

# STANDARD TERMS AND CONDITIONS OF SUPPLY (AUSTRALIA)

## 1. APPLICATION OF THESE CONDITIONS

These conditions, subject to any variations we agree to in writing, apply to all supplies made by the company specified in the invoice or the contract as the supplier to the entity specified in the invoice or the contract as the purchaser. These conditions, in their present form or as changed, pursuant to these conditions, together with the relevant credit application form (if applicable), invoices and Purchase Orders exchanged between the parties form the contract.

## 2. INCONSISTENCIES

Where the supply purports to be made on or subject to terms and conditions other than these conditions, the Purchaser agrees that such other terms and conditions are disregarded and form no part of the Contract unless the Supplier agrees otherwise in writing.

## 3. ACKNOWLEDGMENT

The Purchaser acknowledges and agrees that:

3.1 the Supplier's liability under these conditions falls solely on the Supplier; and

3.2 the obligations the Purchaser accepts and warranties the Purchaser makes are accepted and made for the benefit of the Supplier and all of the Supplier's related bodies corporate.

## 4. ACCEPTANCE OF PURCHASE ORDERS AND FORECASTS

4.1 The Supplier will only accept Purchase Orders which are accompanied by a purchase order number. The Supplier reserves the right to refuse acceptance of any Purchase Order, within 2 working days after receipt. Any quotation given by the Supplier lapses if not accepted by the Purchaser within 30 days.

4.2 If the Purchaser has provided the Supplier with a forecast of future requirements it acknowledges that the Supplier will be entitled to rely on the accuracy of such forecast(s) for the purpose of ordering raw materials and arranging its resources so as to be able to meet those forecast requirements.

4.3 If any such forecast is materially inaccurate the Supplier shall be entitled to invoice the Purchaser for all costs, expenses or losses which result from the Supplier having relied on the inaccurate forecast. Such invoice will be subject to the normal terms of payment applying to the Purchaser.

4.4 In any event, the Supplier shall be entitled to invoice the Purchaser for all finished Goods made to forecast and not ordered by the Purchaser within 3 months of manufacture. Such invoice will be subject to the normal terms of payment applying to the Purchaser.

## 5. TERMS OF PAYMENT

Terms of payment are cash with order, COD (if agreed to by the Supplier) unless credit or the use of credit card has been approved by the Supplier. If credit is satisfactorily established, invoices will be paid on or before the last business day in the month following the month of invoice (without deduction or set-off of any kind) unless otherwise agreed to by the Supplier in writing. If use of credit card is approved, then payment is due on the date of invoice. In the event payment is not received by the due date the Supplier reserves the right to charge interest at the 90 day Bank Bill Swap Bid Rate (as quoted on Reuters page BBSY at 10.45am) plus 5% commencing from the due date of payment in respect of all the Purchaser's indebtedness which is overdue. Any interest so levied shall accrue on a

daily basis and shall accrue until all monies owing are paid in full. The Purchaser shall also be liable to pay all expenses, legal costs on a solicitor and own client basis, of the Supplier in relation to obtaining remedy of the failure to comply.

## **6. DEFAULT**

If the Purchaser defaults in payment, or an application is made to a court to wind up the Purchaser, or a receiver or administrator is appointed to manage the affairs of the Purchaser, or the Purchaser is in material breach of the Contract, then the Supplier may terminate the Contract or any Purchase Order immediately and may recover from the Purchaser, at a minimum, reasonable compensation for materials purchased and ordered and labour expended in complying with the Purchase Orders.

## **7. DELIVERY AND RISK**

7.1 While the Supplier will use all reasonable endeavours to deliver by the date specified in the Purchase Order, it does not unless otherwise agreed in writing guarantee delivery on that date and is not liable for any Loss resulting from late or early delivery. Delivery of the Goods shall be effected when the Goods are unloaded from the delivery vehicle or placed on the Purchaser's or the Purchaser's agent's nominated carrier. If no date for delivery has been specified, then the Goods shall be supplied to the Purchaser and the Purchaser shall receive the Goods as soon as practicable after the Purchase Order has been accepted by the Supplier and the Goods have been manufactured.

7.2 Risk in the Goods passes to the Purchaser at the time of delivery. Delivery to the Purchaser is deemed to occur at the time of delivery to the Purchaser, its agent or carrier.

## **8. PASSING OF PROPERTY**

8.1 The Supplier's rights under this clause 8 secure:

- a) the Supplier's right to receive the price of all Goods sold under this Contract;
- b) all other amounts owing to the Supplier under this Contract or any other contract.

