

PLEXICOR AUSTRALIA PURCHASE ORDER TERMS AND CONDITIONS

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Tax means any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding which is assessed, levied, imposed or collected by any government agency and includes any interest, fine, penalty, charge, fee or other amount imposed in respect of any of the above; and

Tax Invoice has the meaning given to it in the GST Act.

1 Definitions

In these conditions:

Agreement has the meaning given in clause 2.1;

Buyer means MCK Pacific Pty Ltd trading as Plexicor Australia;

Confidential Information means any information relating to the Buyer's business or affairs and includes, without limitation, any:

- (a) trade secrets, know-how, scientific and technical information;
- (b) product, customer, marketing or pricing information;
- (c) information in relation to this Agreement; and
- (d) any other information which the Buyer notifies the Supplier is confidential,

which the Buyer has disclosed (or will disclose) to the Supplier;

Defective Products means Products that are not in conformity with this Agreement, are not to Specification, are defective in design, performance, workmanship, makeup or are the subject of a product recall;

GST Act means A New Tax System (Goods and Services Tax) Act 1999.

Insolvent means in respect of a party, that party:

- (a) being a natural person, dies or commits an act of bankruptcy; or
- (b) being a corporation, takes or has taken against it any action for the winding up of the corporation or the placing of the corporation under external administration or has an administrator or controller appointed over any of its assets; or
- (c) allows any judgement against that party to remain unsatisfied for 14 days without taking formal steps to have the judgment set aside; or
- (d) has execution levied against any of that party's assets.

Intellectual Property Rights includes:

- (a) any copyright (including future copyrights), patent, trade mark (whether registered or common law), registered design or other design right, and any right to apply for the grant or registration of the same; and
- (b) any rights in respect of an invention, discovery, novel design, trade secret, confidential information, know-how, concept, idea, information, data or formula;

Loss means all actions, claims, costs (including actual legal costs), damages, expenses, interest, liabilities, losses (including loss of profit) of any kind, whether direct, indirect or consequential;

Price means the price for supply of Products specified in the Purchase Order and as adjusted under the terms of this Agreement;

Products means the products specified in the Purchase Order;

Purchase Order means a purchase order (including a delivery schedule which forms part of a purchase order) issued by the Buyer in which the specific details of the Product order are contained (including any Special Terms or Specifications attached) and which purchase order incorporates by reference these terms and conditions.

Related Body Corporate has the meaning given to it in the Corporations Act 2001.

Special Terms means any special terms of supply of the Buyer which are attached to the Purchase Order.

Specifications means the Product specification attached to the Purchase Order by the Buyer.

Supplier means the person or entity who is supplying the Products to the Buyer, the details of which are set out in the Purchase Order;

2 Agreement

2.1 These terms and conditions together with the terms set out in the relevant Purchase Order (including any Special Terms and Specifications attached to a Purchase Order) constitute the agreement between the Supplier and the Buyer relating to the supply of Products by the Supplier to the Buyer (**Agreement**).

2.2 To the extent of any inconsistency between these terms and conditions and any Special Terms attached to the Purchase Order, the Special Terms will prevail.

3 Purchase Orders

3.1 The Buyer makes an offer to purchase the Products on the terms and conditions specified in clause 2 at the time it issues a Purchase Order to the Supplier. The agreement between the Buyer and the Supplier is formed when the Supplier accepts the offer of the Buyer, which acceptance occurs on the earlier of:

- (a) the Supplier commencing the supply of Products to the Buyer; and
- (b) the Supplier otherwise notifying the Buyer of its acceptance of the offer.

3.2 The Supplier must fulfil any Purchase Order made by the Buyer for the Products. The Supplier acknowledges that time is of the essence in this Agreement.

3.3 The Buyer's Purchase Order will be the only form that will be recognised by the Buyer as authority for charging Products to its account for Products ordered by, and delivered to, the Buyer in accordance with this Agreement.

3.4 The Buyer may at any time by giving the Supplier notice in writing, change the design, specification, processing or method of packing or shipping or the date or place of delivery of the Products, or any other term specified in the Purchase Order.

3.5 The Supplier must not make any change to the design, specification, processing or method of packing or shipping, or the date or place of delivery of the products unless the Buyer has agreed to such a change in writing.

4 Supply of Products

4.1 The Supplier must supply the Products to the Buyer in accordance with, and as specified in, this Agreement.

4.2 The Supplier must ensure that the following documents and/or information accompanies each delivery of Products to the Buyer;

- (a) packing slips, original bill of lading and/or other relevant transportation receipts;
- (b) details of the quantity of the Products; and
- (c) details of the lot numbers of the containers of the Products.

4.3 The Supplier will pack and mark the Products in accordance with the Purchase Order and the Specifications and all applicable packaging standards of the Buyer as advised to the Supplier from time to time in writing.

4.4 The Supplier must use its best efforts to deliver the Products as expeditiously as possible. If a due date or timeframe for delivery is specified in the Purchase Order or Special Terms, the Supplier must deliver the Products by that due date or within that timeframe, as applicable. Any premium shipping costs incurred will be at the expense of the Supplier.

