

These Purchase Terms and Conditions apply to goods acquired by Motion New Zealand Limited (company No.1124846) or its Related Companies (**Purchaser**). These Terms and Conditions do not apply where there is a signed supply agreement in place between the Supplier and the Purchaser.

## **Supply and Delivery of Goods**

- 1.1 The Supplier must supply the Goods in accordance with the Contract.
- 1.2 Time is of the essence and the Supplier must deliver the Goods to the place and by the date specified in the Purchase Order, or if no date is specified, within a reasonable time.
- 1.3 If the Supplier does not deliver the Goods in accordance with clause 1.2, the Purchaser may cancel the Purchase Order without incurring any cost.
- 1.4 The Supplier shall, at its own expense, pack, load, and deliver Goods to the Delivery Point and in accordance with the invoicing, delivery terms, shipping, packing, and other instructions printed on the face of the Purchase Order or otherwise provided to Supplier by Purchaser in writing.

## **2. Ownership and Risk**

- 2.1 Title in the Goods passes to Purchaser when the Purchaser receives the Goods at the Delivery Point.
- 2.2 Risk in the Goods passes to the Purchaser upon delivery at the Delivery Point and subject to the Purchaser having reasonable opportunity to inspect the Goods and confirm that they are not Defective Goods.

## **3. Payment and Set Off**

- 3.1 Subject to clause 3.3, the Purchaser will pay the Supplier the Price within 62 days from the end of the month in which the Goods were received. For the avoidance of doubt, payment shall be made on the first BusinessDay of the second month (for example, if Goods are delivered in January, the payment shall be made on 1 April).
- 3.2 Unless the Purchase Order states otherwise or the parties agree in writing, the Price includes all Associated Costs.
- 3.3 If the Goods are Defective Goods or the Purchaser determines that an amount is owed from the Supplier to the Purchaser, the Purchaser may (acting reasonably) assess the reduction in the Price and set off that amount from the Price.
- 3.4 If the Supplier disagrees with the Purchaser's assessment in clause 3.3, it must comply with clause 13.

## **4. GST**

- 4.1 If GST is payable on a supply made under or in connection with this Contract, the party providing the consideration for that supply must also pay, upon the receipt of a valid tax invoice, the GST amount at the prevailing rate as additional consideration.
- 4.2 Terms used in this clause 4 have the meaning given to them in *A New Tax System (Products and Services Tax) Act 1999* (Cth) in Australia, and the *New Zealand Goods and Services Tax Act 1985* in New Zealand, as the case may be.

## **5. Warranties**

- 5.1 The Supplier warrants that:
  - a) it is authorised to enter into and perform the Contract;
  - b) it owns the Goods;
  - c) the Goods do not infringe any Intellectual Property Rights;
  - d) the Goods comply with all consumer guarantees applicable pursuant to any relevant law;
  - e) the Supplier shall pass on to Purchaser any manufacturers' warranties as a minimum, in addition to any other warranties under this Contract;
  - f) the Goods are not Defective Goods and comply with all Australian and New Zealand standards; and
  - g) in performing the Contract, it will comply with all relevant Law.
- 5.2 The Contract is deemed to contain all consumer guarantees, terms, and conditions that the Purchaser would be entitled to if the Purchaser were a "consumer" within the meaning of the *Competition and Consumer Act 2010* (Cth).

## **6. Zero Asbestos Policy**

- 6.1 The Supplier warrants and guarantees that the Goods do not contain any asbestos whatsoever and the Supplier shall provide, upon demand by the Purchaser, reasonable evidence to the satisfaction of the Purchaser that the Goods comply with this clause.
- 6.2 Where the Supplier is outside Australia or New Zealand and the Purchaser has imported the Goods into Australia and New Zealand and, despite reasonable evidence being provided by the Supplier that the Goods do not contain asbestos, following independent testing by the Purchaser it is discovered that the Goods

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contain asbestos (**Asbestos Goods**), the Supplier must, at the Purchaser's option, replace the Goods, reimburse, or give credit to the Purchaser for the value of the Asbestos Goods.

