Nissan from any moneys then or later due to the Vendor. Any such returned excess goods and/or rejected goods that bear any trademark or other identification of Nissan shall be destroyed by the Vendor.

Title and Risk

26. The title to and risk of any loss, damage or deterioration of the goods from any cause shall not pass to Nissan until delivery 'into store' at the location specified in the Purchase Order and/or Release. On rejection of any goods or return of excess quantities the title and risk shall pass back to the Vendor at the time of rejection.

Non-disclosure of Confidential Information and Exclusive Manufacture

27. Any drawings, blueprints, specifications, patents and other Confidential Information supplied by Nissan in connection with this Agreement (including any bailed property) at any time remains the confidential property of Nissan and shall be used solely for the provision of Supplies by the Vendor to Nissan and except with the prior consent in writing of Nissan, for no other purpose and shall be returned to Nissan on demand.
28. The Vendor undertakes and warrants that it will not now nor in the future directly or indirectly disclose, reproduce for or sell to any other person other than Nissan, goods inclusive of raw or half-finished goods manufactured by the Vendor to the specifications provided by Nissan nor will it divulge to any other person any information with regard to specifications provided by Nissan or any information with regard to specifications or drawings received from or provided by Nissan.
29. This clause shall survive the termination of the Agreement.

Intellectual Property

30. By accepting this agreement, Vendor guarantees that the goods and/or services described herein, except such as are made to Nissan's detailed and designs, the sale or use of them, will not infringe or contribute to the infringement of any patent, trademark, copyright, or other intellectual property right and Vendor agrees to indemnify, hold harmless and protect Nissan, its affiliated and subsidiary companies, successors, assigns, customers and users from and against all losses, damages, liabilities, claims, demands (including legal fees) and suits at law or equity for actual or alleged infringement of any patents, trademarks, copyrights or corresponding rights pertaining to the goods and/or services subject to this Agreement.

Privacy and Data Security

31. Vendor represents and warrants that it has in place appropriate legal, organisational, and technical measures necessary to:
- a) preserve the security and confidentiality of all Nissan data processed by it and to which it has access, being any data, information or 'Personal Information' (as defined in the *Privacy Act 1988* (Cth) accessible to Vendor under this agreement and which relates in any way to Nissan or its personnel, customers, suppliers, assets or property ('Data'); and
 - b) prevent any computer program, trojan, virus or other trapdoor, easter egg or code which is harmful, destructive or disabling or which assists in or enables theft, alteration, denial of service, unauthorised access to or disclosure, destruction or corruption of information, data or software ('Harmful Code') from being introduced into Nissan's IT systems.
32. Vendor will immediately notify Nissan if Vendor learns or has reason to suspect:
- a) Nissan's Data has been subject to unauthorised or unlawful processing, accidental loss, destruction or damage; or
 - b) that any Harmful Code has been introduced into Nissan's IT systems; as a result of any act or omission of the Vendor (each a **Security Breach**).
33. In the case of a Security Breach Vendor will:
- a) take immediate steps to remedy the Security Breach at Vendor's expense;
 - b) indemnify Nissan in relation to all loss and any fines or penalties incurred by Nissan as a consequence of the Security Breach including liability under any claim by a Third Party arising from the Security Breach;
 - c) not inform any third party of the Security Breach without first obtaining Nissan's prior written consent unless strictly required by applicable law.

Dispute Resolution

34. In the event of any dispute arising between the parties, the parties agree in good faith to use all reasonable endeavours to settle the dispute. If not successful, either party may refer the dispute to a panel consisting of a nominee of the Vendor and a nominee of Nissan. If, after 14 days with the panel, the dispute is not settled, it will be referred to mediation in Melbourne, Victoria. The mediator will be agreed by the panel or failing that will be nominated by the President of the Law Institute of Victoria. The costs of the mediation will be shared equally between the parties.

Termination

35. Nissan may, in addition to any other available remedies, terminate this Agreement effective immediately by notice in writing without liability to the Vendor if the Vendor is in material breach of the terms, conditions or warranties (contained herein or elsewhere by written agreement between the parties) and if such breach is remediable, such breach has not been remedied within thirty days of written notice. Nissan may also claim compensation from the Vendor for such breach.

Publication

36. The Vendor should not without first gaining the consent of Nissan advertise or publish the fact that goods or services specified in the Purchase Order are being supplied to Nissan.



Quality

37. Goods supplied by the Vendor shall -
 - a) comply with the Request for Quotation, the Purchase Order, these conditions and the Drawings and Specifications.
 - b) conform to the Vendor's sample approved by Nissan.
 - c) be of acceptable quality, and
 - d) be fit for the purpose for which they are required.
38. The supply of goods in contravention of clause 37(a) shall be a breach entitling Nissan to avail itself of its remedies as set out in clause 35.

Tooling

39. Where the Vendor uses Tools, Fixtures, Jigs, Dies, Patterns or Artwork (hereinafter called 'Tools') supplied by or paid for by Nissan, the ownership of the Tools shall remain with Nissan and the Vendor will ensure that such Tools are so marked as to be readily identifiable as the property of Nissan at all times.
40. Where the Vendor provides and pays for Tools and recovers the cost in the overall cost of the goods to Nissan, the ownership of the Tools shall remain with the Vendor.
41. The Vendor undertakes to maintain the Tools in good order and condition (fair wear and tear expected) and capable of manufacturing the products ordered whether the Tools are supplied by Nissan or the Vendor.