- 4.5 The Supplier must notify the Buyer as soon as it becomes aware of any anticipated delay or failure in the supply of the Products. The Supplier must take reasonable steps to ensure that its supply line is able to meet its commitments for the purpose of any supply under this Agreement.
- 4.6 The Supplier must notify the Buyer in writing of any Product supersession, consolidation or packaging change at least 90 days before the due date of the Product shipment immediately following such change
- 4.7 The Buyer is not obliged to:
- (a) buy a minimum quantity of Products;
 - (b) maintain or exceed any quantities forecast by the Buyer; or
 - (c) accept or pay for any Products delivered in excess of the quantity or quantities specified in the Purchase Order.
- 4.8 The Supplier represents and warrants to the Buyer that it has the resources, facilities and suitably skilled, qualified and trained personnel to enable it to perform its obligations under this Agreement.

5 Non-exclusivity

Unless otherwise agreed, the Buyer reserves the right to purchase the Products from any other supplier.

6 Price

- 6.1 The Buyer will pay the Supplier the Price for the Products supplied to, and accepted by, the Buyer.
- 6.2 Unless otherwise agreed, the Price is inclusive of:
- (a) all charges for freight, packaging, packing, wrapping, cartons, storage, handling, insurance and delivery of the Products in accordance with this Agreement; and
 - (b) all Taxes other than GST.

7 Invoicing and payment

- 7.1 Subject to clause 7.2, the Supplier must provide the Buyer with a Tax Invoice on or within 14 days after delivery of the Products.
- 7.2 The Buyer will pay all Tax Invoices received from the Supplier under clause 7.1, 60 days after the end of the month in which the Buyer receives the Supplier's Tax Invoice, except where the Buyer:
- (a) exercises its right to reduce the payment under clause 7.3; or
 - (b) disputes the invoice, in which case:
 - (1) the Buyer will withhold payment of the disputed portion of the invoice value until the dispute is resolved; and
 - (2) if the resolution of the dispute determines that the Buyer is to pay an amount to the Supplier, the Buyer will immediately pay that amount on resolution of the dispute.
 - (c) and Supplier have agreed to alternative payment terms.
- 7.3 The Buyer may reduce any payment due to the Supplier and its affiliates and subsidiaries by any amount for which the Supplier is liable to the Buyer and its affiliates and subsidiaries, including credits, warranty claims, costs, charges, penalties, damages and

expenses. This does not limit the Buyer's right to recover those amounts in other ways.

8 Title and risk

- 8.1 Title to and risk in the Products does not pass to the Buyer until the Buyer takes delivery of, and accepts, the Products.
- 8.2 The Supplier warrants that:
- (a) it has complete ownership of the Products free of any liens, charges, intellectual property right, copyright rights and encumbrances and will supply the Products to the Buyer on that basis; and
 - (b) the Buyer will be entitled to clear, complete and quiet possession of the Products.
- 8.3 None of the following constitutes acknowledgement by the Buyer as to the condition of the Product or that the Product is compliant with the terms of this Agreement:
- (a) transfer of title in the Products to the Buyer;
 - (b) delivery of and acceptance of the Products (including signing delivery receipts); and
 - (c) payment for the Products.
- 8.5 The Supplier understands that the Products covered by this Agreement are for the use of the Buyer, its suppliers or its customers. The Products may be incorporated in any products, or subjected to further processes of manufacture by the Buyer or its suppliers. In no event may the Supplier make any claim for royalty or other additional compensation due to or arising out of such use or manufacture.

9 Defective Products

- 9.1 The Supplier must only deliver Products that conform in all respects with the requirements set out in clause 10.1.
- 9.2 The Supplier acknowledges that the Buyer is not required to conduct any inspection or testing of the Products prior to use and the Supplier waives any right to require the Buyer to conduct an inspection of the Products on or after delivery.
- 9.3 If the Buyer, through inspection of the Products or otherwise, finds that any Products are Defective Products, the Buyer may reject the Defective Products by returning them to the Supplier at the Supplier's cost.
- 9.4 At the Buyer's option and request, the Supplier must:
- (a) refund the Buyer any payments made by the Buyer in respect of any Defective Products that the Buyer rejects; or
 - (b) make good free of charge any Defective Products that the Buyer rejects.
- 9.5 The Buyer inspection, testing or acceptance of some or all of the Products does not:
- (a) change or affect the Supplier's obligations under this Agreement; or
 - (b) affect the Buyer's rights to claim for any damage or loss the Buyer may suffer because of the Supplier's breach of warranty or failure to fulfil any of its other obligations under this Agreement.
- 9.6 The Supplier must conduct a sufficient level of sample tests of the Products prior to delivery, to ensure that the Products comply with the Specifications and other terms of this Agreement. The Supplier will bear the costs of such tests.

