



1. Agreement to Sell Goods

The Supplier agrees to sell and the Company agrees to buy the Goods, on and subject to these terms and conditions.

2. Delivery, Acceptance and Title - Goods

2.1 The Supplier must deliver the Goods to the Delivery Point in accordance with the Incoterms Sales Basis on the Delivery Date (or earlier with the Company's prior written consent).

2.2 The Supplier must provide to the Company's Customs Agent all documentation comprising:

- (a) in the case of ocean freight, two copies of each of the Supplier's invoice, the packing list, the fumigation certificate and the packing declaration (such documents to be provided to the Company's Customs Agent within 3 days of delivery of the Goods to the Delivery Point); and
- (b) in the case of air freight, two copies of each of the Supplier's invoice and the packing list (such documents to be provided to the Company's Customs Agent at the time that the Goods are delivered to the Delivery Point.)

2.3 The Supplier must immediately notify the Company's Customs Agent on the delivery of the Goods to the Delivery Point.

2.4 Title to and risk in the Goods will pass on delivery (in accordance with the Incoterms Sales Basis).

2.5 Prior to accepting the Goods, the Company may reject the Goods if the Company (acting reasonably) considers any of the Warranties are untrue or have been breached or the Goods do not otherwise comply with the terms of the Order. The Company accepts the Goods if:

- (a) The Company advises the Supplier in writing that the Goods have been accepted (but signing for delivery does not constitute acceptance);
 - (b) the Company has not rejected the Goods within 30 Business Days of first receipt in Australia by the Company of the Goods; or
 - (c) the Company uses the Goods in a manner that materially changes their condition.
- 2.6 The Company's acceptance of the Goods will not preclude or prejudice any rights, powers or remedies the Company may have as a result of a breach of any of the Warranties or any other provision of these terms and conditions.

3. Purchase Price and Invoicing

3.1 The Purchase Price is in Australian Dollars (unless specified otherwise by the Company) and includes:

- (a) all freight costs, transit insurance and all other charges payable in connection with the sale of the Goods (except to the extent of any inconsistency with the Incoterms Sales Basis); and
- (b) all taxes, duties, imposts and levies payable under the laws of any relevant jurisdiction (except to the extent of any inconsistency with the Incoterms Sales Basis).

3.2 The Supplier may only issue tax invoices for Goods after Delivery of those Goods and must only send one copy of each tax invoice to the Company. All such tax invoices must be issued to the contact person nominated by the Company in the Order (or as otherwise notified by the Company) and include at least the Order number, description of the Goods, the quantity of Goods and date of Delivery of the Goods and be dated the date the invoice is sent to the Company.

3.3 Subject to clause 3.4, the Company must pay the Purchase Price by cheque or electronic funds transfer in Australian Dollars (unless specified otherwise) to the Supplier within 180 days after the Goods are accepted pursuant to clause 2.5.

3.4 If the Purchase Price falls due for payment on a day that is not a Business Day, payment must be made on the next Business Day.

3.5 The Company and the Supplier agree to reasonably assist each other to ensure that the Goods are not subject to any value added tax or goods and services tax (GST) in the country of supply and that the Company is entitled to an input credit in respect of any GST payable on the importation of the Goods into Australia.

3.6 The Company is not obliged to pay any invoice which is received by the Company more than 90 days after the date of Delivery of the Goods.

4. Supplier Obligations

The Supplier must, in a timely manner and at its own cost:

- 4.1 provide the Company with all reasonably requested information in relation to the Goods;
- 4.2 properly carry out all testing and quality assurance procedures, and provide to the Company all test certificates, required by the Order or as otherwise requested by the Company;
- 4.3 properly pack and protect the Goods to prevent damage during transit and upon Delivery;
- 4.4 ensure that all packaging and protective coatings are safe and will not in any way affect the condition of the Goods;

4.5 ensure that all packaging, labelling and transport of the Goods complies with all laws of any relevant jurisdiction, and where applicable, with relevant Australian and other recognised standards;

4.6 ensure that the Goods (and each sub-package of the Goods) are clearly addressed to the Delivery Point and that each sub-package is marked with the product description and quantity of the Goods contained in it;

4.7 comply with any additional packing and marking requirements specified by the Company from time to time;

4.8 ensure that the Warranties are and remain true and correct at all times;

4.9 clearly state whether any Goods contain asbestos or other hazardous substances and, prior to delivery of any such goods, provide Material Safety Data Sheets in respect of such goods in the form required by the Company from time to time; and

4.10 on reasonable notice provide and procure for the Company (and its representatives) full access to all premises and locations to allow the Company to inspect the Goods at any time prior to their Delivery.