6.3 If required by Law, any Asbestos Goods must be destroyed by the Purchaser using the method required by relevant Law. The Supplier must reimburse the Purchaser for all costs and expenses incurred as a result of or in connection with the destruction of the Asbestos Goods.

6.4 Clauses 11 and 12 apply in the case of Asbestos Goods to the extent possible in accordance with the Law.

## **7. Confidentiality**

7.1 Each party agrees not to disclose any Confidential Information for a period of 7 years following supply of the Goods.

## **8. Intellectual Property**

8.1 Purchaser acknowledges that the Intellectual Property Rights in the Goods remain vested in the Supplier.

8.2 The Supplier grants to the Purchaser an irrevocable transferrable, non-exclusive, royalty-free license to use the Intellectual Property Rights in the Goods for the purpose of marketing and selling the Goods worldwide.

8.3 The Supplier must take all necessary steps to protect and register the Supplier's Intellectual Property Rights in Australia, New Zealand, and any other jurisdiction in which the Supplier manufactures all or part of the Goods.

8.4 The Supplier warrants that it is entitled to grant the license in clause 8.2.

8.5 The license granted under clause 8.2 applies for as long as the Purchaser holds the Goods, after which, upon resale of the Goods, such license shall be transferred to the Purchaser's customers.

The Supplier must not use the Purchaser's Intellectual Property Rights without the Purchaser's prior express written consent.

## **9. Insurance**

9.1 The Supplier must hold and maintain a policy of public and product liability insurance of not less than \$20 million per claim for the duration of the Contract.

9.2 The policy must cover the Supplier for any Liability in connection with the Contract and arising from:

- a) personal injury or death; and
- b) loss or damage to property.

9.3 Upon request, the Supplier must provide the Purchaser with a copy of the certificate of currency.

## **10. Indemnity and Limit of Liability**

10.1 The Supplier is liable for and must indemnify and hold the Purchaser harmless from and against any Liability arising out of or in connection with:

- a) the Supplier's breach of the Contract;
- b) actual or alleged Intellectual Property Rights infringement;
- c) Defective Goods and Asbestos Goods;
- d) personal injury or death;
- e) any willful, unlawful or negligent act by the Supplier or that of its employees, agents or contractors; and
- f) damage to Purchaser or third-party property arising out of or in connection with the supply of Goods by the Supplier.

10.2 The Supplier's liability under clause 10.1 shall be reduced to the extent that any Liability is caused or contributed to by the Purchaser's willful misconduct or negligence, or that of the Purchaser's employees or agents.

10.3 The Purchaser is not liable to the Supplier for any Consequential Loss, howsoever arising.

## **11. Product Recall**

11.1 If a Product Recall is initiated, the Supplier must:

- a) provide all necessary assistance to enable the Purchaser to return the Goods to the Supplier;
- b) pay for the cost of all advertising, freight, and any other costs incidental to the Product Recall, including the Purchaser's reasonable internal costs; and
- c) refund the Purchaser the Price of the Goods.

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## 12. Defective Goods

- 12.1 If the Supplier delivers any Defective Goods, the Purchaser may (in addition to its right under clauses 3.3 and 11.1) reject the Defective Goods, in which case the Supplier, at the Purchaser's option, must either:
- accept the return at the Supplier's risk and expense or require the Supplier to collect the Defective Goods; and
  - require the Supplier to replace the Defective Goods free of charge; or
  - reimburse the Price or provide credit to the Purchaser.

## 13. Disputes

- 13.1 If a dispute arises between the parties, either party may provide the other party with a Dispute Notice.
- 13.2 If a party receives a Dispute Notice, it must nominate a senior representative with authority to settle the dispute.
- 13.3 Within 10 Business Days of receiving the Dispute Notice, the senior representatives must meet at least once to attempt, in good faith, to settle the dispute.
- 13.4 If, after complying with clause 13.3, the dispute is not resolved, either party may immediately commence proceedings.
- 13.5 Nothing in this clause 13 prevents a party from seeking interlocutory relief.
- 13.6 If a dispute arises, the parties must continue to perform their obligations under the Contract.

