

## **PURCHASE ORDER GENERAL TERMS AND CONDITIONS**

### **1. INTERPRETATION**

In these terms:

**Associates** mean those entities in the Supplier's supply chains including those entities' assigns, affiliates and their respective agents or Suppliers.

**Adverse Action** includes:

- (a) any action or threatened action:
  - (i) to dismiss the disclosing person and/or any other person from employment or otherwise end their engagement with the Supplier or the Supplier's Associates;
  - (ii) to cause injury to the disclosing person and/or any other person;
  - (iii) to alter the disclosing person's and/or any other person's position with the Supplier or the Supplier's Associates to that person's prejudice;
  - (iv) to discriminate between the disclosing person and/or any other person, and other persons employed, or otherwise engaged, by the Supplier or the Supplier's Associates;
  - (v) to refuse to employ or otherwise engage the disclosing person and/or any other person;
  - (vi) to refuse to use the services of, or supply to, the disclosing person and/or any other person; and
  - (vii) to discriminate against the disclosing person and/or any other person in the terms or conditions on which the Supplier or the Supplier's Associates offers to employ or otherwise engage that person,
- (b) any action taken against a person on the basis of any contractual, civil or criminal liability that may be incurred by that person due to their disclosure of information under clauses [10\(d\)](#), [11\(d\)](#) and [13\(a\)](#); and

- (c) repeated unreasonable behaviour towards a person or group of persons (beyond the scope of reasonable management action carried out in a reasonable manner) and that behaviour creates a risk to the health and safety of that person or group of persons.

**Confidential Information** means any written or oral information of a technical, business or financial nature or which is taken by any provision of this agreement to be Confidential Information, or which PACCAR makes the Supplier aware is considered by PACCAR to be confidential and proprietary, and includes all information that is personal information for the purposes of the Privacy Act 1988 (Cth), but does not include information which the Supplier can establish:

- (a) was in the public domain when it was given to the Supplier;
- (b) becomes, after being given to the Supplier, part of the public domain, except through disclosure contrary to this agreement;
- (c) was in the Supplier's possession when it was given to the Supplier and had not been acquired in some other way (directly or indirectly) from PACCAR; or
- (d) was lawfully received from another person who had the unrestricted legal right to disclose that information free from any obligation to keep it confidential.

**Delivery Date** means the date for delivery of the Goods and/or Services to the Delivery Point.

**Delivery Point** means the place where the delivery of the Goods and/or Service is to occur.

**Goods** means the goods purchased by PACCAR from the Supplier as set out in a Purchase Order or a RFQ and/or a Schedule.

**GST** has the meaning given to that term in the GST Law.

**GST Law** has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Governmental Agency** means a government or government department or other body, a governmental, semi-governmental or judicial

person or a person who is charged with the administration of any law.

**Insolvency Event** means, in relation to a person, when the person:

- (a) is insolvent as that term is defined in Section 9 of the Corporations Act 2001 (Cth); or
  - (i) the subject of an event described in sections 459C(2) (a) to (f) or section 585 of the Corporations Act 2001 (Cth) (or it makes a statement from which another party to this agreement may reasonably deduce it is so subject); or
  - (ii) an insolvent under administration or suffers the appointment of a controller, administrator, liquidator or provisional liquidator as those terms are defined in section 9 of the Corporations Act 2001 (Cth); or
  - (iii) dissolved;
  - (iv) other than to carry out an amalgamation or reconstruction while solvent; or
- (b) is otherwise unable to pay its debts as and when they become due and payable; or
- (c) being a natural person, commits or suffers an act of bankruptcy; or
- (d) takes or suffers a similar action or event under the law of any jurisdiction.

**Intellectual Property Rights** means all present and future rights throughout the world conferred by statute, common law or equity in or in relation to inventions, discoveries, innovations, know how, technical information and data, prototypes, processes, improvements, patent rights, circuitry, drawings, plans, specifications, copyright, trade mark rights, design rights, plant variety rights and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not registrable, registered, or patentable. These include all rights in all applications to register these rights, all renewals and extensions of these rights and all rights in the nature of these rights.

**Modern Slavery** includes conduct which would constitute:

- (a) an offence under Division 270 or 271 of the Criminal Code; or
- (b) an offence under either of those Divisions if the conduct took place in Australia; or
- (c) trafficking in persons, as defined in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, done at New York on 15 November 2000 ([2005] ATS 27); or
- (d) the worst forms of child labour, as defined in Article 3 of the ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, done at Geneva on 17 June 1999 ([2007] ATS 38); or
- (e) any other action or inaction that constitutes modern slavery under any Modern Slavery Law.

