

# Purchase Order Terms and Conditions

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In these terms and conditions:

- a) **Conditions** means these purchase order terms and conditions;
- b) **Date for Delivery** means the date for delivery of the Goods and/or performance of the Services as set out in the Purchase Order;
- c) **Delivery Point** means in relation to Goods, the delivery address for the Goods as set out in the Purchase Order and in relation to the Services, the place for performance of the Services as set out in the Purchase Order;
- d) **Goods** means the goods described in the Purchase Order;
- e) **GST** means GST as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended (**GST Act**) or any replacement or any other relevant legislation and regulations;
- f) **Intellectual Property Rights** means any intellectual or industrial property right, whether protected by statute, at common law or in equity, including any patent, registered design, (whether or not registerable), invention, trade secret, circuit layout design, or right in relation to circuit layouts, right to confidential information, technical information, trademark or name, copyright or other protected right;
- g) **Laws** includes any requirement of any statute, rule, regulation, proclamation, order in council, ordinance or by-law whether commonwealth, state, territorial or local in relation to environmental and occupational health and safety matters;
- h) **Loss** means any loss, liability, costs (including legal costs on an indemnity or solicitor-client basis) or expense incurred by the Purchaser relating to the Agreement;
- i) **Personal Information** means:
  - (i) information or an opinion (including information or an opinion forming part of a database) about an identified individual or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether recorded in a material form or not; or
  - (ii) information or a document that relates to the affairs or personal particulars of another person (such as a company or a business), which is received or learnt from any source as a consequence of or in the performance of the Agreement.
- j) **PPSA** means the *Personal Property Securities Act 2009* (Cth);
- k) **Price** means the price payable by the Purchaser to the Supplier as shown in the Purchase Order, subject to clause 22.2.
- l) **Purchase Order** means the Purchaser's order for Goods or Services or both accompanying these Conditions or otherwise placed or communicated with the Supplier;
- m) **Purchaser** means Tox Free Australia Pty Ltd and any related body corporate (within the meaning of section 50 of the Corporations Act 2001) as specified in the Purchase Order;
- n) **Representative** of a party means that party's director, or authorised officer, employee, agent or sub-contractor;
- o) **Services** means the services described in the Purchase Order;
- p) **Specifications** means any technical or other specification relating to the Goods and/or Services referred to in the Purchase Order or details of which have been supplied by the Purchaser or its Representative to the Supplier;
- q) **Supplier** means the person named as the supplier in the Purchase Order; and
- r) **The Agreement or the Agreement** means the agreement between the Purchaser and the Supplier for the supply of Goods or Services to which the Purchase Order relates constituted by the Purchase Order, these Conditions and the other documents and terms and conditions referred to in clauses 3.1(a) to 3.1(e) (both inclusive).

### 1.2 Interpretation

In the interpretation of these Conditions, unless the context or subject matter otherwise requires:

- a) the singular includes plural and vice versa;
- b) a reference to a party includes that party's executors, administrators,

- substitutes, successors and permitted assigns;
- c) an agreement, obligation or indemnity on the part of 2 or more persons (including, without limitation, where a party consists of more than 1 person), binds each of them separately and any 2 or more of them jointly;
- d) an obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly. Time is of the essence in respect of all of the Supplier's obligations to the Purchaser.

## 2. AGREEMENT

### 2.1 Consideration

The Supplier agrees to supply the Goods and/or Services to the Purchaser in accordance with the Agreement, and in consideration for this the Purchaser agrees to pay the Price to the Supplier.

### 2.2 Application

These Conditions apply to all Purchase Orders and, 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.

### 2.3 Review

These Conditions are subject to periodic review by the Purchaser.

## 3. BINDING TERMS AND CONDITIONS

### 3.1 Entire Agreement

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

- a) these Conditions;
- b) the Purchase Order;
- c) any other terms and conditions (including Specifications) incorporated by reference in the Purchase Order as long as the Supplier has details of these terms and conditions;
- d) any other terms and conditions which are imposed by law; and
- e) any agreed written variation.