## 14. Termination

- 14.1 The Purchaser may terminate this Contract without cause at any time upon prior reasonable notice to the Supplier.
- 14.2 If the Supplier breaches a material obligation under the Contract, Purchaser may immediately cancel any Purchase Order or terminate the Contract and, subject to clause 3.3, will only be liable to pay the Supplier for the Goods supplied in accordance with the Contract.
- 14.3 If Purchaser breaches clause 3, the Supplier must comply with clause 13.
- 14.4 If either party becomes Insolvent, the other party may, by notice in writing, immediately cancel any Purchase Orders or terminate the Contract.

## 15. General

- 15.1 Clauses 5, 6, 7, 8, 10 and this clause 15.1 survive termination of the Contract.
- 15.2 Neither party can assign or otherwise transfer its rights and obligations under this Contract to a third party without the prior written consent of the other party, consent which cannot be unreasonably withheld. The Purchaser may assign or otherwise transfer its rights and obligations under this Contract or Purchase Order to a Related Company without the consent of the Supplier.
- 15.3 The Contract forms the entire agreement and no other terms (including any references on a quote and/or tax invoice to Supplier's own terms and conditions of sale) govern the supply of the Goods by the Supplier.
- 15.4 The Purchaser's rights under the Contract can only be waived by the Purchaser in writing.
- 15.5 If a term of the Contract is held to be unenforceable, that term may be severed from the Contract without affecting the enforceability of the remaining terms.
- 15.6 The Contract is governed by the Laws of New Zealand.

## 16. Definitions

**Associated Costs** means costs of packaging, packing, insurance, freight, transportation, insurance, shipping, storage, handling, demurrage, cartage, packaging or similar charges and taxes (other than GST).

**Business Day** means a day other than a Saturday, Sunday or a public holiday in Sydney, New South Wales.

**Confidential Information** means information relating to the other party which has come into the party's possession as a result of or in connection with the Contract (including Intellectual Property Rights) but excludes information which is required to be disclosed by Law.

**Contract** means the Terms and Conditions and any Purchase Orders as varied by the Purchaser from time to time.

**Consequential Loss** means any consequential loss including, but not limited to, any special, indirect, incidental, exemplary or consequential damages or losses of any kind such as loss of profit or anticipated profit, loss of production, loss of goodwill or reputation, loss of savings or anticipated savings, loss of inventory, cost of capital, loss of revenue or anticipated revenue, loss of use or equipment or loss of contract or business opportunity.

**Defective Goods** means Goods that do not comply with this Contract or Law, are not new or of acceptable quality,

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design, workmanship, or performance or are defective in any other way.

**Delivery Point** means the location identified by the Buyer in the Purchase Order to which the Supplier is to deliver the Goods or such other delivery area or point which is specified in writing by the Buyer.

**Dispute Notice** means a written notice containing the details of a dispute.

**Purchaser** means Motion New Zealand Limited, or its related entities as identified on the Purchase Order.

**Goods** means the goods specified in the Purchase Order.

**GST** means a tax on goods and services imposed by Law.

**Insolvent** means a party:

- a) becomes or is presumed insolvent (as that term is defined under the *Corporations Act 2001* (Cth)); or
- b) is wound up, in liquidation, in provisional liquidation or under administration.

**Intellectual Property Rights** include:

- a) any intellectual property rights including, without limitation, copyright, patent, trademark, and design; and
- b) whether or not registered or registrable, and whether created by legislation or general law and any application or the right to apply for the grant or registration of the same.

**Law** means any common law, principle of equity or tort and legislation of a relevant jurisdiction.

**Liability** means any direct or indirect loss, damage, cost, charge, or expense (including legal costs on an indemnity basis), including claims by third parties.

**Product Recall** means a recall in respect of the Goods which is required by Law or by an authority, or because the Purchaser withdraws the Goods from sale because, in the Purchaser's reasonable opinion, there are safety or quality concerns.

**Price** means the price for the Goods specified in the Purchase Order (plus any applicable GST).

**Purchase Order** means the purchase order issued by the Purchaser to the Supplier to supply the Goods.

**Related Companies** has the same meaning as related bodies corporate (as that term is defined in the *Corporations Act 2001* (Cth)).

**Supplier** means the supplier specified in the Purchase Order.

**Terms and Conditions** means these terms and conditions.