**Modern Slavery Law** means any legislation (and any binding or non-binding guidelines issued by any entity or person so authorised under Modern Slavery Law), applicable in Australia, and/or otherwise applicable to the Buyer or Supplier from time to time with respect to reporting on and/or addressing the risks of Modern Slavery in business operations and supply chains including but not limited to the *Modern Slavery Act 2018* (Cth), the *Modern Slavery Act 2018* (NSW) and the *Modern Slavery Amendment Act 2021* (NSW).

**PACCAR** means PACCAR Australia Pty Ltd (ACN: 004 669 669) and any of its related entities as defined in the Corporations Act 2001 (Cth).

**PACCAR's Property** means the "personal property" as defined in section 10 of the PPSA of PACCAR.

**PPSA** means *Personal Property Securities Act 2009* (Cth).

**PPSR** means the Personal Property Securities

Register established pursuant to the PPSA.

**Proprietary Rights and Tools** means all present and future rights throughout the world conferred by statute, common law or equity in relation to drawings, designs, prototypes, specifications, tools, equipment, other technical data or materials of every description furnished to the Supplier by PACCAR or specifically paid for by PACCAR, all tooling, patterns, and moulds manufactured from PACCAR's specifications and specifically paid for by PACCAR.

**Purchase Order** means a written document provided by PACCAR to the Supplier and titled 'Purchase Order', containing the following information:

- (a) Delivery Point;
- (b) Delivery Date;
- (c) the quantity of Goods or the Services to be purchased; and
- (d) the price of the Goods and/or Services.

**Purchasing Manager** means the purchasing manager appointed by PACCAR from time to time.

**RFQ** means as defined in clause [5A\(ii\)\(a\)](#)

**Schedule** means order schedules provided by PACCAR in response to a Supplier Offer which includes the:

- (a) part number;
- (b) required delivery date;
- (c) chassis number or an order number;
- (d) Delivery Point; and
- (e) lead times.

**Security Interest** means as defined in section 12 of the PPSA.

**Services** means the services purchased by PACCAR from the Supplier as set out in a Purchase Order or a RFQ and/or a Schedule.

**Supplier** means any company or individual authorised to supply Goods and/or Services to PACCAR and named in a Purchase Order or a RFQ and/or a Schedule

**Suppliers Offer** means as set out in clause [5A\(ii\)\(b\)](#).

**Terms** means PACCAR's standard terms and condition of purchase as set out in this document (and any written variations to this document) unless the context otherwise requires.

## **2. GENERAL TERMS AND CONDITIONS**

- (a) PACCAR agrees to buy and the Supplier agrees to sell the Goods and/or the Services in accordance with these Terms.
- (b) These Terms shall apply to all Goods and/or Services sold by the Supplier to PACCAR unless otherwise agreed in writing by PACCAR's Purchasing Manager.
- (c) These Terms are deemed to be incorporated into all contracts for the purchase of Goods and/or Services by PACCAR from the Supplier and will prevail over any inconsistent terms in any document of the Supplier unless otherwise agreed by PACCAR's Purchasing Manager in writing.
- (d) If PACCAR places an order or Schedule with the Supplier for Goods and/or Services or enters into a contract with the Supplier and the Goods and/or Services are delivered or provided to PACCAR, or PACCAR makes any payment, the Supplier is taken to have accepted these Terms.
- (e) PACCAR does not require a written communication from the Supplier of acceptance of these Terms.
- (f) To the extent the Supplier's terms and conditions are supplied with the Goods and/or Services (including as printed on consignment notes or other documents) those terms and conditions will be of no legal effect and will not constitute part of any agreement to purchase Goods and/or supply Services (even if a representative of PACCAR signs those terms and conditions or annexure the Suppliers terms and conditions to a Purchase Order or a RFQ and/or a Schedule)

### **3. PRICE**

(a) Unless PACCAR consents in writing any order for Goods and/or the provision of Services may not be filled at a price higher than that set out in:

(i) the most recent Suppliers Offer or as otherwise agreed and loaded into PACCARs computerised ordering system; or

(ii) set out in a Purchase Order,

save that in the absence of the above or where there is no stated price, then any order for Goods and/or provision of Services will be charged at a price no higher than a price previously quoted to PACCAR or charged by the Supplier to PACCAR.

(b) Any reduction in the Supplier's costs resulting from refunds, reductions or drawback of freight rates, customs duties, import taxes, excise taxes and/or sales taxes are to be paid to PACCAR through a price reduction. The Supplier will inform PACCAR and provide them any required documents that is necessary and which establishes PACCAR's entitlement to clawback from the Supplier.

### **4. PACKING, MARKING AND SHIPPING**

The Supplier covenants with PACCAR that:

(a) All Goods shall be properly packed to prevent damage or deterioration and in such manner as will obtain the lowest transportation rates.