### 3.2 Precedence

These Conditions shall apply to all contracts for the purchase of Goods and/or Services by the Purchaser from the Supplier to the exclusion of any other 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 expressly 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.

### 3.3 Acceptance

Acceptance of a Purchase Order by the Supplier will occur on the earlier of:

- a) the Supplier's written acceptance being received by the Purchaser; or
- b) 2 days after the Purchase Order is sent by the Purchaser to the Supplier (unless the Supplier rejects the Purchase Order within that time by written notice to the Purchaser),

and will constitute acceptance of the terms and conditions of the Agreement (including, without limitation, these Conditions) by the Supplier.

## 4. PRICE

### 4.1 Price of Goods and/or Services supplied

Subject to clause 22.2, the Price specified in the Purchase Order is fixed, 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 Delivery Point.

### 4.2 GST

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

#### 4.3 Freight

Unless otherwise stated or agreed in writing the Supplier is responsible for freight and delivery to the Delivery Point.

### 5. PAYMENT

#### 5.1 Payment Terms

- a) Subject to clauses 5.1(b) and 5.2, payment for Goods and/or Services supplied by the Supplier to the Purchaser is payable within 30 days after the end of the month in which the Supplier's invoice for those Goods and/or Services, issued in accordance with clause 5.2, is received by the Purchaser.
- b) If the Purchaser disputes an invoice of the Supplier, it will pay the undisputed portion of the invoice and dispute the balance. That dispute will be resolved in accordance with clause 18. Payment by the Purchaser of an invoice (in whole or in part) will not preclude the Purchaser from disputing that invoice at a later stage.

#### 5.2 Invoices

The Supplier must provide the Purchaser with a GST compliant tax invoice for the Goods and/or Services after they are delivered or performed under the Agreement. Each invoice must include:

- a) a reference to the Purchase Order number;
- b) a reference to the item number;
- c) a detailed description of the delivered Goods or performed Services (including sizes, quantities, weight, unit and price);
- d) the Price relating to the Goods and/or Services, broken down to reflect the same Price components on the Purchase Order; and
- e) the amount of any applicable GST.

The Purchaser will not be liable to pay any amount set out in invoices which do not comply with this clause 5.2.

### 6. DELIVERY AND PERFORMANCE

#### 6.1 Delivery of Goods

The Supplier must deliver the Goods on the Date for Delivery and at the Delivery Point. If the Supplier fails to do so, the Purchaser may, without limiting its other rights and remedies, cancel all or part of the Purchase Order. If the Purchaser has paid a deposit, the Supplier must refund the deposit in full to the Purchaser.

#### 6.2 Performance of Services

The Supplier must ensure that the Services are performed at the Delivery Point on the Date for Delivery. If the Supplier fails to do so, the Purchaser may, without limiting its other rights and remedies, cancel all or part of the Purchase Order. If the Purchaser has paid a deposit, the Supplier must refund the deposit in full to the Purchaser.

#### 6.3 Change in Date for Delivery

Should any change in any Date for Delivery be proposed by the Supplier for any reason, immediate written notice must be given to the Purchaser who may in its absolute discretion, accept or reject such proposal. If the Purchaser rejects a proposal to change the Date for Delivery and the Supplier fails to deliver Goods or perform Services on the original applicable Date for Delivery, the Purchaser may, without limiting its other rights and remedies, by written notice to the Supplier, terminate the Agreement either wholly, or to the extent to which it relates to the delivery of the relevant Goods or Services.

### 7. TITLE AND RISK

#### 7.1 Title

Property in the Goods passes to the Purchaser on delivery of the Goods by the Supplier.

#### 7.2 Risk

The Supplier bears all risks of loss and damage to the Goods until final acceptance by the Purchaser in accordance with clause 7.4.