5. Warranties and Remedies

5.1 The Supplier warrants that:

(a) the Supplier is the legal and beneficial owner of the Goods and has the right to sell the Goods to the Company free from all mortgages, charges, encumbrances, liens and other third party rights and claims;

(b) the delivery of the Goods complies with all applicable laws, regulations and other governmental requirements;

(c) the Goods are new, free from defects, of merchantable quality and fit for the purposes for which the Goods would ordinarily be used and any other purposes notified by the Company to the Supplier;

(d) where the Company has provided specifications for the Goods to the Supplier, the Goods conform with any specifications provided by the Company;

(e) if the Supplier is not the manufacturer, the Goods conform with the manufacturer's specifications; the Goods satisfy the requirements of any Australian standards specified in the Order or any international standards that apply to them or to goods of the same or similar type and of all applicable laws;

(f) the sale of the Goods to the Company under this contract will not infringe the laws of any relevant jurisdiction and the Supplier has all licences required under the laws of any relevant jurisdiction to sell and deliver the Goods to the Company; there are no terms, conditions or restrictions including patent conditions which will become binding on the Company as a result of the sale of the Goods to the Company; and

(g) all information about the Goods given to the Company by or on behalf of the Supplier is true and correct in all material respects and is not misleading in any respect.

5.2 If the Supplier breaches any Warranties or the Company rejects any Goods under clause 2.5, then at the Company's discretion and upon demand from the Company the Supplier must (as applicable) at the Supplier's cost and expense:

- (a) repair or modify the Goods to the Company's reasonable satisfaction;
- (b) replace the Goods; and / or
- (c) refund any amount paid by the Company to the Supplier in relation to the Goods.

The Supplier's obligations under this clause 5.2 shall continue for at least 24 months after the Goods are first received at the Company's Site.

6. Insurance

Without limiting the Supplier's liability under the Order, the Supplier must obtain and maintain (from the date of the Order until the time when the Supplier has complied with all of its obligations under the Order), from solvent and reputable insurers, public and products liability insurance in the amount of A\$20 million for any one loss or occurrence.

7. Intellectual Property

7.1 If the Supplier is manufacturing or procuring the manufacture of the Goods and the Goods are required to be manufactured or fabricated to the Company's specifications or special requirements (and are not goods of the type ordinarily manufactured by the Supplier or the Supplier's sub-contractors) the Company will be entitled to own all intellectual property rights of any kind that arise as a result of, or in the course of, the design or manufacture of the Goods.

7.2 The Supplier warrants that the supply of the Goods to the Company, the use of the Goods by the Company or any resale of the Goods by the Company, will not infringe the intellectual property rights of any person and the Company will not have to pay any licence fee, royalty or other amount to any person in connection with the Goods.

8. Cancellation

8.1 The Company may cancel an Order by written notice given to the Supplier if the Supplier breaches any provision of the Order and such breach is incapable of remedy, or such breach is capable of remedy and the Supplier fails to remedy the breach within 14 days of receiving a notice from the Company requiring it to do so.

8.2 In addition to its rights under clause 8.1, the Company may at its option and without cause at any time up to 14 days prior to the Delivery Date cancel all or any part of an Order by notice in writing to the Supplier; and upon such cancellation the Company has no obligations except for those set out in clause 8.3.