(b) Where timber forms part of the required packaging for the Supplier to comply with clause 4(a), only timber that can be recycled by PACCAR is to be used. PACCAR will not accept any timber that has been chemically treated unless express written consent is given by PACCAR prior to the Goods leaving the premises of the Supplier. Timber packaging used by the Supplier that is chemically treated will be disposed of by PACCAR with the reasonable cost of disposal charged back to Supplier.

(c) The Supplier shall be responsible for all charges by way of preparation crating

dunnage and other costs unless separately stated in these Terms.

(c) All consignments shall be clearly marked with PACCAR's order reference and name.

(d) Each consignment shall be issued with a packing slip which shall clearly state PACCAR's order number, the type of goods, quantities and product name.

(e) The shipment of Goods and/or the provision of Services to PACCAR is deemed to be acceptance of these Terms.

### **5. DELIVERY AND ORDERING**

#### **A. ORDERS**

##### **(i) Purchase Orders/Schedules**

(a) PACCAR may place Purchase Orders (orally or in writing) for Goods and/or Services.

(b) The Supplier must use its reasonable endeavours to supply the Goods and/or Services according to the Purchase Order.

(c) If PACCAR does not receive a written notification from the Supplier, that they are unable to supply to the Goods and/or Services according to the Purchaser Order/Schedules, within 24 hours of receipt of the Purchaser Order, the Supplier will be deemed to have accepted the Purchaser Order.

##### **(ii) Request for Quotation**

(a) If PACCAR provides the Supplier with a request for quotation (**RFQ**), this shall not constitute an offer. PACCAR may withdraw or alter the RFQ without notice.

(b) All responses to RFQ provided by the Supplier and received by PACCAR in PACCAR's standard form will constitute a valid quotation and offer for the provision of the Goods and/or supply of the Services (**Suppliers Offer**). For the avoidance of doubt the Suppliers Offer does not constitute an acceptance by PACCAR of the Suppliers Offer.

- (c) The Supplier's Offer may be accepted by PACCAR providing Schedules to the Supplier either in writing or via an electronic system. The Supplier agrees that immediately upon the Schedules being uploaded onto PACCAR's electronic system such that they are accessible by the Supplier, the Schedule is deemed to have been provided.
- (d) All Schedules will be based on the most recent Suppliers Offer unless the parties otherwise agree.
- (e) A contract will be formed between PACCAR and the Supplier upon the Supplier being provided with the Schedule from PACCAR and each contract will be governed by these Terms. The Schedule and these Terms shall constitute the entire agreement between PACCAR and the Supplier. For the avoidance of doubt, no representation or statement by an employee, agent not expressly stated in the Schedule shall be binding on PACCAR.
- (f) Any other documents received by the Supplier from PACCAR will be deemed to be forecasts only and will not constitute an order.

**(iii) Cancellation and Modification of Orders / Schedules**

Orders can be modified or cancelled by PACCAR, anytime prior to the delivery date, provided always that PACCAR will be liable for the Suppliers reasonable costs associated with any work in progress.

Where the Supplier has failed to deliver an order for Goods and/or Service made under these Terms in whole or in part in accordance with the timeframes set out in clause [5B\(a\)](#), PACCAR is entitled to cancel an order, or part thereof, where the delivery delay is material and causes detriment to PACCAR's business. If PACCAR cancels an order, or part thereof, in accordance with this clause, it does so without any liability.

**B. DELIVERY**

**(a) Delivery:**

- (i) In relation to Goods and/or Services where a Schedule forms the basis of the

order, the Supplier shall deliver the Goods and/or Services such that they are delivered in accordance with required delivery date set out in the Schedule. The Supplier will comply with the stated Delivery Date and will use their best endeavours to satisfy any request by PACCAR for earlier delivery.

- (ii) In relation to Goods and/or Services where a Purchaser Order forms the basis of the order, the Supplier shall deliver the Goods and/or Services such that they are delivered in accordance with the delivery terms specified in the Purchase Order.
- (iii) The costs of delivery of the Goods and/or Services to the Delivery Point, will be at the Suppliers cost unless otherwise stated in the Purchase Order.

**(b) Failure to Deliver:**

If the Supplier does not supply the Services and/or deliver any or all of the Goods to the Delivery Point on the Delivery Date, PACCAR may, in addition to any other remedy:

- (i) obtain those Goods and/or Services from another source;
- (ii) where there is a two (2) or more day delay, refuse to accept, or partially accept, the late delivery, and not be liable for any payment of those Goods and/or Services;
- (iii) approve revised delivery terms;
- (iv) the Supplier if reasonably requested by PACCAR, and if necessary to protect PACCAR's legitimate business interest, will then ship the Goods via air or other expeditious route to minimise delay in delivery with the Supplier to bear all costs occasioned thereby; or
- (v) where the Supplier has not delivered or fully delivered any or all of the Goods after two (2) days from the Delivery Date, treat such default as a repudiation by the Supplier and accept such repudiation

and terminate the supply agreement by giving seven (7) days' notice in writing whereupon PACCAR's obligations to the Supplier will terminate absolutely.