8.2 All payments received from the Purchaser must be applied in accordance with section 14(6)(c) of the PPSA.

8.3 The Purchaser agrees that legal title and property in the Goods is retained by the Supplier until payment is received in cleared funds from the Purchaser of all sums owing to the Supplier, whether under the Contract or otherwise. The Purchaser must keep the Goods separate from other goods and store the Goods so that they are readily identifiable as those supplied by the Supplier.

8.4 The Purchaser must not sell the Goods except in the ordinary course of the Purchaser's business.

8.5 If the Purchaser fails to pay by the due date any amount owing to the Supplier, the Supplier may (without prejudice to any of its other rights) recover and resell any of the Goods in which property has not passed to the Purchaser. In addition to any rights the Supplier may have under Chapter 4 of the PPSA, the Supplier may, without notice, enter any premises where it expects the Goods may be located and remove them without committing a trespass, and the Purchaser authorises the Supplier to enter onto the premises where the Goods are kept to take possession of the Goods for that purpose at any time. The Purchaser also indemnifies the Supplier from and against all Loss suffered and or incurred by the Supplier as a result of exercising its rights under this clause 8. If there is any inconsistency between the Supplier's rights under this clause 8 and its rights under Chapter 4 of the PPSA, this clause 8 prevails.

8.6 The Purchaser acknowledges and warrants that the Supplier has a security interest (for the purposes of the PPSA) in the Goods and any proceeds until title passes to the Purchaser in accordance with this clause 8. The Purchaser must do anything reasonably required by the Supplier to enable the Supplier to register its security interest with the priority the Supplier requires and to maintain that registration.

8.7 The security interest arising under this clause 8 attaches to the Goods when the Purchaser obtains possession of the Goods and the parties confirm that they have not agreed that any security interest arising under this clause 8 attaches at any later time.

## **9. CANCELLATIONS**

Any request by the Purchaser for cancellation of a Purchase Order must be in writing and may be delivered by post, hand delivery or facsimile or email. The Purchaser is liable to reimburse the Supplier for the costs it has incurred for labour and materials in fulfilling the Purchase Order up to the date the request for cancellation is received and acknowledged by the Supplier.

## **10. FORCE MAJEURE**

10.1 Neither party is liable for any Loss incurred by the other party as a result of any delay or failure to observe any of these conditions (other than an obligation to pay money) as a result of any circumstance beyond the party's control, including but not limited to any strike, lock-out, labour dispute, act of God, fire, flood, accidental or malicious damage or breakdown in machinery. The party affected must notify the other party as soon as possible of such circumstance.

10.2 During the continuance of such circumstance the obligations of the party affected, to the extent they are affected by the circumstance, are suspended and resume as soon as possible after the circumstance has ceased to have effect.

## **11. SUPPLIER'S LIABILITY**

11.1 Nothing in these conditions is to be interpreted as having the effect of excluding, restricting or modifying any statutory guarantee, condition or warranty, or right or liability implied by any applicable legislation into the Contract, if such exclusion, restriction or modification would be void or prohibited by the legislation.

11.2 To the extent that the Supplier breaches any statutory guarantee, condition or warranty implied into the Contract and which cannot be excluded or modified, the Supplier's liability is limited to, at the Supplier's discretion:

a) in the case of Goods:

- i.) replacement of the Goods or supply of equivalent Goods;
- ii.) payment of the cost of replacing the Goods or acquiring equivalent
- iii.) Goods; repair of the Goods; or
- iv.) payment of the cost of having the Goods repaired; or

b) in the case of services, to:

- i.) supply of the services again; or
- ii.) payment of the cost of having the services supplied again.

11.3 Subject to (a) and (b) above, the Supplier is not liable to the Purchaser (or to any third party claiming through the Purchaser) for any Loss caused by any act or omission of the Supplier, its employees or agent, and whether based on negligence, tort, contract or otherwise. Under no circumstances shall the Supplier be liable for indirect or consequential losses.

## **12. ARTWORK, PRINTING PLATES, DIES AND TOOLS – (IF APPLICABLE)**

12.1 All works produced by the Supplier and any intellectual property in and to such works, remain the exclusive property of the Supplier unless otherwise agreed in writing, and the Supplier may charge the Purchaser for maintenance of such works. Where the Purchaser supplies a mould, die, tool, printing plate or any other item used in the manufacturing process:

12.2 the Supplier shall not be liable for any loss or damage of any such item; and

12.3 the Purchaser shall reimburse the Supplier for all maintenance expenses.