#### 7.3 Final inspection and acceptance

Notwithstanding any prior inspections, usage or payments, all Goods, and of completion of all Services, 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.

Without limiting the generality of clause 5.1(b), the Purchaser may dispute or withhold payment of any part or all of an invoice in respect of Goods or Services in either or both of the following circumstances:

- c) pending completion of a final inspection, measurement, testing, examination and acceptance of those Goods or Services; or
- d) if the Purchaser rejects those Goods or Services based on its final inspection, measurement, testing, examination of them.

#### 7.4 Date of acceptance

Acceptance of the Goods by the Purchaser will occur on the date upon which the Purchaser notifies the Supplier in writing of acceptance.

#### 7.5 Rejected Goods

The Purchaser may, within 90 days after delivery of the Goods at the Delivery Point or performance of the Services, reject any Goods or Services which do not comply strictly with the Agreement. Once Goods or Services are rejected, the Purchaser, in its sole discretion, 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 Rights or any other distinguishing features such as name or symbols.

#### 7.6 No Waiver

The Purchaser's acceptance of Goods or Services is not to be taken as a waiver of any of its rights. If the Purchaser accepts any Goods or Services, this does not extinguish any of the Purchaser's rights if the Goods or Services do not comply with any of the terms and conditions of the Agreement.

### 8. SUPPLIER WARRANTIES

#### 8.1 Warranties relating to Goods

The Supplier warrants that the Goods:

- a) are safe and free from risk to health and safety and compliant with all relevant laws;
- b) are and will remain free from any Security Interest (as that term is defined in the PPSA), or any other security, charge or encumbrance;
- c) are free from all defects or faults;
- d) are of a high quality;
- e) are clearly and durably labelled identifying the Goods and including any appropriate and correct warnings and instructions;
- f) are fit for the purpose for which they are purchased (as set out in the Agreement or otherwise communicated by the Purchaser before acceptance or deemed acceptance by the Supplier of the terms and conditions of the Agreement, or as should be reasonably understood by the Supplier as a supplier of goods which are the same or similar to the Goods who is experienced in such technical and specific matters relating to the Goods and the purpose they are intended for);
- g) match the description referred to in the Purchase Order and meet the Specifications;
- h) comply with any representations, descriptions, samples or other

specifications (including the Specifications) including quality, function, performance or design;

- i) comply with all legislation, regulations and other governmental requirements in Australia relating to the Goods including those relating to manufacturing, packaging, labelling and transportation; and
- j) include any applicable Supplier's warranty that passes to any end user of the Goods from or through the Purchaser, without liability to the Purchaser.

## 8.2 Warranties relating to Services

The Supplier warrants that the Services:

- a) are provided with due care and skill, with the same or higher level of care and skill as would reasonably be expected of a person qualified and experienced in the supply of the same or similar Services, taking all necessary care to avoid Loss or damage;
- b) match the description referred to in the Purchase Order and meet the Specifications;
- c) comply with any representations, descriptions, samples or other specifications (including the Specifications) including quality, function, performance or design; and
- d) comply with all legislation, regulations and other governmental requirements in Australia relating to the Services.

## 9. INTELLECTUAL PROPERTY RIGHTS

- a) The Supplier warrants that the Goods and Services, and the Purchaser's reasonably foreseeable use of them will not infringe the Intellectual Property Rights of any person. The Supplier indemnifies the Purchaser against breach of this warranty.
- b) The Purchaser will own all Intellectual Property Rights arising from performance of the Services. The Supplier assigns such rights to the Purchaser and agrees to execute any document reasonably required by the Purchaser to evidence or perfect such ownership.
- c) The Supplier grants the Purchaser a licence of all Intellectual Property Rights owned by the Supplier to enable it to use, modify, maintain and repair the Goods and enjoy the benefit of the Services.