#### **6. INSPECTION – RETURN**

Notwithstanding any prior payment, all Goods are subject to inspection by PACCAR within a reasonable time after delivery at the Delivery Point.

If the Supplier delivers Goods to PACCAR that PACCAR, considers in its reasonable discretion:

- (a) do not match the description of the Goods ordered;
- (b) do not match the quantity of Goods ordered;
- (c) are not fit for the purpose specified by PACCAR and in accordance with Australian Consumer Law;
- (d) breach any of the warranties given in under clause [11](#); or
- (e) are not of acceptable quality pursuant to Australian Consumer Law,

then the Goods shall not be taken to be delivered for the purposes of clause [5\(B\)](#) and PACCAR must, at the cost of the Supplier, adequately store the Goods for the Supplier, and must, at the Supplier's cost arrange for the return of those Goods to the Supplier, or scrapped as agreed with the Supplier. PACCAR will endeavour to keep the storage and transfer costs required under this clause to a minimum.

#### **7. PAYMENT**

- (a) Save in the event of material breach by the Supplier or delivery of defective or inadequate Goods and/or Services, payment shall be made by PACCAR to the Supplier no later than thirty (30) days from the end of the month of the Delivery Date unless agreed in writing between the parties. Any significant delay in receiving invoices or material errors or omissions on invoices will be considered reasonable for withholding payment and will not affect any of PACCAR's cash discount privileges.

- (b) In the event that the Supplier materially breaches these Terms, payment (if any) shall be made upon resolution of the breach or deficiency as the case may be or, where the Supplier has already received payment (in whole or in part), the Supplier may be required to refund such payment in full to PACCAR within thirty (30) days of the date of the notification of the breach or deficiency.

#### **8. GST**

- (a) Unless otherwise stated, the price is GST exclusive.
- (b) In addition to the price for the Goods and/or Services, PACCAR must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under these terms of sale.
- (c) PACCAR must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as PACCAR pays the price (or the corresponding first part of it if the Supplier agrees to PACCAR paying the price by instalments).

#### **9. RISK AND TITLE**

- (a) Title in Goods shall pass to PACCAR at the time of delivery to the Delivery Point.
- (b) Risk of damage or loss of the Goods shall pass to PACCAR at such time as the Goods are delivered to the Delivery Point and PACCAR has completed its inspection of the Goods and has accepted the Goods in accordance with clause [6](#). Until that time, the Goods remain at the risk of the Supplier.

#### **10. SUPPLIER OBLIGATIONS**

- (a) The Supplier will be required to provide traceability of manufactured parts based upon the degree of product liability risk involved, as set out on PACCAR's drawings provided with the Purchase Order or a RFQ and/or a Schedule which are based upon SC1, SC2, SC3, SC4 or SC0, QA1, QA2, QA3 or QA4 codes and the applicable standards of PACCAR which are referenced in the drawings.

- (b) It is the responsibility of the Supplier to ensure that all drawings and data as provided by PACCAR in the Purchase Order or a RFQ and/or a Schedule are followed and that the Goods are manufactured in accordance with those specifications. If the Supplier is unsure or has any doubt as to the meaning of any portion of any of the information provided or has not been provided with complete information by PACCAR required to quote or provide the Goods and/or Services, the Supplier must contact PACCAR for clarification prior to proceeding.
- (c) The Supplier shall maintain all Goods in good condition and shall not knowingly sell any damaged Goods or any Goods not of acceptable quality. The Supplier acknowledges that the reputation and goodwill of PACCAR may be injured and that PACCAR will suffer loss and damage if the Supplier provides damaged Goods or Goods and/or Services not of an acceptable quality.
- (d) Without limiting the operation of any other clause in these Terms, the Supplier must:
- i. provide information as requested by the Buyer from time to time and which is reasonably required by the Buyer to comply with its obligations under Modern Slavery Law; and
  - ii. procure from the Supplier's Associates contractual obligations similar to those contained in this subclause, to the reasonable satisfaction of the Buyer.

**11. WARRANTIES AND INDEMNITY**

- (a) The Supplier acknowledges that under applicable State, Territory and Commonwealth law(s) (including without limitation the Competition and Consumer Act 2010 (Cth) ("**Competition and Consumer Act**")) certain statutory implied guarantees and warranties (including with limitation the statutory guarantees under the Competition and Consumer Act) may be implied into these Terms ("**Non-Excluded Guarantees**").

- (b) The Supplier acknowledges that nothing in these Terms purports to modify or excluded the Non-Excluded Guarantees.

