

## 1. Definitions

In these Terms and Conditions:

- (a) "ACDC" means the Australian Commercial Disputes Centre.
- (b) "Act" means the Corporations Act 2001 (Cth).
- (c) "Lorbrand" means Lorbrand Asia Pacific Pty Ltd (ACN: 168 239 950)
- (d) "Lorbrand Tools" means any tooling, dies, gauges, jigs, fixtures, moulds, equipment, patterns and other facilities supplied by Lorbrand or its Related Body Corporate, either directly or indirectly, to Supplier or paid or to be paid for by Lorbrand or its Related Body Corporate.
- (e) "Force Majeure" means an act of God, a strike, a lockout, act of public enemy, civil commotion, war, blockade, riot, state of emergency, lightning, fire, storm, flood, washout, explosion, Government restraint, or any form or Government intervention and any other cause which is not within the control of the party alleging it.
- (f) "Goods" means the products and, if any, services, specified in the Purchase Contract.
- (g) "GST" and "Tax Invoice" will have the meaning attributed to those terms in A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (h) "INCOTERMS" means the standard accepted commonly used trade Terms and Conditions utilised in international trade as published by the International Chamber of Commerce and entitled "Incoterms 2000".
- (i) "Insolvency Event" means in respect of Supplier death, liquidation, provisional liquidation, voluntary administration, compromise, arrangement, amalgamation, administration, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors, the appointment of a receiver, the inability of Supplier to pay its debts when they fall due, bankruptcy or the filing for bankruptcy under Chapter 11 of the United States Bankruptcy Code or any event that is analogous to the aforementioned events under any Law.
- (j) "Intellectual Property Rights" means patents, design rights, copyrights, trademarks and service marks (whether registered or not and applications for any of the foregoing) know-how and rights of a like nature throughout the world.
- (k) "Law" means any requirement of any statute, rule, regulation, proclamation, ordinance or by-law, present or future and whether state, federal or otherwise.
- (l) "Material Adverse Change" means any change to the circumstances of Lorbrand (beyond the control of Lorbrand) which Lorbrand believes has a material adverse impact on the ability of Lorbrand to observe the Purchase Contract. A Material Adverse Change includes, but is not limited to, the cancellation or variation of an order for products, into which the Goods have been incorporated, by an entity to which Lorbrand supplies the said products.
- (m) "Purchase Contract" means the purchase contract issued by Lorbrand and accepted by Supplier stipulating the Goods to be supplied, the agreed price for the Goods and other details relevant to the supply of the Goods. The Purchase Contract includes any document sent by Lorbrand to Supplier stipulating the quantity and timing of the delivery of the Goods. The Purchase Contract is subject to these Terms and Conditions.
- (n) "Related Body Corporate" has the same meaning as this term has under the Act.
- (o) "Rules" means the rules for Domestic Arbitration prescribed by the ACDC.
- (p) "Supplier" means the seller of the Goods specified in the Purchase Contract.
- (q) "Technical Materials" means all plans, designs, drawings, engineering information, data, specifications, reports, accounts and other material of a technical nature.
- (r) "Tender" means any document, drawing, specification or design issued by Lorbrand pursuant to which Lorbrand has agreed to purchase the Goods from Supplier as described in the Purchase Contract. This includes, but is not limited to, documents, drawings, specifications or designs of an entity to which Lorbrand supplies products.
- (s) "Tender Documents" means the documents applicable to the Tender.
- (t) "Terms and Conditions" means these "Terms and Conditions of Purchase Contract".
- (u) The terms "EXW", "FCA", "FAS", "FOB", "CFR", "CIF", "CPT", "CIP", "DAF", "DES", "DEQ", "DDU" and "DDP" have the meaning these terms are given in the INCOTERMS.

## 2. General

- (a) These Terms and Conditions override any inconsistent terms and conditions in any document or communication used by Supplier in relation to the supply of Goods (including any terms and conditions that may be printed on the underside of or attached to an invoice or delivery docket provided by Supplier) or any industry practice or earlier course of dealing.
- (b) If the Purchase Contract bears reference to a Tender the Tender Documents will apply in addition to these Terms and Conditions. Where the terms of the Tender Document and these Terms and Conditions are inconsistent these Terms and Conditions will prevail.
- (c) If any INCOTERM is nominated in the Purchase Contract, the terms of INCOTERMS applies except as otherwise provided or as inconsistent to these Terms and Conditions.