## 10. CONFIDENTIALITY

The Supplier must ensure that its Representatives keep confidential all information supplied by the Purchaser or relating to the Agreement (**Information**), and not use or disclose that information except to fulfill its obligations under the Agreement. The Information supplied remains the property of the Purchaser and the Supplier must not disclose the Information without prior written consent of the Purchaser.

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.

## 11. 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 Laws and all of the Purchaser's then current policies and procedures including, without limitation, 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. As an independent contractor, the Supplier is responsible for the management, supervision and control of its own employees and ensuring their health and safety throughout all works and tasks. The Supplier acknowledges that compliance with the Purchaser's site requirements does not relieve or mitigate the Supplier's obligations for Workplace Health and Safety.

## 12. INDEMNITY AND RELEASE

The Supplier indemnifies the Purchaser, its affiliated companies, and their Representatives, successors, and assigns and holds them 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, representations or any other term of the Agreement;
- d) the Supplier's negligent, unauthorised or wrongful acts or omissions with regard to the use or installations of hazardous materials;
- e) a claim that any Goods or Services supplied to the Purchaser infringe upon or misappropriate the Intellectual Property Rights of another person; or
- f) a claim of any lien, security interest or other encumbrance made by a third party.

## 13. TERM AND TERMINATION

### 13.1 Term

The Agreement shall commence and end on the dates specified in the Purchase Order unless otherwise terminated earlier in accordance with the remainder of this clause 14. Clauses 8, 9, 10, 12 and 17 survive termination of the Agreement.

### 13.2 Without cause

The Purchaser may, at any time, terminate the Agreement, in whole or in part, without cause, upon written notice to the Supplier. Following receipt of such notice by the Supplier, the Supplier shall, to the extent specified by the Purchaser, stop all work on the Purchase Order, and cause its suppliers and subcontractors to stop work. Charges for any such termination of the Purchase 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 or forgone profits for undelivered Goods or unperformed Services.

### 13.3 With cause

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

- a) fails to make delivery of the Goods or perform the Services on the applicable Date for Delivery;
- 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 of creditors.

## 14. 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. 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.

## 15. SUBCONTRACTING, ASSIGNMENT AND ADVERTISING

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

- a) subcontracts any obligation under the Agreement; or
- b) assigns, charges or encumbers the Agreement or any rights under the Agreement; or
- c) advertises or publishes anything concerning the Agreement

## 16. INSURANCE

During the period of the Agreement, the Supplier must, at its own expense:

- a) maintain appropriate insurance in relation to public liability and product liability with a reputable insurer for at least \$20,000,000, to cover all insurable sums which the Supplier may become legally liable to pay

consequent on the death of or bodily injury (including illness or disease) to any natural person or loss of or damage to (including loss of use of) any real or personal property;

- b) maintain appropriate insurance in relation to professional indemnity with a reputable insurer for at least \$5,000,000, to cover all insurable sums which the Supplier may become legally liable to pay consequent on the Supplier's performance or purported performance of the Services;
- c) maintain any other insurances required by Law (including, without limitation, workers' compensation and employers' liability insurance); and
- d) insure the Goods and/or with a reputable insurer for their full replacement cost (until risk in those Goods passes to the Purchaser in accordance with these Conditions).

The Supplier must, upon the Purchaser's request, provide the Purchaser with certificates of currency with respect to these insurance policies.

## 17. RECOVERY OF MONIES

Any debt due from or moneys payable by the Supplier to the Purchaser whether under the Agreement or otherwise may be deducted by the Purchaser from any moneys due or to become due to the Supplier under the Agreement. The Purchaser is entitled to recover from the Supplier any balance that remains owing after such deduction.

## 18. DISPUTE

Without affecting the rights of the Purchaser or of the Supplier at law or under any relevant or applicable statute, any dispute in connection with the Agreement must be resolved, at first instance, by discussion between a Representative nominated by the Purchaser and a Representative nominated by the Supplier. If the Representatives fail to resolve the dispute, the dispute shall be referred to mediation. The mediator and the process will be agreed upon by the Supplier and the Purchaser. Notwithstanding the existence of a dispute, the Supplier must continue to perform its obligations under the Agreement.