- (c) In addition to the Non-Excluded Guarantees, the Supplier hereby agrees that:

i. The Goods will:

- A. comply with all requirements of the law and of any Government Agency for the packaging, promotion, distribution, storage, sale, leasing or hire of the Goods in the Commonwealth of Australia;
- B. conform to the specification drawing samples or other descriptions furnished or specified by PACCAR; and
- C. not infringe the Intellectual Property Rights of any third party.

ii. The Services will be provided:

- A. in compliance with any applicable law;
- B. to the same standard to which a prudent and experienced provider would normally provide the Services;
- C. diligently, competently, with care and skill and in a proper and professional manner; and
- D. in compliance with PACCAR's directions, standards, policies, procedures and methodologies reasonably necessary to protect PACCAR's legitimate business interests, and as notified to the Supplier by PACCAR from time to time.

- (d) The Supplier warrants that:

- i. the information provided by it under this clause and clause [10\(d\)](#) is true and not false or misleading in a material particular at the time it is provided to the Buyer;
- ii. its direct conduct (as opposed to the conduct of its supply chain) under these Terms shall not constitute Modern Slavery;

- iii. the Supplier if it becomes aware that Modern Slavery is taking place in its operations and/or supply chains will notify the Buyer; and
- iv. it has put in place reasonable processes, procedures, investigations and compliance systems and has taken (and will continue to take) reasonable actions and investigations to ensure that the warranties made in this clause [11\(d\)](#) are valid and will continue to be valid at all times until the termination of this Contract.

The Supplier must procure from the Supplier's Associates identical warranties as contained under this subclause, to the reasonable satisfaction of the Buyer.

## **12. PROTECTION OF DISCLOSING PERSONS**

Notwithstanding the operation of any other provision of these terms, the Supplier must not, and must procure to the reasonable satisfaction of the Buyer that the Supplier's Associates must not, take Adverse Action against any person employed, contracted or otherwise engaged by the Supplier and/or the Supplier's Associates or any other third party due to their disclosure of information in good faith for the purpose of clauses [10\(d\)](#), [11\(d\)](#) and [13\(a\)](#).

## **13. AUDITS**

- a) The Supplier must provide all reasonable assistance and do all things reasonably required by the Buyer to enable the Buyer, or any person engaged by the Buyer, to undertake any audit, checks or observations of the Supplier or the Supplier's Associates in connection with these Terms, for the purpose of validating the Supplier's compliance with clauses [10\(d\)](#), [11\(d\)](#) and [12](#). This assistance includes without limitation providing:
  - i. access to all necessary information held by the Supplier and/or the Supplier's Associates;
  - ii. entry to the premises of the Supplier and/or the Supplier's Associates without prior notice; and
  - iii. access to speak freely, without interference from or in the presence of any representative of the Supplier or the Supplier's Associates, with any

person employed, contracted or otherwise engaged by the Supplier and/or the Supplier's Associates in connection with these Terms, whether or not they are located at the premises referred to in paragraph (ii).

- b) In its absolute discretion, the Buyer may consider a breach of clauses [10\(d\)](#), [11\(d\)](#) and [12](#) a default event and may terminate the supply agreement.

## **14. SUPPLIER LIABILITY**

Subject to clause [11](#) and to the extent permitted by law, the liability of the Supplier and its employees, agents and contractors for a breach of any warranty or liability implied by these Terms, is limited, at PACCAR's option, to:

- (a) in the case of the Good:
  - i. PACCAR is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable damage. PACCAR is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure. This warranty against defects is given in addition to other rights and remedies of PACCAR under law.
  - ii. the replacement of the goods or the supply of equivalent Goods;
  - iii. the repair of the Goods;
  - iv. the payment of the costs of replacing the Goods or of acquiring equivalent goods; or
  - v. the payment of the cost of having the Goods repaired.
- (b) in the case of Services:
  - i. the supplying of the Services again; or
  - ii. the payment of the cost of having the Services supplied again.

Notwithstanding anything above, the Supplier is liable for:

- (c) all liabilities and losses incurred by PACCAR, its employees, agents and contractors, unless

the loss is caused by gross negligence or wilful misconduct of PACCAR, its employees, agents and/or contractors;

- (d) all liabilities and losses incurred by PACCAR's customers of any of the Goods, Services, work, materials or tools directly arising under or materially necessary to perform the arrangements agreed in these Terms, unless the loss is caused by negligence or wilful misconduct of PACCAR's customers; and
- (e) all reasonable legal costs and other expenses incurred by PACCAR,

respectively arising out of or in connection with a claim, demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal), arising directly or indirectly as a result of or in connection with:

- i. a breach by the Supplier of any representation or warranty or guarantee in these Terms or implied by law;
  - ii. a breach or non-performance of any obligation of the Supplier under these Terms, whether express or implied; or
  - iii. a claim that the Goods sold by the Supplier to PACCAR infringe any Intellectual Property Rights of a third party.
- (f) The provider of the warranties under these Terms is the Supplier.
  - (g) Other than as expressly provided for in this clause [14](#) and subject to the limitations in clause [11](#), PACCAR, its contractors and/or agents will not be liable for any loss or damage (including consequential loss or damage, which includes without limitation, loss of profit and loss of revenue) of any kind whatsoever, except to the extent that the loss is due to the gross negligence or wilful misconduct of PACCAR, its contractors and/or agents.

