



Penfold Buscombe

PRINT COMMUNICATIONS

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# Terms and Conditions of Trade for Suppliers

**effective as of July 2002**

**MELBOURNE**

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**GOLD COAST**

19 PRODUCTION AVENUE  
ERNEST QLD 4214  
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**PENFOLD BUSCOMBE AUSTRALIA PTY LTD**

ABN 73 096 088 854

## 1. DEFINITIONS

- (a) "PBA" means Penfold Buscombe Australia Pty Ltd (ABN 73 096 088 854);
- (b) "Goods" means the objects or articles the subject of this Order and includes Services;
- (c) "Order" means the Purchase Order for Goods or Services and includes these Terms and Conditions of Purchase;
- (d) "Supplier" means the person, firm or corporation from whom Goods or Services are ordered by this document;
- (e) "Services" includes repair, overhaul, maintenance, modification, alteration, construction, replacement or like activities;
- (f) "FIS" means free into store;
- (g) Words in the singular include the plural and vice versa.

## 2. CONTRACT AND VARIATION

- 2.1.** This Order constitutes the entire contract between the parties and supersedes all previous communications and negotiations. No terms stated by the Supplier in accepting or acknowledging this Order will be binding on PBA unless expressly accepted by PBA in writing. The Supplier may not assign this Order without PBA's prior written consent.
- 2.2.** This Order may not be varied except by a written "Amendment to Purchase Order" signed by PBA.
- 2.3.** This Order constitutes a contract between the parties and no further document or act will be required of the parties to be legally bound.

## 3. QUALITY OF GOODS AND STANDARD OF SERVICE

- 3.1.** The Supplier warrants that the Goods will at all times be of prime quality, fresh in the case of perishables, fit for the purpose for which they are required and intended, conform to their description and specifications and be of merchantable quality. These warranties are in addition to any other warranties of service or guarantees given by the Supplier or that may be implied by Law.
- 3.2.** Services will be provided professionally, in accordance with best commercial practice and with due skill, care and attention.
- 3.3.** The Supplier will comply with the following requirements:
  - (a) Goods will not be under or over supplied;
  - (b) Minimum order requirements will not be applicable unless specified in the Order;
  - (c) The product brands described in the Order will be supplied. Alternative product brands must be approved by PBA before they are acceptable;
  - (d) The Goods will not be defective, sub-standard, faulty, soiled, damaged, unusable or late;
  - (e) The Supplier shall maintain the quality of Goods from the time of the order until delivery;
  - (f) In the case of the provision of Services, the Supplier undertakes to rectify or redo any faulty work or Services for a period of 12 months from the date of practical completion;
  - (g) The Supplier will comply with all relevant laws, regulations etc. in the supply of the Goods and will obtain any requisite licences or permits.

## 4. DELIVERY

- 4.1.** The Supplier will deliver the Goods to the location specified in the Purchase Order between the hours of 7.30 a.m. and 4.00 p.m. on any day Monday to Friday unless other prior arrangements are made. The Supplier will ensure that:
  - (a) The Goods are delivered with detailed documentation detailing order number and description of contents and invoice, detailing item, quantity, individual price and total price;
  - (b) The Goods are supplied in one delivery;
  - (c) The Goods are provided FIS unless otherwise specified in the Order;
  - (d) Any item subject to shelf life control will be freshly manufactured and clearly identified on delivery with details of date of manufacture, shelf life conditions, requirements and shelf life period;
  - (e) In the case of food delivery, delivery is made in appropriately licensed registered and hygienic food transportation vehicles;
  - (f) All Goods are packed in a way to ensure their safe delivery undamaged to PBA.
- 4.2.** Time is of the essence in the delivery of Goods. The Supplier will deliver the Goods pursuant to the Order on the date and time specified in the Order. If the Supplier fails to deliver the Goods on that date and time as specified, PBA may:
  - (a) Cancel the whole or part of this Order;
  - (b) Return the Goods to the Supplier at the Supplier's expense;
  - (c) Seek damages as a result of the Supplier's late delivery; and/or
  - (d) Order the Goods elsewhere and seek damages for any loss suffered by PBA.
- 4.3.** Where no delivery date is specified herein, the Supplier must notify BVP of the delivery date upon receipt of Order.
- 4.4.** PBA in accepting delivery of the Goods must sign delivery documentation. If Goods are delivered and no signature has been obtained the Goods may be considered undelivered and in that case PBA will not be responsible for such Goods.

## 5. RETURN OF GOODS

- 5.1.** Notwithstanding the terms of any delivery documentation including the signature thereon of PBA, PBA may reject and return any Goods which do not comply with this Order (and in particular Clause 3.3) or which are otherwise unacceptable in the reasonable opinion of PBA.
- 5.2.** The Supplier will accept return of any Goods in excess of PBA's requirements except for perishables (including foodstuffs) and Goods manufactured expressly for PBA (Including printed materials) for which there is no alternative market.
- 5.3.** Except for Goods returned pursuant to Clause 5.2, where Goods are returnable the Supplier will bear the cost of return transportation and PBA may, without prejudice to any other rights under this Order or otherwise:
  - (a) Obtain credit for the returnable Goods; or
  - (b) Obtain replacement Goods from the Supplier; or
  - (c) Source the Goods elsewhere and recover any additional cost or expense so incurred from the Supplier; or
  - (d) Terminate the Order in whole or in part and seek damages.

