



Purchase Order Terms and Conditions

Last updated: 15 February 2019

All Purchase Orders issued by any member of the Wellington Drive Technologies Limited group of companies ("**Wellington**") for the supply to Wellington of the goods specified in the Purchase Order (collectively, "**Product**") shall be supplied on the terms and conditions of the Purchase Order, these terms and conditions ("**Terms and Conditions**") and any special terms agreed in writing between the parties to form part of the Purchase Order. Wellington will not accept, and expressly objects to and rejects, any other terms and conditions (whether written or oral) originating from Supplier that purport to modify, add to, waive or otherwise vary the terms and conditions stated herein. The Purchase Order, including any other terms and conditions agreed in writing between the parties to form part of the Purchase Order, shall prevail over these Terms and Conditions to the extent of any inconsistency, but all the foregoing shall be included in the term "Purchase Order" used in the following Terms and Conditions.

- 1. Specifications.** Where the specifications for a Product are described in the Purchase Order provided by Wellington to the Supplier, the Product shall (a) meet that specification; (b) be manufactured to a level of quality of workmanship at least equal to that represented in the specification; (d) be capable of meeting the warranties in these Terms and Conditions; and (e) otherwise the Product shall be manufactured to the specification to which Product fitting the description in the Purchase Order would ordinarily be manufactured. Supplier shall immediately seek instructions from Wellington in the event any specifications are unclear.
- 2. Packing.** Where the method of packing is not specified in the Purchase Order the Product shall be packed in the manner usual for such Product, so as to preserve and protect the Product.
- 3. Supplier Changes.** Wellington may notify the Supplier in writing of a change to the specification, quantity, packing or delivery details for a Product. From the time of receipt of the notice from Wellington, the new requirements for the Product shall apply. The parties will negotiate any change to the pricing for the Product which reflects any change to Supplier's costs resulting from the new requirements. Supplier shall not make any changes to the Product(s) without the prior written approval of Wellington.
- 4. Pricing and Payment.** Unless otherwise specifically stated in the Purchase Order: the price of all Product includes all costs associated with delivery (as per relevant Incoterm) to the delivery point specified in the Purchase Order; prices include central government, provincial or local excise, sales, use, value added or other taxes, levies or charges now or hereinafter enacted, which are applicable to the Product, and all bank charges applicable to Supplier; there shall be no additional charges to Wellington; the price is a fixed price and prices shall remain current in respect of the supply of all the Product specified in the Purchase Order; and payment shall be made by Wellington directly into Supplier's nominated bank account.
- 5. Use of Incoterms.** The Purchase Order may specify that the relevant supply of Product is subject to an Incoterm (e.g. FOB, CIF, DDP, Ex Works etc.). Such references to Incoterms are deemed to be made to the relevant term published by the International Chamber of Commerce as Incoterms 2010.
- 6. Issue of Purchase Orders.** Purchase Orders may be sent electronically and/or in hard copy. Actions taken by Supplier before a Purchase Order is issued by Wellington and accepted by Supplier shall be at Supplier's own risk and expense. Verbal orders are not binding on Wellington unless confirmed in writing in a Purchase Order.