## 3. Acceptance

If written acceptance of the Purchase Contract is not provided by Supplier to Lorbrand, the commencement of supply of Goods by Supplier will constitute acceptance by Supplier of the terms of the Purchase Contract, including these Terms and Conditions.

## 4. Price

- (a) The price of the Goods is fixed in accordance with the prices listed on the Purchase Contract and is not subject to increases in price without Lorbrand's prior approval in writing. Unless an INCOTERM to the contrary is agreed to by the parties and nominated on the Purchase Contract, the price of the Goods includes delivery to the destination stated in the Purchase Contract and the off-loading of the Goods by Supplier at the point of destination.
- (b) The Price includes any applicable GST. Where GST is payable either:
- (1) Supplier must provide Lorbrand with a Tax Invoice that complies with all requirements in the GST Act; or
  - (2) Lorbrand may require Supplier to accept a Recipient Created Tax Invoice (as provided for in the GST Act) as created by Lorbrand.
- (c) Supplier must submit monthly-itemised invoices to Lorbrand in a form approved by Lorbrand. Unless otherwise stated on the face of the Purchase Contract, Lorbrand will have at least 30 days from the end of the month in which the invoice is received in which to pay Supplier the invoiced amount. Lorbrand may withhold any amount that it disputes in good faith until the dispute has been resolved.
- (d) No interest is payable on the late payment of any amounts by Lorbrand.
- (e) Lorbrand may set-off any amounts payable by Supplier pursuant to clauses 8.3 and 11 against any amounts payable to Supplier.

## 5. Delivery

- (a) Time is of the essence and deliveries must be made both in the quantities and at times specified in the Purchase Contract. Delivery should be made to the location nominated in the Purchase Contract or such other place nominated by Lorbrand by providing Supplier at least 12 hours notice of any change of delivery location.
- (b) Supplier agrees that the cost of delivery is determined according to the INCOTERM nominated on the Purchase Contract, and if no INCOTERM has been nominated, delivery will be DDP.
- (c) If delivery is not made by the date specified in the Purchase Contract, or within a reasonable time if no date is specified, Lorbrand will be entitled to terminate the contract in respect of the Goods undelivered or delivered late and of any Goods already delivered under this contract which cannot be effectively and commercially used by Lorbrand by reason of the non-delivery or late delivery of the first mentioned goods.
- (d) Without limiting the generality of clause 13, upon termination according to clause 5(c) Lorbrand is entitled to:
- (1) Return to Supplier, at Supplier's risk and expense any Goods detailed in clause 5(c) and to recover from Supplier any money paid by Lorbrand in respect of such Goods, and Goods already delivered but which cannot be effectively and commercially used due to non-delivery or late delivery of other Goods;
  - (2) Recover from Supplier any additional expenditure reasonably incurred by Lorbrand in obtaining other goods in replacement of the goods detailed in clause 5(c) and any other damages and losses incurred by Lorbrand arising from late or non-delivery of Goods or any part thereof.
- (e) A notice of shipment must be sent by Supplier to Lorbrand at the time the Goods are shipped, which must state the description of the Goods, the reference number of this Purchase Contract, the name of the vessel, the port of shipment or delivery, shipping route, the quantity loaded, the invoice amount and other particulars from time to time, requested by Lorbrand.
- (f) Supplier must ensure that the Goods are suitably packed or otherwise prepared for shipment so as to secure the lowest transportation and insurance rates and in accordance with the carriers' requirements.
- (g) The packing and marking of the Goods must comply with the Law of Australia and any country from which the Goods are to be exported and in accordance with the instructions of Lorbrand.
- (h) All documents related to the shipping of the Goods must be provided to Lorbrand at the time that the Goods depart the port of export including, without limitation:

- (1) The bills of lading;
- (2) Certificate of insurance;
- (3) Packing declaration;
- (4) Declarations to customs and quarantine authorities;
- (5) Evidence of payment of all customs duties and other charges; and
- (6) Certificate of origin of the Goods.