Modification

42. Nissan may vary or modify the design of the goods in minor respects.
43. If the design of vehicles is varied or modified in such a way as to necessitate major variations or modifications to the goods or if any contract entered into by Nissan for the fulfilment of which the goods are required is cancelled or frustrated or put to an end through no cause over which Nissan has control, Nissan may cancel this Agreement.
44. Nissan's right to vary or modify the design shall be subject to giving reasonable notice in that respect to the Vendor and Nissan shall endeavour (without being bound) to give two months' notice.
45. Nissan's liability to take any goods in stock but not more goods in stock than the Vendor is bound to provide.
46. Nissan shall not be liable for any damages at all arising out of a variation or modification of a design under clause 42.
47. Nissan shall only be liable for actual damage suffered to the Vendor (and which it cannot mitigate) arising out of a cancellation under clause 43 but not for loss of profits.

Insurance

48. The Vendor shall procure and maintain at its expense adequate Workers Compensation and Occupational Disease Insurance to the limits required under, and which comply with, the laws of Victoria or of the Commonwealth of Australia covering all operations, activities and things whatsoever to be performed under this Agreement by all employees and agents of the Vendor, as well as all other insurance (including public and product liability, property damage, business interruption, and recall insurance) agreed by the parties. The Vendor will ensure that every contractor and sub-contractor employed by it maintains adequate insurance. Such insurance shall include coverage for common law claims. The Vendor will produce proof as reasonably required by Nissan that adequate coverage is current. Such insurance must provide that the insurer will indemnify Nissan in the event that the insured is in breach of Policy conditions.

Warranty (for goods purchased for distribution under warranty)

49. If any of the goods supplied are found to contravene clause 37(a) or are otherwise defective, the Vendor agrees to reimburse Nissan for the full amount of all liability incurred by Nissan in relation to such contravention or defect, including any liability arising out of any statute or express warranty given by Nissan on the goods. Should the Vendor require to view the contravening or defective goods, the Vendor shall be liable for freight costs associated with their return.

GST

50. All amounts payable or other consideration provided in respect of Supplies made in relation to this Agreement are exclusive of GST.

Where a supply is a taxable supply, all amounts payable or other consideration provided must be increased by the amount of GST payable in relation to the supply.

51. All GST must be paid at the time any payment to which it relates is payable (provided a tax invoice has been issued for the supply). Where any GST payable is not referable to an actual payment, then it must be paid within ten (10) days of a tax invoice being issued by the party making the supply.

Compliance with Laws, Corporate Social Responsibilities and Nissan's Policies

52. Vendor undertakes that it:
 - a) will not be involved in any conduct or activity which may harm or diminish the name or reputation of Nissan or any of its products or services in any way;
 - b) will not be involved in any situation which brings Nissan or any of its products or services into disrepute, contempt, scandal or ridicule;
 - c) will ensure that the goods or services will be provided in accordance with the applicable legislation, including Registered Industry Codes of Practice approved by the National Heavy Vehicle Regulator, and will inform Nissan as soon as it becomes aware of any changes in applicable legislation;
 - d) will ensure that the persons involved in providing the goods or services have appropriate skills, qualifications and experience and will at all times have the ability and capacity to meet the requirements demanded by the services;
 - e) if the services include the provision of labour hire services, the Vendor holds, and will continue to hold, any and all licences required under the *Labour Hire Licensing Act 2018 (Vic)* or other State or Territory equivalent. The Vendor will immediately notify Nissan if it no longer holds the required licences;
 - f) will ensure that the persons involved in providing the services have visas, permits and other applicable authorisation to perform the Services required under any applicable law;
 - g) upon request from Nissan, provide copies of any consents, permits, licences, certificates, records, reports or other documents relevant to Vendor's compliance with such laws.
53. The Vendor and Nissan acknowledge they must comply with laws relating to the chain of responsibility obligations under the *Heavy Vehicle National Law Application Act (2013) (Vic)* or other State or Territory equivalent.
54. The Vendor warrants it will comply with the *Modern Slavery Act 2018 (Cth)* and will take steps (including to maintain due diligence procedures) to ensure that there is no modern slavery in it or its sub-contractors' supply chains. The Vendor must notify Nissan as soon as it becomes aware of any suspected modern slavery in a supply chain connected to this agreement and it will maintain complete records to trace the supply chain of all goods and services.
55. The Vendor will comply with applicable Nissan policies and procedures as notified by Nissan from time to time as they relate to the Vendor and the supply of goods and/or services under this Agreement (including but not limited to the Supplier Code of Conduct).

Sub-Contractors

56. Vendor agrees that, notwithstanding that Nissan may consent to Vendor's engagement of a subcontractor, Vendor will:
 - a) remain principally responsible for the due fulfilment of each of its obligations under this agreement, and fully liable for any failure to fulfil such obligations; and
 - b) be liable for the fees and costs of any subcontractor and will be responsible and liable for all acts and omissions of the subcontractor.
57. Vendor must ensure that any goods or services (or any element thereof) supplied by any subcontractor meets the requirements of this agreement.

Assignment

58. Vendor will not assign, sublet or transfer this agreement, or any part thereof, or any payments due or to become due hereunder, without



prior written consent of Nissan, and any such assignment, subcontract or transfer without such written consent will be null and void.

Insolvency

59. The insolvency on part of either party shall give to the other party the right to cancel and terminate this Agreement.

Waiver

60. The Waiver by Nissan of any specific default or defaults by the Vendor or failure by Nissan to cancel or terminate this Agreement or any part of it when a right of cancellation or termination arises shall not constitute waiver by Nissan of any of the terms and conditions of this Agreement with respect to any further or subsequent default or defaults by the Vendor or any cause herein stated which gives rise to a right of cancellation or termination.

Remedies

61. The warranties and remedies available to Nissan under the terms of this agreement will be cumulative and in addition to those implied by or available at law or equity. No waiver of any breach of this agreement will be construed to constitute a waiver of any other breach or of any provision hereof.

Applicable Law

62. This agreement is subject to the laws of Victoria, Australia.