## 19. RELATIONSHIP

Nothing in the Agreement constitutes the Supplier and Purchaser as partners or agents of the other, or establishes (or is to be taken as establishing) an employment relationship between them.

## 20. WAIVER

A waiver by a party:

- a) in respect of a breach of a provision of the Agreement by the other party will not constitute a waiver in respect of any other breach of that or another provision; and
- b) is not effective unless it is in writing, and only relates to the specific purpose for which it is given.

## 21. NO LIMITATION OF STATUTORY RIGHTS AND SEVERANCE

- a) Nothing in the Agreement has the effect of or is taken to have the effect of excluding, restricting or modifying the provisions of any relevant or applicable statute.
- b) If a word, phrase, sentence, paragraph or clause is unenforceable, illegal or void, then it is severed and the other provisions of the Agreement remain operative.

## 22. VARIATIONS

### 22.1 Variation

The Purchaser may, prior to delivery of Goods or performance of the Services, by written notice to the Supplier, add, omit, amend, supplement or replace the Purchase Order, Specifications or these Conditions. The addition, omission, amendment, supplement or replacement will apply to the Agreement from the date on which the Purchaser gives the Supplier the written notice.

### 22.2 Price

Where an addition, omission, amendment, supplement or replacement under clause 22.1 would result in variation to the Price, the Supplier must immediately advise the Purchaser in writing of the varied Price (which must be determined by the same method of pricing for the provision of the original Goods and/or Services). A variation to the Price is not effective unless it is communicated to the Purchaser in writing and signed by the Purchaser.

### 22.3 Agreement

If, in the opinion of the Supplier, an addition, omission, amendment, supplement or replacement under clause 22.1 is likely to prevent the Supplier from meeting its obligations under the Agreement, it must immediately notify the Purchaser. The Purchaser will decide whether the addition, omission, amendment, supplement or replacement under clause 22.1 will take effect and notify the Supplier of its decision in writing and may, in its discretion, modify the Agreement to the extent required to enable the Supplier to deliver the relevant Goods and/or Services in accordance with the relevant addition, omission, amendment, supplement or replacement.

## 23. PRIVACY

The Purchaser may collect Personal Information for the purposes of performing its obligations under the Agreement.

By executing the Agreement the Supplier consents to the Purchaser using any Personal Information relating to, collected from or disclosed by, the Supplier to perform the Purchaser's obligations under the Agreement. The Purchaser will use that Personal Information in accordance with its Privacy Policy.

The Supplier may contact the Purchaser to gain access to and request correction or amendment to the Supplier's Personal Information.

The Purchaser may disclose the Supplier's Personal Information to:

- a) third parties that are associated or connected with giving effect to the transaction contemplated under the Agreement and the performance of the Supplier's obligations under the Agreement; and
- b) the Supplier's Related Entities (as defined in section 9 of the Corporations Act 2001).

The Supplier:

- c) agrees that the Purchaser may disclose the Supplier's Personal Information to investigate the credit worthiness of the Supplier, including (without limitation), conducting a credit check at any time, making enquiries with persons nominated by the Supplier as trade references, its bankers or any other credit providers (**Information Sources**);
- d) authorises the Information Sources to disclose to the Purchaser all information concerning the Supplier which is within the possession of the Information Sources, and which is requested by the Purchaser; and
- e) consents to the Purchaser giving to, and obtaining from, the Information Sources, Personal Information about the Supplier and information about the commercial credit arrangements of the Supplier for the purpose of collecting overdue payments or for notifying other credit providers of default by the Supplier.

## 24. GOVERNING LAW

The law of Victoria, Australia governs the Agreement. The parties irrevocably submit to the nonexclusive jurisdiction of the courts of Victoria.

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