- (i) If Supplier considers the Goods cannot be delivered in time in accordance with Lorbrand's Purchase Contract, Supplier must notify Lorbrand immediately and give to Lorbrand an estimate of the period of delay and details of the steps, which Supplier proposes to take to minimise the delay. Supplier must comply with Lorbrand's reasonable instructions in order to minimise the delay.

## 6. Warranties

- 6.1 (a) These Terms and Conditions are additional to all warranties, conditions and undertakings express or implied by the Trade Practices Act 1974 (Cth) or any other Law or as set out in the Tender Documents.
- (b) Supplier warrants that all Goods meet the description, specification drawings, data or samples and quality standards provided by Supplier or set out in the Purchase Contract or other document issued by Lorbrand or its representatives to Supplier regarding Lorbrand's requirements for the Goods including, without limitation, the Tender Documents. Any in-progress inspection by Lorbrand's employees or agents or other representative does not affect this warranty.
- (c) Supplier warrants that the Goods are new, of good title, of merchantable quality, made of good materials and workmanship and free from defects, encumbrance, and lien or security interest.

**(d)** Supplier warrants that all Goods are fit for the purpose for which goods of the same kind are commonly supplied and any purpose which Lorbrand or its representatives make known to Supplier, and must be accompanied by any necessary instructions, technical documents, operating and service manuals and any applicable warranties. If a standard of performance is specified Supplier warrants that Goods will be capable of such performance.

**(e)** The Goods must carry any applicable manufacturer's warranty, which passes on to any buyer or customer from Lorbrand without liability to Lorbrand. Supplier must assign to Lorbrand at the request of Lorbrand the benefit of any warranty or guarantee that Supplier has received from any supplier (whether under contract or by implication or operation of law).

**(f)** Supplier warrants to Lorbrand that it will provide all information required by Lorbrand to report the export, import or transport of the Goods in a timely and accurate manner to enable Lorbrand to observe its requirements pursuant to any Law.

**(g)** Supplier warrants to Lorbrand that it holds good title to any Intellectual Property Rights in or associated with the Goods and provides Lorbrand, the successors, assigns, customers and users of Lorbrand's products (incorporating the Goods) and any Related Body Corporate of Lorbrand a license to use any Intellectual Property Rights in or associated with the Goods.

**6.2** Supplier agrees to defend, protect and completely indemnify (including legal expenses on the requisite hourly basis set by Lorbrand's lawyers) Lorbrand, its successor, assigns, customers and the users of Lorbrand's products (incorporating the Goods) and any Related Body Corporate of Lorbrand from and against any claim arising by reason of the use of the Goods, including all claims for actual or alleged infringement of any Intellectual Property Rights.

**6.3** Without limiting the effect of clause 8.1, Supplier agrees to indemnify and keep indemnified Lorbrand against all and any liability arising from the breach of any warranty provided pursuant to clause 6.1.

#### **7. Inspection and return**

**(a)** All Goods are received subject to inspection within a reasonable time after delivery or before delivery at Lorbrand's discretion irrespective of the date of payment. Signed delivery dockets do not mean acceptance by Lorbrand of the Goods delivered but only the number of packages or cartons delivered.

**(b)** Lorbrand may reject any Goods or parts thereof that are not in accordance with the Purchase Contract or these Terms and Conditions. Notice of rejection will be provided to Supplier in writing by Lorbrand and must specify the reasons for rejection. Lorbrand is entitled to return the rejected Goods to Supplier at Supplier's expense and risk.

**(c)** In all cases of rejection Lorbrand will be entitled to require Supplier to replace the rejected Goods with Goods which are acceptable to Lorbrand or request repayment of any money paid to Supplier in respect of the rejected Goods or may terminate this contract.

**(d)** Without limiting the generality of clause 13, upon termination according to this clause:

**(1)** Lorbrand is entitled to return to Supplier at Supplier's risk and expense any Goods previously delivered to Lorbrand which cannot be effectively and commercially used by Lorbrand by reason of not having the rejected Goods and to recover from Supplier any moneys paid by Lorbrand in respect of such Goods; and

**(2)** Supplier is liable for any costs, loss or damage suffered or incurred by Lorbrand in relation to Goods that are rejected including the cost of replacement goods.