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- 7. Purchase Order must be accepted by Supplier.** Supplier must advise Wellington by email or facsimile whether it accepts a Purchase Order within three (3) business days after receipt of a Purchase Order from Wellington. Wellington may at its option either deem such Purchase Order to have been accepted by Supplier or reject any Purchase Order which has been accepted by Supplier, if Supplier has failed to notify Wellington of Supplier's acceptance within such time. If Supplier rejects a Purchase Order and wishes to negotiate any parts of the Purchase Order, then before it will be binding on the parties the Purchase Order must be reissued by Wellington and accepted by both parties once all issues have been agreed.
- 8. Product Inspection Process.** The Supplier agrees to allow Wellington's representative(s) to inspect at any time the Supplier's manufacturing process, the Product during the manufacturing process, prior to being loaded and prior to shipping.
- 9. Failure to Inspect not Acceptance.** Failure by Wellington to inspect, or to identify any defect or nonconformity during any inspection, whether before or after delivery, shall not constitute acceptance by Wellington of any defect or nonconformity.
- 10. Notice of Defect.** Wellington will give notice to Supplier of any defective or nonconforming Product within thirty (30) days after Wellington has discovered the defect or nonconformity, provided that Supplier acknowledges that Product may not be inspected, and any issues identified by Wellington for some time after delivery.
- 11. Supplier to Meet Delivery Times.** Supplier shall meet the delivery times specified in the Purchase Order, which is of the essence of the Purchase Order. Supplier will advise Wellington immediately in writing if it is likely any Product will not be delivered in accordance with the requirements of the Purchase Order.
- 12. No Requirement to Accept Different Quantities.** Unless agreed in writing by Wellington prior to shipping, Wellington is not required to take delivery of a quantity of Product that is greater or less than the quantity specified in the Purchase Order.
- 13. Shipping.** Unless otherwise specified in the Purchase Order, all shipping from the delivery point specified in the Purchase Order for delivery of Product by Supplier shall be arranged by and shall be at the expense of Wellington. Title to the Product and risk of loss or damage to Product shall pass to Wellington from Supplier only upon delivery of the Product by Supplier to the carrier appointed by Wellington to carry the Product from the delivery point specified in the Purchase Order together with the appropriate shipping documents for the Product.
- 14. Customs/Country of Origin Requirements.** Supplier shall ensure that all Product and shipping containers comply with all customs laws, rules and regulations, including, but not limited to, country of origin marking and identification requirements. Supplier shall provide certificates of origin within seven (7) days of Wellington's written request.
- 15. Early Delivery Not Allowed.** The Supplier agrees that the Product (or any agreed installments of Product) will not be delivered to the delivery point prior to the date specified in the Purchase Order for delivery. In the event that the Supplier delivers the Product prior to the specified delivery date Wellington may refuse to take delivery of the Product, or, if Wellington agrees at its absolute and sole discretion to take delivery, the Supplier agrees to reimburse Wellington for any and all additional storage or other costs incurred as a result of the early delivery, and Wellington will not be required to make payment at any earlier time than that which would have applied if the Product had not been delivered early.
- 16. Late Delivery.** The Supplier agrees that if all of the Product has not been delivered to the specified delivery point by the date specified for such delivery in the Purchase Order, Wellington may at its absolute and sole discretion either grant an extension of the delivery date, agree to a reduction of the purchase price for the Product to compensate Wellington for the delay or cancel the Purchase Order or the relevant Product delivery with no obligation on Wellington to Supplier for payment for the Product that was not delivered point by the date specified for such delivery in the Purchase Order or for any other costs incurred by Supplier.
- 17. Rejection of Product.** Wellington shall have the right to reject, before or after delivery, any item of Product that does not conform to the requirements of the Purchase Order. Wellington also has the right to reject the entire volume of Product supplied even if less than the entire Product is nonconforming.



18. Remedies. Where Wellington has, in accordance with the Purchase Order, cancelled a Purchase Order or rejected Product, or Product has breached the warranty in Section 20 below, and without limiting any claim Wellington may have at law or equity against Supplier, Wellington has the option at its sole and absolute discretion to (a) require a full refund of any deposits, interim payments, or final payments made plus any shipping and other costs incurred by Wellington together with the costs of meeting any claims made by Wellington's customer(s), and/or (b) elect to have the Supplier replace each such nonconforming item by delivery thereof to the original delivery point within a period to be agreed by Wellington and/or (c) Wellington may refuse to take delivery of any Product yet to be delivered by Supplier. In addition, where the Supplier has breached the warranty contained in subsection (vii) of Section 20 below, Wellington may require the Supplier at its own expense to either (a) supply to Wellington Product which is modified so as to make it non-infringing; or (b) procure for Wellington the right to continue acquiring and using the Product containing the infringing material.

19. Failure to Reject not Acceptance. The failure by Wellington to reject Product that is nonconforming does not amount to a waiver of Wellington's rights to claim against Supplier for breach of the Purchase Order or to exercise any other rights under the Purchase Order that Wellington may have at law or equity for such breach.

20. Warranty. Supplier warrants that all Product supplied by Supplier to Wellington under the Purchase Order shall: (i) be free and clear of all liens and encumbrances; (ii) be merchantable and be fit for any particular purpose the Supplier represents that they are or will be fit; (iii) be free of material defects in design, materials, workmanship, packaging, labeling and tagging; (iv) meet Supplier's specifications as specified in the Purchase Order for the Product or as previously supplied to Supplier in writing, as in effect at the date of the Purchase Order; (v) meet all applicable industry standards and requirements for the Product as in effect at the date of the Purchase Order; (vi) be equivalent in design, specification, materials, quality, finish, workmanship and performance to the Sample(s) (if any) provided (by either Supplier or Wellington), and any designs or drawings submitted by or to and approved by Wellington; (vii) be free of any right or claim of a third party based on an industrial right or other intellectual property right (other than Intellectual Property supplied by Wellington referred to in Section 29); (viii) meet the requirements of this Section 20 for the warranty period specified in the Purchase Order, if any, and in the absence of any such warranty period have the durability customarily associated with Product of the relevant type; and (viii) meet the requirements of the Purchase Order.

21. Termination by Wellington. Wellington may terminate any Purchaser Order which has not been completed at the date of termination, effective immediately by giving written notice to Supplier, if (i) Supplier breaches any provision in the Purchase Order; or (ii) if, prior to the date for performance of an obligation on the part of the Supplier under the Purchase Order, it is clear that the Supplier will commit a breach of that obligation; or (iii) in Wellington's view the financial position of the Supplier is or is likely to become unacceptable.