#### **15. INTELLECTUAL PROPERTY**

- (a) PACCAR grants to the Supplier a non-exclusive licence to use its Intellectual

Property Rights for the sole purpose of fulfilling orders/Schedules in accordance with these Terms.

- (b) The Supplier acknowledges that there is no transfer of title, interest or ownership to the Supplier of any Intellectual Property Rights in the Intellectual Property Rights of PACCAR.

#### **16. PROPRIETARY RIGHTS AND TOOLS**

- (a) The Supplier should hold Proprietary Rights and Tools at its own risk. Any Proprietary Rights and Tools shall be safely stored, maintained, and, wherever possible, clearly marked "Property of PACCAR Australia Pty Ltd" by the Supplier.
- (b) The Supplier should effect and maintain insurance coverage for the Proprietary Rights and Tools at its own expense in an amount equal to the replacement cost of such property with loss payable to PACCAR. Any insurance cover effected under this clause [16](#) shall be maintained in accordance with clause [19](#).
- (c) PACCAR shall have the right to enter the Supplier's premises at any reasonable time to inspect the Proprietary Rights and Tools and any related materials.
- (d) Upon PACCAR's written request, the Supplier shall, at PACCAR's option:
  - i. return any of the Proprietary Rights and Tools to PACCAR's specified destination within 10 business days. Any property returned by the Supplier must be in the same conditions in which it was received with reasonable wear and tear excepted; or
  - ii. assemble any of the Proprietary Rights and Tools for retrieval by PACCAR within reasonable time; or
  - iii. destroy or have destroyed any of the Proprietary Rights and Tools designated by PACCAR and certify to PACCAR that such Proprietary Rights and Tools has been destroyed.
- (e) The Supplier must:

- i. repair and maintain all tangible Proprietary Rights and Tools;
- ii. implement a preventative maintenance plan must be in place to ensure consistency of meeting relevant engineering specifications;
- iii. endeavour to update tooling records and inform PACCAR's Manufacturing Engineering Department of any changes, repair or maintenance work that is carried out.

- (f) Any costs associated with preventative maintenance shall be the responsibility of the Supplier unless prior written consent has been granted by PACCAR.

#### **17. CONFIDENTIALITY**

The Supplier must:

- (a) keep the Confidential Information private and secret;
- (b) not access, use or reproduce Confidential Information for any purpose other than in connection with the Goods delivered or Services supplied to PACCAR by the Supplier, nor assist or permit any other person to do so;
- (c) not disclose Confidential Information except as permitted under these Terms; and
- (d) take all steps reasonably necessary to safeguard Confidential Information from unauthorised access, use or disclosure.

The Supplier may disclose Confidential Information:

- (a) to their representatives/contractors if they need to know the Confidential Information and provided that the Supplier:
  - iv. ensures that their representatives do not use, reproduce or disclose the Confidential Information other than in accordance with these Terms; and
  - v. accept liability for any failure of their representatives to do so;
- (b) if disclosure is required by law or the rules of any stock exchange, provided that the

Supplier first notify PACCAR of the required disclosure (where practicable); or

- (c) with PACCAR's prior written consent.

#### **18. VARIATION**

PACCAR is entitled to vary these Terms in respect of future orders for Goods and/or Services at any time by providing the Supplier with ten (10) day prior written notice.

#### **19. INSURANCE**

- (a) All Suppliers providing Services or Goods, or storing PACCAR property must effect and maintain the following insurance coverage, at its own sole expense:

- i. public and product liability insurance for at least \$10 million indemnity for each claim;
- ii. workers' compensation as required by law;
- iii. comprehensive motor vehicle insurance; and
- iv. professional indemnity insurance as required by law.

- (b) In addition to clause [19\(a\)](#) and in respect of the storage of PACCAR property, the Supplier must also effect and maintain the following insurance coverage, at its own sole expense:

- i. industrial special risks insurance for at least the cost price of the PACCAR property.

- (c) The Supplier must give PACCAR copies of the certificates of currency for the policies listed in clause [19\(a\)](#) and if applicable clause [19\(b\)](#), upon reasonable notice by PACCAR at any time, and give PACCAR any further evidence when asked to do so that it has complied with clause [19\(a\)](#) and if applicable clause [19\(b\)](#).