#### **8. Defective goods**

**8.1** Should any Goods fail to conform to the warranties contain in clause 6, Lorbrand will notify Supplier and Supplier must, if requested by Lorbrand, indemnify Lorbrand for any incidental and consequential damages cause by such non-conforming Goods, including but not limited to, costs, expenses and losses incurred by Lorbrand:

**(a)** In inspecting, sorting, repairing or replacing such nonconforming goods;

**(b)** Resulting from production interruptions;

**(c)** Conducting recall campaigns or other corrective services actions regardless of whether such campaigns are conducted by Lorbrand or an entity that Lorbrand supplies to and regardless of whether the recall campaign relates to the Goods or a product in which the Goods have been incorporated; and

**(d)** Claims for personal injury (including death) or property damage cause by such non-conforming Goods.

**8.2** If Supplier becomes aware of any matter which may affect the Goods or Lorbrand's use of the Goods, Supplier must notify Lorbrand in writing immediately of the matter giving full details of all relevant information. This includes anything which may affect the composition, characteristics or Lorbrand's use of the Goods, the health, hygiene or safety of any person and Suppliers', Lorbrand's or the Good's compliance with any Law, standard or code of practice.

**8.3** Lorbrand may set-off the amounts owing under clause 8.1 against any amounts otherwise payable by Lorbrand to Supplier.

#### **9. Tooling to remain Lorbrand's property**

**(a)** The Lorbrand Tools remain Lorbrand's property whether during or after the termination of this Purchase Contract.

**(b)** Supplier must keep the Lorbrand Tools in good condition and when necessary repair the Lorbrand Tools at its own expense.

**(c)** Supplier agrees that it will not use any Lorbrand Tools for any purpose

other than to supply Goods to Lorbrand and will return and deliver up the Lorbrand Tools following the expiry or termination of this Purchase Contract.  
**(d)** Without limiting the generality of Clause 16, Lorbrand retains all Intellectual Property Rights in Lorbrand Tools.

#### **10. Changes, Cancellation and Variations**

**(a)** Lorbrand may at any time direct Supplier in writing to change the Goods or any aspect of the supply of the Goods. Supplier's obligation to supply the Goods following such a change will be subject to the parties agreeing upon the applicable prices, rates or charges acting reasonably and with reference to the prices, rates and charges set out in the Purchase Contract.

**(b)** Lorbrand may cancel or vary the Purchase Contract (in whole or part) at any time in response to a legitimate business need of Lorbrand including, without limitation, a Material Adverse Change. Lorbrand must give Supplier written notice of such cancellation or variation and must pay Supplier for all Goods delivered up to the date of cancellation or variation. Unless otherwise agreed, Lorbrand must also purchase Goods which have actually been produced by Supplier but not delivered by Supplier and work in progress and other materials produced or acquired by Supplier to manufacture the Goods but only to the extent to which such items cannot be used by Supplier producing goods for itself. Save as expressly set out in this clause, Lorbrand will have no liability to Supplier for cancelling or varying the Purchase contract.

#### **11. Deduction & Set-Off**

Lorbrand may deduct or set-off against any amount payable to Supplier any amount payable by Supplier to Lorbrand, including but not limited to any amount due by Supplier for Goods rejected by Lorbrand or for warranty claims made by Lorbrand or by its customers that relate to the Goods.

#### **12. Notification of certain events**

Supplier must promptly notify Lorbrand in writing if any of the following events occur or is likely to occur to Supplier:

**(a)** A change in trade name, or place of business;

**(b)** Change in the ownership or control of Supplier;

**(c)** The sale or transfer of all or any part of Supplier's business;

**(d)** The acquisition by any competitor of Lorbrand of any interest of any kind in the ownership of Supplier;

**(e)** An Insolvency Event concerning Supplier or a Related Body Corporate; and

**(f)** Any other matter or thing, which may affect Supplier's ability or capacity to supply the Goods to Lorbrand.

#### **13. Termination**

**(a)** In addition to termination rights set out elsewhere in these Terms and Conditions Lorbrand may terminate this Purchase Contract by written notice to Supplier if:

**(1)** Supplier is in default of any of its obligations set out in the Purchase Contract (including these Terms and Conditions) that is not capable of remedy, or if capable of remedy is not remedied within 30 days of written notice by Lorbrand of such default;