12.4 The Supplier will exercise reasonable care in printing the Australian Product Number ("APN") symbol but does not guarantee the accuracy or scanability of APN symbols. The Supplier's liability for manufacturing defects in APN symbols is limited to, at the Supplier's discretion, replacement of the packaging bearing the defective symbol or rectification of the symbol, with the manner of rectification at the Supplier's discretion.

### **13. INTELLECTUAL PROPERTY**

Any technical information, knowledge or processing methods at any time transmitted either orally or in writing by the Supplier to the Purchaser shall remain the property of the Supplier and shall be considered absolutely confidential by the Purchaser who shall not use them for any purpose nor sell transfer or divulge them in any manner to anyone without the prior written consent of the Supplier. The Purchaser warrants that the use by the Supplier of any designs or instructions supplied by the Purchaser will not infringe the patents, trade marks, designs or copyright ("intellectual property") of any other person and the Purchaser agrees to indemnify the Supplier against any claim relating to or arising from the infringement of any intellectual property of any other person. If at any time a claim is made against the Supplier or the Supplier becomes aware that a claim is likely to be made against the Supplier for infringing any intellectual property or contributing to any such infringement by the Supplier or any other person as a result of supplying Goods, the Supplier may immediately terminate or suspend this Contract.

### **14. QUANTITY AND QUALITY TOLERANCES**

14.1 Should the Supplier be required to match any shade or colour a light and dark tolerance shall be allowed to such extent as shall be agreed upon by the Supplier and the Purchaser at the time the standard colour is specified and in the absence of any agreement a reasonable tolerance shall be allowed

14.2 Where the Purchaser supplies specifications to the Supplier, any Goods not varying in the specification stipulated by the Purchaser by more than the established industry tolerance must be accepted by the Purchaser as complying with the Contract.

### **15. PRICE VARIATION**

15.1 The price quoted by the Supplier is unless otherwise agreed in writing subject to variation at any time prior to the date of acceptance of the Purchase Order upon written notice to the Purchaser. Without limitation, if the cost of wages, materials or any other supply or input to the Supplier increases after the date of any written and/or price list and before delivery of the Goods or completion of the work specified in the Purchase Order, the Supplier may subject to other agreed pricing mechanisms add a fair and reasonable amount to the price quoted to cover the increase and the Purchaser must pay the price as varied.

15.2 Any addition or change to the specifications of the Goods must be agreed in writing by both the Supplier and the Purchaser and may result in a price variation in accordance with paragraph 15.1.

### **16. TAX AND DUTIES**

The Purchaser is liable for all taxes (including GST), duties, levies and other government fees and charges in relation to the Goods. Unless specified otherwise, prices quoted do not include such taxes (including GST), duties, etc.

### **17. GOODS AND SERVICES TAX**

17.1 If, and to the extent, any supply of the Goods under the Contract is a taxable supply within the meaning of the GST Law, the price for the Goods will be increased to

17.2 include GST payable by the Supplier in respect of the supply. All rebates, discounts or other reductions in price will be calculated on the GST

17.3 exclusive price. The parties agree that:

- a) the parties must be registered persons within the meaning of the GST Law;
- b) the Supplier must provide tax invoices and if applicable adjustment notes to the Purchaser in the form prescribed by or for the purposes of the GST Law; and
- c) costs required to be reimbursed or indemnified excludes any amount that represents GST for which an input tax credit within the meaning of the GST Law can be claimed.

## **18. CLAIMS**

Any claim by the Purchaser arising out of the Contract must be made in writing and may be delivered by post, hand delivery, facsimile or email as soon as practicable after discovery by the Purchaser of the problem and in any event no later than 14 days after delivery of the Goods. To the extent the Supplier can identify the Goods and the date of manufacture the Purchaser must supply a sample and information if requested. The Supplier has the right at any time within 14 days after receipt of the claim to inspect the relevant Goods. If the Purchaser disposes of any of the Goods within the 14 day period, except with the written consent of the Supplier, all claims in respect of the Goods disposed of are deemed to have been waived by the Purchaser.

## **19. CONFIDENTIALITY**

Unless required by law or otherwise agreed, the Purchaser must keep confidential all information it receives from the Supplier which relates to the Goods, the Supplier's business or any services the Supplier provides and any of the Supplier's intellectual property (including without limitation any formulations), other products or processes except to the extent that information is in the public domain.