For the purposes of clause 8.2:

(a) if the Goods are goods ordinarily supplied by the Supplier, the Company will be under no obligation whatsoever to pay any money to the Supplier;

(b) if the Goods have been manufactured or fabricated to the Company's specifications or special requirements (and are not goods ordinarily supplied by the Supplier), then upon receipt of the notice of cancellation under clause 8.2 the Supplier must:

- (i) immediately cease manufacture or fabrication of the Goods (unless otherwise instructed by written notice from the Company at or after the time of receipt of the notice of cancellation); and
- (ii) do everything possible to mitigate any cost incurred by the Supplier upon such cancellation; and

(c) where the Goods are of the type referred to in clause 8.3(b), the Company must pay to the Supplier, in full and final satisfaction of all of the Supplier's rights against the Company, the reasonable actual direct costs incurred by the Supplier in connection with the manufacture or fabrication of the Goods prior to the effective date of cancellation less any mitigated costs and resale proceeds.

8.4 For the avoidance of doubt, the Company's only liability in relation to the cancellation of any Order under this clause 8 is as set out in clause 8.3 above and the Company is not liable to the Supplier for any indirect or consequential costs (including loss of profits or opportunity costs) or any loss, cost, damage or expense.

8.5 Title to any Goods (and any raw materials and unfinished Goods) in respect of which the Company makes any payment under clause 8.3(c) passes to the Company on the making of that payment.

9. Miscellaneous

9.1 Unless this Order is placed pursuant to an existing contract between the parties which provides for the placing of purchase orders, this Order comprises the whole contract between the parties about its subject matter and prevails over any terms and conditions put forward by the Supplier at any time.

9.2 No rule of construction applies to the disadvantage of a party because that party put forward the Order or any portion of it.

9.3 The Order is governed by the laws of the jurisdiction of the State or Territory of the Company's address specified in the Order. The courts of that jurisdiction (and the courts exercising appellate jurisdiction over them) have jurisdiction in connection with the Order. The parties submit to the jurisdiction of those courts.

9.4 No change or variation to the Order is effective unless confirmed in writing by the Company.

9.5 Except as set out in an Order, the Supplier must not permit or allow any person to exercise any of the Supplier's rights or perform any of the Supplier's obligations under the Order without the prior written consent of the Company (which consent must not be unreasonably withheld).

9.6 If any person is appointed by the Supplier to perform any of the Supplier's obligations under the Order (which appointment must be in accordance with clause 9.5), whether by sub-contract or otherwise, the Supplier is liable to the Company for all of the acts and omissions of such person.

9.7 The provisions in the United Nations Convention on Contracts for the International Sale of Goods adopted at Vienna Austria on 10th April 1980 do not apply to the Order.

10. Definitions

In the Order:

"**Business Day**" means a day on which the Company is ordinarily open for business in the jurisdiction that applies to the Order;

"**Company**" means the Company entity specified in the Order (or, where a business name is specified, the Company entity that carries on business under that business name) and, where more than one Company entity is party to the Order, includes all or any of them as appropriate and also includes any successors, assignees or transferees of the Company;

"**Company's Custom Agent**" means the agent nominated by the Company with responsibility for clearing the Goods through Australian Customs;

"**Company Site**" means the site owned or occupied by the Company which shall be the ultimate destination for the Goods;

"**Delivery**" or "**Delivered**" means delivery or delivered to the Delivery Point by the Delivery Means;

"**Delivery Date**" means the date for delivery specified in the Order or, if not so specified, the last day of the applicable lead time period;

"**Delivery Means**" means instructions for delivery specified in the Order;

"**Delivery Point**" means the delivery point specified in the Order;

"**Goods**" are specified in the Order, or if not so specified means the goods referred to in the Order;

"**Incoterms**" means the defined terms published by the International Chamber of Commerce ("ICC") entitled *Incoterms 2010* (as updated or replaced from time to time).

"**Incoterm Sales Basis**" means the Incoterm specified in the Order or notified by the Company to the Supplier from time to time;

"**Order**" means these terms and conditions and the purchase order to which these terms and conditions are attached or referred to in;

"**Purchase Price**" means the amount specified in or calculated in accordance with the Order;

"**Supplier**" means the supplier of the Goods; and

"**Warranties**" means the warranties provided by the Supplier to the Company under these terms and conditions together with any warranties implied by law.