**(2)** Supplier breaches any warranties Supplier has provided under these Terms and Conditions;

**(3)** An event in clause 12, has occurred in relation to Supplier other than a change of trade name or place of business;

**(4)** An Insolvency Event has occurred in relation to a Related Body Corporate of the Supplier; or

**(5)** A Material Adverse Change has occurred in relation to Lorbrand.

**(b)** Upon termination under this clause 13:

**(1)** Lorbrand will have the right to withhold any payment for any Goods not yet delivered by Supplier;

**(2)** Supplier will be liable to Lorbrand for any incidental or consequential losses incurred by Lorbrand as a result of Supplier's default under these Terms and Conditions; and

**(3)** Supplier must return the Lorbrand Tools and grant to Lorbrand an irrevocable license to enter Supplier's premises for the purpose of taking possession of the Lorbrand Tools.

**(c)** Supplier does not have any claim whatsoever at law or equity against Lorbrand if Lorbrand cancels an order under this clause.

#### **14. Property and risk**

**(a)** Property and risk in the Goods will pass according to the INCOTERM elected under the Purchase Contract.

**(b)** Where no INCOTERM is elected under the Purchase Contract property and risk in the Goods will pass to Lorbrand upon Lorbrand taking delivery of the Goods and the Goods having been inspected and accepted by an authorized representative of Lorbrand. Where Goods are delivered in installments the property and risk in the Goods pass to Lorbrand upon delivery of that installment. The passing of property and risk in the Goods will be without prejudice to any right of rejection which Lorbrand is entitled under these conditions.

**(c)** If Lorbrand pays for Goods before they are accepted, that does not constitute acceptance of the Goods.

#### **15. Insurance**

Supplier must maintain at its sole expense insurance with reputable and financially responsible insurance companies, which adequately covers Supplier's liability against Lorbrand and third parties for any incidental and consequential loss or damage arising out of or incidental to any recall campaign pursuant to defective Goods or Goods suspected of being defective.

Lorbrand is entitled to require certain insurance coverages and amounts be taken out by Supplier. Lorbrand may request to see, and Supplier will be required to produce within 48 hours, evidence that this clause has been complied with.

#### 16. Intellectual Property

(a) Lorbrand retains the Intellectual Property Rights in any Technical Materials provided to Supplier under the Purchase Contract.

(b) In return for the payment of the purchase price, the Supplier assigns to Lorbrand all Intellectual Property Rights in any Technical Material created by the Supplier or on the Supplier's behalf for the purpose of the Purchase contract other than any pre-existing Intellectual Property Rights of the Supplier.

#### 17. Confidentiality

Unless otherwise required by Law, Supplier must keep confidential the terms of the Purchase Contract (including but not limited to prices), these Terms and Conditions and all confidential information it receives from Lorbrand or which relates to the Goods or Lorbrand's business, Intellectual Property Rights or other products. Supplier must not make any public announcements or disclosure in relation to the Goods, these Terms and Conditions or its relationship with Lorbrand without Lorbrand's prior written consent. The obligations of this clause continue to apply after the fulfillment of any part of the Purchase Contract or termination or cancellation of the Purchase Contract.

#### 18. Force Majeure

(a) Any delay or failure by either party to perform its obligation will be excused if, and to the extent that, it is caused by Force Majeure, provided notice of such delay or failure (including the anticipated duration of the delay or failure) is given by the affected party to the other party as soon as possible after the Force Majeure (but in no event more than 3 days thereafter).

(b) During the period of such delay or failure to perform by Supplier, Lorbrand may, at its option, purchase Goods from other sources and reduces its scheduled purchases from Supplier by such quantities, without liability to Lorbrand, or have Supplier provide the Goods from other sources in quantities and at times requested by Lorbrand, and at the price set out on the Purchase Contract.

(c) In addition, Supplier, at its expense must take such actions as are necessary to ensure the supply of Goods to Lorbrand for a period of at least 30 days during any anticipated labour disruption or resulting from the expiration of Supplier's labour agreements or contracts. If requested by Lorbrand, Supplier must, within 10 days, provide adequate assurances that the delay will not exceed 30 days. If the delay lasts more than 30 days or Supplier does not provide adequate assurance that the delay will cease within 30 days, Lorbrand may immediately terminate this contract without liability.