## **20. INSURANCE**

Unless otherwise instructed by the Purchaser in writing or included in a written quotation or price list by the Supplier, insurance cover for the Goods in transit will not be arranged by the Supplier. Instructions for insurance cover will only be accepted in writing at the time the Goods are ordered. The Supplier is not obliged to give the Purchaser a notice referred to in Section 35(3), Sale of Goods Act 1923 (NSW) (or any equivalent legislation).

## **21. TRANSPORT**

If the Purchaser requests delivery by means other than the means normally used by the Supplier, then the Purchaser must pay all additional costs associated with the means chosen. If, within 4 weeks after the Goods are available for dispatch, the Supplier is unable or finds it impractical to transport the Goods by the means chosen, the Supplier may transport the Goods by any means it considers suitable and will advise the Purchaser accordingly.

## **22. OTHER DELIVERY PROVISIONS**

22.1 Delivery may be made in one or more lots and at different times and by separate deliveries or shipments. Each lot must be accepted and paid for, notwithstanding any late delivery or non-delivery of any other lot. If the Supplier allows the Purchaser to nominate a delivery date, such date may not be more than 60 days after the expected date of manufacture of the Goods, as advised by the Supplier to the Purchaser.

22.2 The quantity of Goods delivered by the Supplier under a Purchase Order can vary by up to 10% of the quantity specified by the Purchaser in the Purchase Order, provided the Purchase Order satisfies the minimum run-size requirements of the Supplier.

22.3 If the Purchaser is unable or unwilling to accept delivery on or before the nominated delivery date, or if no delivery date is nominated and the Purchaser is unable to accept delivery when the Supplier gives notice that the Goods are available for delivery, then the Supplier will hold the Goods in stock for 45 days after which time it may, at its discretion:

- a) continue to hold the Goods and charge the Purchaser for storage;
- b) invoice the Purchaser and deliver the Goods in accordance with prior arrangements, notwithstanding that the Purchaser's representative or agent is not present or is unwilling to accept the Goods; or
- c) treat the Contract as having been repudiated by the Purchaser and invoice the Purchaser for the full Contract price for the Goods and any other costs incurred by the Supplier less any amounts received by the Supplier from a bona fide sale of the Goods to a third party.

22.4 The Supplier will deliver the Goods to the Purchaser's nominated store. The Purchaser must unload the Goods at the Purchaser's risk.

22.5 If the Purchaser requires Goods to be delivered into the Northern Territory or anywhere north of (and including) Port Hedland in Western Australia, or outside of the metropolitan area of Brisbane, the Supplier is only obliged to deliver the Goods to a nominated store in Adelaide (for Northern Territory) or Perth (for Western Australia) or Brisbane (for Queensland). Any further transport of the Goods by the Supplier is as agent for the Purchaser, and the Purchaser is liable for the extra cost of delivery of the Goods.

### **23. PRODUCT SPECIFICATIONS AND DESIGN CHANGES**

The Supplier may make any changes or improvements to the design or specification of the Goods at any time without giving prior written notice to the Purchaser unless otherwise agreed in writing.

### **24. TOOLING**

Any tooling charges are payable by the Purchaser either as an upfront payment or by amortised payments, as agreed in writing by the parties. Amortised tooling remains the property of the Supplier unless otherwise agreed in writing.

### **25. PALLETS**

The Supplier retains the right of possession of any pallets used for delivery of the Goods, and the Purchaser agrees to indemnify the Supplier in relation to the hire and replacement costs of any pallets not returned in good order and condition to the Supplier within 28 days of delivery of the Goods, unless otherwise agreed in writing by the Supplier.

### **26. PAYMENT BY LETTER OF CREDIT**

If the Purchaser is not resident in Australia or is not an Australian company, payment must be made by irrevocable letter of credit. If the Purchaser requires delivery of the Goods outside Australia, prices quoted are “free on wharf” free alongside ship, unless otherwise agreed in writing by the Supplier.

### **27. ASSIGNMENT AND NOVATION**

The Purchaser must not assign or novate the Contract or otherwise deal with the benefit of it or a right under it, or purport to do so, without the prior written consent of the Supplier. A change in control of the Purchaser will be deemed an assignment for the purposes of this contract;

### **28. RELATIONSHIP OF THE PARTIES**

Except as expressly provided in the Contract nothing in the Contract is intended to constitute a fiduciary relationship or an agency, partnership or trust; and no party has authority to bind any other party.

