

1. DEFINITIONS

In these terms and conditions:

Agreement means an agreement between the Purchaser and Supplier for the supply of Goods or Services constituted by an Order, these Conditions and any agreed variation;

Conditions mean these terms and conditions of purchase in this Agreement;

Goods means the goods described in the Order;

GST means any tax including any additional tax imposed on the supply of or payment for goods or services which is imposed or assessed under any GST Law;

GST Law means *A New Tax System (Goods and Services Tax) Act 1999*, and all related and auxiliary legislation;

Loss means any loss, liability, costs (including legal costs as the higher of an indemnity or solicitor-client basis) or expense incurred by the Purchaser relating to this Agreement;

Order means the Purchaser's order accompanying this Agreement or otherwise placed or communicated with the Supplier and includes these Conditions;

Purchaser means Transpacific Industries Pty Ltd ABN 40 010 745 383 and any related body corporate (within the meaning of section 50 of the *Corporations Act*) as specified in the Order;

Representative of a party means that party's director, or authorised officer, employee or agent;

Services means the services described in the Order;

Specifications means any technical or other specification relating to the Goods or Services referred to in the Order and details of which have been supplied by the Purchaser or its Representative to the Supplier; and

Supplier means the person who sells the Goods or provides the Services to the Purchaser.

2. BINDING TERMS AND CONDITIONS

Entire Agreement

The entire Agreement between the Purchaser and the Supplier for the purchase of the Goods or Services by the Purchaser from the Supplier is:

- (a) these Conditions;
- (b) any other terms and conditions (including Specifications) incorporated by reference in the Order as long as the Supplier has details of these terms and conditions;
- (c) any other terms and conditions which are imposed by law and which cannot be excluded; and
- (d) any agreed written variation.

Precedence

These Conditions shall apply to all contracts for the purchase of Goods or Services by the Purchaser from the Supplier to the exclusion of any terms and conditions or any other materials which the Supplier may purport to apply or which are endorsed upon any correspondence or documents issued by the Supplier irrespective of their date of communication to the Purchaser, except to the extent that the Supplier's terms and conditions are agreed to in writing and signed by the Purchaser. The Supplier may not rely on any representations by the Purchaser that are not included in the Agreement.

Acceptance

Acceptance of an Order by the Supplier constitutes acceptance of these Conditions.

3. PRICE

Price of Goods or Services supplied

The price specified in the Order is firm, and is not subject to increase. The price includes all costs of testing, inspection, labelling, packing and freight and delivery to and off-loading at the destination as specified in the Order.

GST

The price at which the Goods or Services are provided by the Supplier to the Purchaser includes (unless otherwise stated or agreed in writing) GST, if applicable.

Freight

Unless otherwise stated or agreed in writing the Supplier is responsible for freight and delivery to the destination as specified in the Order.

4. PAYMENT

Payment Terms

Payment for Goods or Services supplied by the Supplier to the Purchaser will be tendered 45 days from the end of the month upon receipt by the Purchaser of a correctly rendered invoice or acceptance of the Goods by the Purchaser, whichever is the later.

Invoices

In addition to any other information specified in the Order or elsewhere in these Conditions, invoices must contain the following information: Purchase Order Number, Item Number, Description of Goods or Services, Sizes, Quantities, Weight, Unit Prices, GST Payable and Extended Totals. The Purchaser will accept no liability whatsoever for invoices which do not bear such information.

5. DELIVERY

The Goods must be received on the dates and at the destination specified in the Order. Time is of the essence. If the Supplier fails to meet any such delivery date, the Purchaser may, without limiting its other rights and remedies, cancel all or part of the Order. If the Purchaser has paid a deposit, it is entitled to be refunded in full to the Purchaser.

6. TITLE AND QUALITY

Title

Property in the Goods passes to the Purchaser on delivery.

Risk

The Supplier bears all risks of loss and damage to the Goods until final acceptance by the Purchaser in accordance with clause 6.3.