- (d) PACCAR reserves the right to increase the minimum levels of insurance and the right to require additional or other types of insurance to be maintained by the Supplier when reasonable.

- (e) The Supplier must notify, in accordance with the terms of the relevant insurance policy, both the insurer and PACCAR immediately if there is a claim or an event which may give rise to a claim against the Supplier or PACCAR.
- (f) The Supplier may not cancel an insurance policy without providing PACCAR with 30 days prior written notice and must immediately notify PACCAR and the relevant insurance company if an insurance policy is cancelled.
- (g) The Supplier must not do anything which may affect rights under any insurance or which may increase an insurance premium payable without prior written consent from PACCAR.
- (h) Compliance with the obligations set out in this clause [19](#) does not relieve the Supplier of its other obligations in this agreement.

**20. OWNERSHIP OF PROPERTY AND THE PPSA**

- (a) The Supplier irrevocably acknowledges and agrees that:
  - i. PACCAR retains title to PACCAR's Property and the Supplier is a mere bailee of PACCAR's Property; and
  - ii. the Supplier must not agree, attempt, offer or purport to sell, assign, sub-hire, lend, pledge, mortgage, let on hire, encumber or otherwise part with or attempt to part with PACCAR's Property and must not conceal, alter or make any addition or alteration to, or repair of PACCAR's Property without PACCAR's prior written consent.
- (b) The Supplier agrees at all times to waive its right to:
  - i. claim a lien over PACCAR's Property; and
  - ii. rely on any right it may have whether under law or otherwise to retain possession of PACCAR's Property.
- (c) The Supplier acknowledges that, by virtue of this agreement, PACCAR has a Security

Interest in PACCAR's Property for the purposes of the PPSA and to the extent applicable the PPSA applies.

- (d) The Supplier acknowledges and agrees that PACCAR may do anything reasonably necessary, including but not limited to registering any Security Interest which PACCAR has over its property on the PPSR, in order to perfect the Security Interest and comply with the requirements of the PPSA.
- (e) The Supplier agrees to do all things necessary to assist PACCAR to undertake the matters set out in clause [20\(d\)](#) (including, without limitation, execute all relevant documents).
- (f) The Supplier and PACCAR agree that, pursuant to section 115 of the PPSA and to the extent permitted by the PPSA, the following provisions do not apply in relation to a Security Interest in PACCAR's Property (words in this provision have the same meaning as in the PPSA):
  - i. section 95 (notice of removal of accession), to the extent that it requires the secured party to give a notice to the grantor;
  - ii. section 96 (when a person with an interest in the whole may retain an accession);
  - iii. subsection 121(4) (enforcement of liquid assets – notice to grantor);
  - iv. section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor and other secured parties before disposal;
  - v. paragraph 132(3)(d) (contents of statement of account after disposal);
  - vi. subsection 132(4) (statement of account if no disposal);
  - vii. section 135 (notice of retention);
  - viii. section 142 (redemption of collateral); and
  - ix. section 143 (reinstatement of security agreement).
- (g) To the extent permitted by the PPSA, Supplier waives the right to receive notice under section 157 of the PPSA of a

verification statement in relation to any registration of a Security Interest on the PPSR.

- (h) Each party agrees not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances required by sections 275(7)(b) to (e) of the PPSA. The Supplier agrees that it will only authorise the disclosure of information under section 275(7)(c) or request information under section 275(7)(d), if PACCAR consents.
- (i) Nothing in clause [20\(h\)](#) will prevent any disclosure by PACCAR that it believes is necessary to comply with its other obligations under the PPSA or under any other applicable law.
- (j) To the extent that it is not inconsistent with clauses [20\(h\)](#) and [20\(i\)](#) constituting a confidentiality agreement for the purposes of section 275(6)(a) of the PPSA, the Supplier agrees that PACCAR may disclose information of the kind mentioned in section 275(1) of the PPSA to the extent that PACCAR is not doing so in response to a request by an interested person (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.

## **21. FOREIGN CORRUPT PRACTICES**

The Supplier shall comply and require its employees, agents and contractors to comply with all applicable laws in force from time to time in every jurisdiction in which the Supplier manufactures, delivers or performs Services relevant to the activity contained in this agreement.