22. Supplier Indemnity. Supplier shall defend, indemnify and hold Wellington harmless from and against any and all losses, liabilities, suits, claims, damages, fees, and expenses (including, but not limited to, court costs and reasonable lawyers' and expert witness fees) of whatever kind or nature which may arise out of or be in any way connected with or is alleged to arise out of or be connected with a breach of the Purchase Order by the Supplier.

23. Force Majeure. Neither party shall be in default on account of delays in performance to the extent it is beyond such party's control and not occasioned by such party's fault or negligence.

24. No Assignment. The Supplier may not assign or transfer the Purchase Order or except as set out in the Purchase Order subcontract all or any part of the manufacture of the Product to any third party without Wellington's written consent.

25. Notices. Any notice required or permitted under the Purchase Order shall be given in writing. Notices shall be sent by confirmed email, facsimile transmission or by personal delivery to the addresses notified by each party to the other in writing or if no such address has been specified to the usual business addresses of the Supplier and Wellington.

26. No Waiver. Failure by either party to require strict compliance with any provision of the Purchase Order shall not be construed as a waiver of that provision or any other provision.



27. Governing Law. The Purchase Order shall be governed by and construed under the laws of New Zealand, except the laws of New Zealand which would render such choice of laws ineffective. The Purchase Order is not subject to the United Nations Convention on Contracts for the International Sale of Goods. Any dispute arising out of, under or in connection with the Purchase Order, including any question with regard to its existence, validity or interpretation shall be referred to and shall be finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce, which Rules are deemed to be incorporated by reference into this Section 27, by one or more arbitrators appointed in accordance with the said Rules. The seat, or legal place, of arbitration shall be Auckland, New Zealand, and the language of the arbitration shall be English. Arbitration does not prevent any party from requesting interim or conservatory measures from the courts of New Zealand. Each party waives any objection it may now or hereafter have to the New Zealand venue and specifically waives any objection that any dispute resolved hereunder was brought in an inconvenient forum and agrees not to plead or claim the same. The arbitral award rendered by the arbitrator shall be in writing and shall set forth in reasonable detail the facts of the dispute and the reasons for the arbitrator's decision. The award shall be final and binding on the parties. Any monetary award of the arbitration tribunal shall be made and payable in the currency of the price under the Purchase Order. Any such monetary award shall accrue interest at the maximum rate allowed under the jurisdiction the law of which governs the Purchase Order, from the date of the notification of the dispute to the date when the award is paid in full.

28. Confidentially. The Supplier shall at all times keep confidential and not directly or indirectly make or allow any disclosure or use to be made of any Confidential Information belonging to and disclosed by Wellington or the subject matter of the Purchase Order without the prior written consent of Wellington. "Confidential Information" means any and all information of whatsoever nature or kind, relating to the Product and the procedures, processes, techniques, technologies, information and technical data, concerning the manufacture use and sale of the Product, the Intellectual Property (as defined in Section 29) or the business of Wellington and information about Wellington's customers, which is or has been disclosed to the Supplier by Wellington (or by any associated company of Wellington), whether imparted orally, by observation, electronically or otherwise, but does not include information to the extent the Supplier can prove: (a) at the time of disclosure the information was already known to the Supplier and was not subject to any obligation of confidentiality at the time of receipt by the Supplier; (b) the information was or has become general public knowledge through no fault of the Supplier and was obtained by the Supplier from such publicly available source; (c) the information was rightfully obtained by the Supplier from third parties, or was developed independently by the Supplier without breaching any obligation of confidence owed by it or any other person or entity to Wellington.

29. License to use Wellington IP. In order to enable Supplier to manufacture or supply Product for Wellington, Wellington may supply to Supplier methods, techniques, procedures, work instructions, and the like, and technical information relating to the design, development, manufacture and/or use of Product, machines or components thereof, whether in written, diagrammatic, electronic or any other form, and whether or not incorporated in registered patents, trademarks or designs in any jurisdiction (all the foregoing included in the expression "Intellectual Property" in the Purchase Order). Wellington hereby grants Supplier a license to use such Intellectual Property solely for the purposes of the Purchase Order, and for no other purpose whatsoever. Supplier shall acquire no other rights in such Intellectual Property. All such Intellectual Property (including all copies thereof), shall be returned to Wellington upon the termination of this Agreement, or earlier on the request of Wellington.

30. Changes to these Terms and Conditions: From time to time, Wellington may make changes to these Terms and Conditions. Any such changes shall take effect on the date that the changes are posted on Wellington's website, www.wdtl.com/legal. It is the Supplier's responsibility to ensure that it is familiar with the most recent version of these Terms and Conditions, which will apply to any orders placed by Wellington from the date the version takes effect as described above. Please refer to the "Last Updated" section at the start of these Terms and Conditions for when these terms were last updated.

31. Translation: In the event these Terms and Conditions are translated into a different language, the English version shall be the official, governing, version.

32. Headings: Headings have been inserted for convenience and shall not be used to interpret these Terms and Conditions.