Final inspection and acceptance

Notwithstanding any prior inspections, usage or payments, all Goods shall be subject to:

- (a) final inspection which may include measurement, testing or examination; and
- (b) acceptance at the Purchaser's facility within a reasonable time (but not more than 90 days) after receipt of the Goods.

Date of acceptance

Acceptance of the Goods by the Purchaser will occur:

- (a) on the date upon which the Purchaser notifies the Supplier in writing of acceptance; or
- (b) automatically upon the lapsing of the 90 day period stipulated in clause 6.3(b) if the Purchaser has not provided notice pursuant to clause 6.4(a).

No Waiver

The Purchaser's acceptance does not waive rights. If the Purchaser accepts any Goods, this does not extinguish any of the Purchaser's rights if the Goods do not comply with a term of the Agreement.

Supplier's warranties

The Supplier warrants that the Goods:

- (a) are safe;
- (b) are free from encumbrances, defect or fault;
- (c) are of merchantable quality;
- (d) include appropriate and correct warning and instructions;
- (e) are fit for the purpose for which purchased (as communicated by the Purchaser before the Order or as should be reasonably understood by the Supplier of the Goods who is experienced in such technical and specific matters relating to the Goods and the purpose they are intended for);
- (f) comply with any representations, descriptions, samples or other specifications (including the Specifications) including quality, function, performance or design; and
- (g) include any applicable Supplier's warranty that passes to the consumer from the Purchaser without liability to the Purchaser.

Supplier's Indemnities

The Supplier must indemnify the Purchaser against any Loss incurred by the Purchaser concerning a breach of warranty, representation or term of the Agreement.

Rejected Goods

The Purchaser may, within 90 days of delivery at the Purchaser's facility, reject any Goods which do not comply strictly with the Agreement. Once the Goods are rejected, the Purchaser may require:

- (a) in the case of either Goods or Services, the Supplier to refund any payment within 7 days; or
- (b) in the case of Goods, replacement of the Goods to the Purchaser's satisfaction; or

(c) in the case of Services, the re-supply of the Services.

Title and risk in the rejected Goods immediately re-vests in the Supplier. The Supplier is liable for all Loss incurred by the Purchaser due to the rejection of the Goods. The Supplier must, at its cost, remove from the rejected Goods any of the Purchaser's Intellectual Property or any other distinguishing features such as name or symbols.

7. INTELLECTUAL PROPERTY RIGHTS

The Supplier may sell Goods containing the Purchaser's intellectual property only to the Purchaser or as permitted by the Purchaser.

8. CONFIDENTIALITY

The Supplier agrees to keep confidential all of the Purchaser's information concerning or arising from the performance of the Order ("Information"). This clause does not apply to Information which is lawfully obtained from a third party, is public knowledge, is already known or is otherwise independently developed by Representatives of the Supplier who have not been exposed to the Information.

Information remains the Purchaser's property

All Information supplied by the Purchaser remains the property of the Purchaser and may only be used by the Supplier in fulfilling its obligations under the Agreement. The Supplier must not disclose any information without prior written consent of the Purchaser.

9. WORK ON THE PURCHASER'S PREMISES

If any Services are to be performed on the Purchaser's premises, the Supplier must comply with all applicable environment, occupational health and safety laws and the Purchaser's then current safety and other applicable policies. The Supplier shall provide the Purchaser with a complete list of all chemicals, hazardous materials, and ingredients in the composition of goods used in the performance of the Services and a copy of the material safety data sheet for such chemicals and hazardous materials. The submission of such list by the Supplier shall not relieve the Supplier of exclusive responsibility for the safe transportation, use, storage and disposal of such materials prior to acceptance by the Purchaser. All chemicals and hazardous materials brought by the Supplier to the Purchaser's premises shall bear a label stating the identity of the chemical of material and the hazards associated therewith.