The Supplier represents and warrants that:

- (a) it has not and will not, in connection with the activity contemplated by this agreement or in connection with any other business transactions involving PACCAR, make, offer or promise to make any payment or transfer anything of value, directly or indirectly to:
  - i. any governmental official or employee (including employees of government-owned and government-

- controlled corporations and public international organisations);
- ii. any political party, official of a political party or candidate;
- iii. an intermediary for payment to any of the parties mentioned in clauses [20\(a\)i](#) or [20\(a\)ii](#); or
- iv. any other person or entity if such payment or transfer would violate the laws of the country in which made; and

- (b) it is not a government official, political party official or candidate, or an immediate family member of such official or candidate.
- (c) It is the intent of the parties that no payments or transfers of value shall be made which have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining business. If the Supplier becomes aware of any circumstances suggesting that any such payment or transfer has occurred, it will immediately notify PACCAR, and PACCAR may immediately terminate this agreement by written notice.
- (d) For the purposes of this clause government official means any officer or employee of any government or any governmental department, agency or instrumentality thereof, or of any government-owned or government-controlled corporation or any public international organisation, or any person acting in an official capacity for or on behalf of any such government or department, agency, instrumentality, corporation or public international organisation.
- (e) The Supplier agrees that it will, at the request of PACCAR, certify that, in relation to this agreement, it has not, and to the Supplier's knowledge no other person, including but not limited to every employee, representative, and agent of the Supplier or of PACCAR, made, offered to make, or agreed to make any loan, gift, donation or other payment, directly or indirectly, whether in cash or in kind to or for the benefit of any government official, political party, party official or

candidate for political office in order to secure or retain business.

- (f) The Supplier further agrees that, should it learn of or has reason to know of any such payment, offer, or agreement to make a payment to a government official, political party, or political party official or candidate in connection with PACCAR's business as outlined in clause 20, it will immediately advise PACCAR of such knowledge.
- (g) PACCAR shall be granted reasonable access to inspect the Supplier's books and records and the right to audit the Supplier on a periodic basis or as reasonably determined by the Supplier. PACCAR will endeavour not to cause disruption to the Supplier or the operation of the Supplier's business and will give the Supplier at least 48 hours' notice before access.

## **22. SUSTAINABILITY**

The Supplier acknowledges that the concept of sustainability is a guiding principle that underpins PACCAR's operations, including in its procuring of goods and services from its suppliers. Consistent with this, the Supplier will, wherever possible, look for opportunities to minimise its environmental and social impact in supplying the goods and services. This will include looking to

- (a) make existing buildings more energy efficient and acquire energy generate by renewable resources;
- (b) reduce waste and reuse materials where possible;
- (c) dispose of all waste in an environmentally responsible way;
- (d) use low carbon modes of transport to reduce emissions and reduce the need to travel;
- (e) use water more efficiently; and
- (f) encourage and enable your employees to live active, sociable, meaningful lives and to promote their good health and wellbeing.

## **23. GENERAL CONDITIONS**

### (a) Entire agreement

These terms constitute the entire agreement and understanding between the parties concerning its subject matter and succeeds and cancels all other previous agreements, contracts, statements and understandings, whether verbal or in writing.

### (b) Non-exclusive

PACCAR reserves the rights to acquire the Goods and/or Services from a third party or parties at any time.

### (c) Jurisdiction

This agreement is to be governed by and construed in accordance with all applicable laws in force in the state of Victoria in the Commonwealth of Australia from time to time and the parties submit to the non-exclusive jurisdiction of the courts of that state.

### (d) Compliance with law

- i. The Supplier agrees that in the performance of anything required directly or indirectly under this agreement, it will comply with the requirements of all applicable governmental, federal, state and local statutes, regulations and orders and will indemnify and save PACCAR harmless from any claim, loss or damage arising from the Supplier's breach or alleged breach of the same, except for any loss arising out of any negligence or wilful misconduct by PACCAR.
- ii. The Supplier shall promptly notify PACCAR, once made aware of or notified itself, of any applicable export or import requirements or restrictions of any government or governmental entity with respect to the Goods, Services, articles, materials, tools or work covered by this agreement.

### (e) Assignment

The Supplier must not assign its benefits or obligations under these Terms without the prior written consent of PACCAR in writing. PACCAR may assign its rights and obligations under these Terms to another person without the consent of the Supplier

(f) Waiver

- iii. A right of PACCAR may only be waived in writing, signed by PACCAR's Purchasing Manager.
- iv. No other conduct of PACCAR (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right.
- v. A waiver of a right by PACCAR on one or more occasions does not operate as a waiver of that right if it arises again.
- vi. The exercise of a right by PACCAR does not prevent any further exercise of that right or of any other right.

(g) Severability

Any provision of these Terms which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make these Terms enforceable, unless this would materially change the intended effect of the Terms.

(h) Time is of the essence

In this agreement time is of the essence unless otherwise stipulated.

(i) Survival

Clauses [11](#), [14](#), [15](#) and [16](#) continue despite the termination of these Terms.

(j) Set off

Subject to the terms set out in these Terms, the parties agree that PACCAR is entitled to set-off and adjust invoices so that they refer to the agreed price of the Goods and /or Services.