### **29. SIGNIFICANT REGULATORY CHANGES**

Should any significant change in law or regulation (including the introduction of any form of emission or carbon trading scheme or emissions or carbon tax) occur during the Term, the Supplier will subject to clause 11.1 be entitled, by 10 days notice in writing to the Purchaser, to increase the price payable by the Purchaser for Products by an amount equal to the increased cost that will be incurred by the Supplier in supplying the Products to the Purchaser as a result of such significant change.

### **30. ENFORCEMENT OF SECURITY INTEREST**

If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interest created under this Contract, the Purchaser agrees that the following provisions of the PPSA will not apply; section 95 (notice of removal of accession) to the extent that it requires the Supplier to give a notice to the Purchaser; section 121(4) (enforcement of liquid assets – notice to grantor); section 130 (notice of disposal), to the extent that it requires the Supplier to give a notice to the Purchaser; paragraph 132(3)(d) contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); section 143 (reinstatement of security agreement).

### **31. NOTICES UNDER PPSA**

The Supplier does not need to give the Purchaser any notice under the PPSA (including a notice of verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.

## **32. PRIVACY**

The Purchaser must comply with the Privacy Law with respect to any act done or practice engaged in by the Purchaser for the purposes of this Contract, including, without limitation, in relation to the collection, use disclosure, storage, destruction or de-identification of Personal Information. The Purchaser must also enter into a contractual arrangement to this effect with any subcontractor or third party to which it discloses Personal Information in connection with this Contract.

## **33. MISCELLANEOUS**

33.1 Any of these conditions may be varied in writing by the Supplier unless otherwise agreed between the parties. Any variation to these conditions will only apply to

33.2 Purchase Orders placed after the condition has been varied. The Supplier may set-off any amounts owed by it to the Purchaser under the Contract against amounts owed by the Supplier to the Purchaser on any account

33.3 whatsoever. The waiver by the Supplier of any provision, or breach of any provision, of the Contract is not to be construed as a waiver of any other provision or a breach of any

33.4 other provision, or further breach of the same or any other provision of the Contract. If any provision of the Contract is unenforceable or void either in whole or in part for any reason, then that provision (or part) is deemed to be deleted without in any way

33.5 affecting the validity or enforceability of any other provision. The Contract (including the details appearing on the Purchase Order) constitute the entire agreement between the Purchaser and the Supplier and no modification is

33.6 binding in relation to the Contract unless agreed to in writing by the Supplier. Any dispute arising out of the Contract is governed by the laws of the State or Territory of Australia where the Purchase Order was received by the Supplier and the Purchaser submits to the jurisdiction of and agrees to be bound by the Federal

33.7 Courts of Australia and of that State. The following words have the following meanings in these conditions:

- a) "Contract" means the contract between the Purchaser and the Supplier for
- b) the supply of the Goods, as described in clause 1; "Goods" means all goods and/or services ordered in the Purchase Order;
- c) "GST" has the same meaning as in the GST Law;
- d) "GST Law" means the A New Tax System (Goods and Services Tax) Act
- e) 1999 (Cth); "Loss" means any loss, liability, damage, expense or cost whatsoever and includes (without limitation) indirect or consequential loss or damage, loss of
- f) profits or business opportunity, and damage to equipment or property; "Personal Information" has the meaning set out in the Privacy Act 1988 (Cth).
- g) "PPSA" means the Personal Property Securities Act 2009 (Cth);
- h) "Privacy Law" means the Privacy Act 1988, including (without limitation) the 13 Australian Privacy Principles (APPs) in the Privacy Act 1988 (Cth) and all relevant Australian privacy laws, including the Health Privacy Principles under state legislation (e.g. those contained in the Health Records Act 2001 (Vic) or the privacy provisions contained in Part 2 of the Health Records (Privacy and Access) Act 1997 (ACT)), the Privacy Regulations 2013 and the Privacy
- i) (Credit Reporting) Code. "Purchase Order" means a purchase order issued by the Purchaser to the
- j) Supplier; "Purchaser" means the person (including its successors, personal representatives and permitted assigns) who acquires the Goods from the Supplier, and where this consists of more than 1 person the obligations in the
- k) Contract are deemed to be joint and several; "Related Bodies Corporate" has the meaning given to it in the Corporations
- l) Act 2001 (Cth); and "Supplier" means the company identified in the invoice.