## **6. TITLE AND RISK OF LOSS OR DAMAGE**

- 6.1.** The Supplier warrants that the Goods purchased are free and clear of all liens and encumbrances and the Supplier has good and marketable title to same.
- 6.2.** All risks whatsoever including risk of loss or damage to the Goods and/or items to be serviced including material supplied by PBA or any third parties or their property will be upon the Supplier until the Goods and/or items are delivered to PBA in accordance with this Order.
- 6.3.** Where this Order relates to a service the Supplier will bear the risk of loss or damage from the time of receipt by the Supplier of the items to be serviced until they are delivered in accordance with this Order.
- 6.4.** Where part payment for any Goods is made by PBA the title to and property in the partly completed Goods, meaning materials or parts to be used in this manufacture will pass to PBA. Risk of loss will remain with the Supplier.

## **7. INSTALLATION AND FITTING**

Where the Supplier provides work in connection with the installation or fitting of Goods or where the presence of the Supplier or its servants or agents is required on PBA's premises;

- (a) The Supplier will use its best endeavours not to impede or interfere with other work in progress on PBA premises;
- (b) The Supplier enters PBA's premises at its own risk and shall be liable for and indemnify PBA against any loss, damage claim or liability arising directly or indirectly out of the performance of work or presence on PBA's premises; The Supplier, its employees, agents and contractors shall comply with the safety regulations of PBA and with the reasonable directions of PBA.

## **8. SUPPLY INDEPENDENT OF PBA**

The Supplier performs all work independently of PBA and not as an agent or employee of PBA and will be liable for the safe supply of the Goods.

## **9. PRICE**

- 9.1.** Unless otherwise specified in this Order all prices will be net of GST.
- 9.2.** Where, pursuant to this Order, a price is not specified or is variable, if the Supplier has failed to substantiate the price or the price appears unreasonable to PBA, PBA may refuse to accept the delivery or may accept the delivery and payment will only be made after confirmation of change to the price or by agreement between the parties.
- 9.3.** PBA may reduce the amount payable on any invoice on a pro-rata basis where Goods are returned.

## **10. INVOICE AND PAYMENT**

- 10.1.** The Supplier shall invoice PBA in duplicate at the agreed rate in the Order. All invoices shall be addressed to PBA and sent to the address in the Order. All documents must include an applicable PBA Order Number and description and quantity of Goods delivered;
- 10.2.** Invoices shall be settled at the agreed rate of price as specified in the order and subject to the terms specified on the face of this document and may only be varied by consent in writing of PBA, irrespective of any pending counter claim.
- 10.3.** PBA may offset against or deduct from any amount owing to the Supplier such amounts as may be due or payable by the Supplier to PBA whether pursuant to this Order or otherwise.

## **11. INDEMNITY**

The Supplier will indemnify and hold harmless PBA its officers employees and agents from and against all liabilities, claims, losses, damages and judgements, including costs and expenses incidental thereto:

- (a) For damage to or loss of property or injury, death or inconvenience to any person whomsoever arising from or in any way connected with any act or omission of the Supplier or defect or in appropriation in the Goods or other items provided by the Supplier; or
- (b) Arising out of or in connection with infringement of patent, trade mark, copyright or the like regardless where such action, claim or demand arises, by reason of the use of the Goods purchased by this Order.

## **12. TERMINATION**

Without prejudice to any other rights PBA may have against the Supplier, PBA may terminate this Order in whole or in part in writing with immediate effect in the event of any of the following:

- (a) Supplier enters into liquidation, is presented with a winding up application, has appointed a receiver and/or manager or is unable to pay its debts;
- (b) Supplier's conduct in PBA's opinion is prejudicial to the interests and operations of PBA;
- (c) Supplier breaches any of the terms or conditions of this Order;
- (d) Supplier assigns or sub-contracts this agreement in whole or part without the prior written consent of PBA;
- (e) Supplier ceases or threatens to cease to carry on its business.
- (f) Waiver of PBA of any specific default by the Supplier or failure by PBA to cancel this Order or any part thereof when a right of cancellation arises shall not constitute waiver by PBA of any of the rights pursuant to this Order.

## **13. PBA'S PROPERTY**

- 13.1.** All designs, data, samples, blue prints, plans, drawings, specifications, film, cutting forms etc. ("PBA property") furnished by PBA to the Supplier whether or not the Supplier has been charged for the same and any of such as has been manufactured or purchased by the Supplier and for which PBA shall have paid shall be the sole property of PBA. Any such PBA property or any substantial portion or description thereof may not be produced or reproduced in any material form without authority in writing by PBA.
- 13.2.** Upon conclusion or cancellation of this Order the Supplier shall hand to PBA any finished or unfinished work relevant to this Order and such PBA property as aforesaid.
- 13.3.** The Supplier will not during continuance of the Order or any time thereafter manufacture any Goods, the subject of any PBA property for commercial use other than to order of PBA, nor furnish to third party any such Goods or samples.

## **14. ADVERTISING**

The Supplier will not without first obtaining the written consent of PBA in any manner advertise or publish the fact that the Supplier has contracted with PBA for the supply of Goods.

## **15. GOVERNING LAW AND JURISDICTION**

These Terms and Conditions are governed by the law in force in the State or Territory in which the Printer's premises are located and the parties submit to the non-exclusive jurisdictions of the courts of that State or Territory and any courts which may hear appeals from these courts in respect of any proceedings in connection with these Terms and Conditions.