10. INDEMNITY AND RELEASE

The Supplier must defend, indemnify and hold the Purchaser, its affiliated companies, and their Representatives, successors, and assigns harmless from and against any and all claims, suits, actions, liabilities, loss, judgments or damages, whether ordinary, special or consequential arising directly or indirectly from or in connection with:

- (a) the acts, negligence, omissions or wilful misconduct of the Supplier;
- (b) the Goods or Services supplied;
- (c) a breach of any of the Supplier's warranties or any other term of the Agreement;
- (d) the Supplier's negligent, unauthorised or wrongful acts or omissions with regards to the use or installations of hazardous materials;
- (e) a claim that any Goods or Services supplied to the Purchaser infringe upon or misappropriate any patent, copyright, trademark, trade secret or other intellectual property interest of another;
or
- (f) a claim of any lien, security interest or other encumbrance made by a third party.

11. TERM AND TERMINATION

Term

This Agreement shall commence and end on the dates specified in the Order unless otherwise terminated earlier in accordance with the remainder of this clause 11.

Without cause

The Purchaser may, at any time, terminate the Order, in whole or in part, without cause, upon written notice to the Supplier. Following upon any such termination on the Supplier shall, to the extent specified by the Purchaser, stop all work on the Order, and cause its suppliers and subcontractors to stop work. Charges for any such termination of the Order will be limited to actual non-recoverable costs incurred by the Supplier which the Supplier can demonstrate were properly incurred prior to the date of termination. In no event shall such reimbursement include anticipated profits for undelivered Goods or unperformed Services.

With cause

The Purchaser may terminate the Order, in whole or in part, if the Supplier:

- (a) fails to make delivery of the Goods or perform the Services within the time specified in that Order;
- (b) fails to replace defective Goods or Services in accordance with these Conditions;

- (c) fails to perform any other term specified in the Agreement; or
- (d) becomes insolvent, files or has filed against petition in bankruptcy, or makes an assignment for the benefit or creditors.

12. THE PURCHASER'S PROPERTY

All drawings, Specifications, artwork, data, material, supplies, equipment, tooling, dies, moulds, fixtures and patterns furnished or paid for by the Purchaser, shall be the Purchaser's exclusive property, and shall be used by the Supplier only in performance of the Order. Such property, while in the Supplier's custody and control, shall be held at the Supplier's sole risk and, upon the Purchaser's request, shall be returned to the Purchaser in good condition, normal wear and tear accepted.

13. MISCELLANEOUS

Conditions of assignment, subcontracting or advertising

The Supplier must obtain the Purchaser's consent in writing before it:

- (a) assigns its rights or subcontracts any obligation under the Agreement; or
- (b) advertises or publishes anything concerning the Agreement.

Supplier must maintain insurance

During the period of the Agreement, while the Supplier has the risk in the Goods and after the Purchaser takes delivery and risk in the Goods, the Supplier must, at its own expense:

- (a) maintain product liability insurance with a reputable insurer for at least \$10,000,000 or greater amount specified in the Order; and
- (b) insure the Goods with a reputable insurer for their full replacement cost.

The Supplier must on the Purchaser's request, produce satisfactory evidence of the insurance.

Relationship

The Supplier is an independent contractor of the Purchaser. Nothing in these Conditions constitute any other type of relationship between the parties.

No waiver

Failing to insist on strict performance on any Conditions of the Agreement is not a waiver of any later breach or default.

Provisions are severable

Each provision of the Agreement is severable. Severance does not affect any other provision.

Variation must be in writing and notified

The Purchaser may by writing, amend, supplement or replace any Order, Specification or these Conditions. The changes then apply to any Agreement as the Purchaser notifies after the date of change.

Governing law

The law of Queensland, Australia governs this Agreement.

Compliance with laws and standards

The Supplier must ensure that the Goods and any dealing between the Purchaser and the Supplier comply with all laws and the standards that ensure the Goods are saleable in Australia including those relating to manufacturing, packaging, labelling and transportation.

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