#### 19. Limit of liability

(a) The maximum liability of Lorbrand to Supplier as a result of a breach of any of these Terms and Conditions by Lorbrand will be limited to the amount of liquidated damages nominated on the Purchase Contract. This amount represents a genuine estimate of the maximum amount of damages Supplier will suffer in the event of default by Lorbrand.

(b) Should an amount of liquidated damages not be nominated on the Purchase Contract the maximum liability of Lorbrand for breach of the Purchase Contract or these Terms and Conditions will be the total price of Goods ordered under the Purchase Contract.

(c) Lorbrand will in no circumstances be liable to the Supplier, whether in contract or tort or any other basis, for any special, incidental, consequential, indirect or exemplary damages.

#### 20. Compliance with Laws

Supplier must comply at all times with all requirements of any Laws of Australia or of the country of origin of the Goods applying to the Goods including, but not limited to, the manufacture, labelling, transportation, importation, exportation, licensing, approval or certification of the Goods and all other Laws from which liability may accrue to Lorbrand from violation and Supplier agrees to defend, protect and completely indemnify (including legal expenses on the requisite hourly basis set by Lorbrand's lawyers) Lorbrand, its successor and assigns and any Related Body Corporate of Lorbrand from and against any claim arising from any breach of this clause by Supplier.

#### 21. Claims

Any claims that a party has not complied with its requirements under the Purchase Contract or these Terms and Conditions must be brought within a reasonable time.

#### 22. Governing law

This Purchase Contract is governed by the Law of the State of Western Australia without giving effect to international principles of the conflict of laws and Supplier and Lorbrand expressly exclude the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods with respect to sales covered by this Purchase Contract. Lorbrand and Supplier submit to the non-exclusive jurisdiction of the Courts of Western Australia.

#### 23. Dispute resolution

23.1 In the case of a dispute between the parties, the following process for resolution will be followed:

- (a) Internal management conference between the parties within 14 days;
- (b) Mediation within a further 14 days conducted in accordance with Guidelines for Commercial Mediation issued from time to time by the ACDC

and in force at the date of the dispute;

(c) If the party making the claim remains dissatisfied after the meeting convened under clause 23.1, or at any time during or at the conclusion of any mediation held pursuant to clause 23.2, that party may then institute proceedings against the other party.

23.2 For the purposes of clause 23.1:

- (a) The language of the dispute resolution will be English;
- (b) The venue of the dispute resolution will be Australia;
- (c) Each party will bear their own costs and one-half of the costs of any mediation.
- (d) Each party is entitled to legal representation at all stages; and
- (e) The process set out in clause 23.1 will not exclude the rights of the parties to seek urgent interlocutory relief.

23.3 This clause 23 does not constitute an arbitration agreement within the meaning of the Commercial Arbitration Act 1985.

#### 24. Assignment

(a) Lorbrand is entitled to assign any rights, benefits or duties under the Purchase Contract to a Related Body Corporate without requiring the consent of Supplier.

(b) Supplier will not assign or delegate its rights or obligations under the Purchase Contract without the prior written consent of Lorbrand. For these purposes any change to the directors or shareholders of Supplier from the date of this Purchase Contract will require the prior written consent of Lorbrand.

#### 25. Rights are cumulative

The rights of Lorbrand under these Terms and Conditions are cumulative and additional to any other rights Lorbrand may have at Law or in equity.

#### 26. Severability

If any term or condition or part of these Terms and Conditions is illegal, unenforceable or invalid, those Terms and Conditions or part of the Terms and Conditions are to be treated as removed from these Terms and Conditions, but the rest of these Terms and Conditions are not affected.

#### 27. Waiver

Lorbrand will not be deemed to have waived any of its rights or remedies under these Terms and Conditions or at Law by allowing any time or indulgence or by not exercising any right or remedy arising out of any default by Supplier.

#### 28. Variation and replacement

(a) No variation of the Purchase Contract will be of any force unless it is in writing and signed by both parties. (b) Lorbrand may at any time replace or amend these Terms and Conditions, such replacement to be effective from the date specified by Lorbrand in its notice to Supplier ad

(c) Vising of the replacement or amendment.