- 9.7 If the Buyer decides to accept some Products from the Supplier that do not comply with the terms of this Agreement, this decision does not bind the Buyer to accept future deliveries of Products that do not comply with the terms of this Agreement.
- 9.8 The Supplier is liable for all direct, incidental and consequential damages, losses, costs and expenses incurred by the Buyer in connection with the failure of the Supplier to deliver conforming Products or to comply with the shipping and delivery or other requirements of the Buyer, even if the Supplier has made good the Defective Products under clause 9.4(b).

10 Product Warranties

- 10.1 The Supplier represents, undertakes and warrants to the Buyer that:
- (a) the Products match the description and performance criteria required by the Buyer and conform to Specifications, drawings and any other descriptions supplied, or agreed to, by the Buyer;
 - (b) the Products are fit for the purpose for which products of the same kind are commonly supplied and for any other purpose which the Buyer made known to the Supplier before entering into this Agreement;
 - (c) the Products are free of defects and are of merchantable quality; and
 - (d) the Products comply with all relevant statutes, regulations, by-laws, laws, codes and with best industry practices.

The warranties given under this clause 10.1 survive any expiry or termination of the agreement.

11 Insurance

- 11.1 The Supplier must, at its own cost, take out and maintain with a reputable insurer:
- (a) Workers Compensation insurance, as required by law; and
 - (b) product liability insurance and public liability insurance in each case for a minimum cover of \$5 million for each claim, unless varied with the consent of the Buyer.
- 11.2 At the Buyer's request, the Supplier must provide the Buyer with certificates of currency for any relevant insurance policy and any other documentation necessary to satisfy the Buyer that the Supplier is complying with its obligations under this clause 11.
- 11.3 Insurance policies taken out under this clause 11 must:
- (a) include the Buyer as an additional insured;
 - (b) provide a waiver by the insurer of all rights of subrogation, action or relief against any of the insured parties;
 - (c) provide that the policy will not be cancelled, altered or amended without prior written consent from the Buyer; and
 - (d) provide that a failure by any insured party to observe the fulfil the terms and conditions of the policy shall not prejudice the rights of any other insured party.

12 Liability and indemnities

- 12.1 The Supplier is liable for, and must indemnify the Buyer, its employees, agents, contractors and sub-contractors against, any

liability or any Loss of any kind arising directly or indirectly from:

- (a) the breach of any warranty or any of the other terms of this Agreement by the Supplier;
- (b) carrying out a recall of Products supplied by the Supplier, where, in the Buyer's opinion, the recall is required either by law or as a result of the Products not conforming to the standards specified in this Agreement;
- (c) any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind caused or contributed to by the Products;
- (d) any negligence or wilful act or omission by the Supplier or any of its employees, agents, suppliers or sub-suppliers in connection with this Agreement; or
- (e) any claim that the Products, anything the Supplier does in supplying the Buyer with the Products, or the Buyer's use of the Products, infringes or allegedly infringes the Intellectual Property Rights of any person,

except to the extent that any liability or Loss is directly caused by the Buyer's misconduct or negligent act or omission or that of its employees, agents, suppliers or sub-suppliers or sub-contractors.

13 Force Majeure

- 13.1 In this clause 13, Force Majeure means an act of God, war, revolution or any other unlawful act against public order or authority, an industrial dispute, a governmental restraint or any other similar event which is not within the reasonable control of a party.
- 13.2 Where a Force Majeure prevents or delays a party from performing any obligation under this Agreement, that obligation is suspended as long as the Force Majeure continues. If the delay continues for a period of 3 months either party may terminate this Agreement by giving the other party 30 days' notice in writing.
- 13.3 The Buyer may source the Products from a party other than the Supplier if the Force Majeure prevents or delays the Supplier from performing any obligation under this Agreement.

14 GST

- 14.1 Any reference in this condition 14 to a term defined or used in the GST Act is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- 14.2 To the extent that any supply made under or in connection with this Agreement is a taxable supply, the recipient must pay, in addition to the consideration to be provided under this Agreement for that supply (unless it expressly includes GST) an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply, provided that the supplier has first issued to the recipient a tax invoice in respect of that taxable supply.

15 Intellectual Property

- 15.1 The Supplier agrees:
- (a) that the Buyer or Buyer's subcontractor has the right to repair, reconstruct, or rebuild the specific goods delivered under this Agreement without payment of any royalty to the Supplier; and

- (b) that parts manufactured based on the Buyer's drawings and/or specifications may not be used for its own use or sold to third parties without the Buyer's express written authorisation.

- 15.2 The Supplier agrees that copyright and all other rights in parts based on the Buyer's drawings and/or specifications or in parts that are manufactured by the Supplier at the request of the Buyer shall be deemed to be owned by the Buyer and, to the extent necessary, the Supplier hereby assigns to the Buyer all right, title and interest in all copyrights and other rights therein.
- 15.3 The Supplier represents and warrant to the Buyer that the supply of the Products to the Buyer, and the subsequent use and on sale of the Products by the Buyer, will not infringe the intellectual property rights of any third person.

16 Termination

- 16.1 Either party (**Terminating Party**) may immediately terminate this Agreement by written notice to the other party if the other party (**Defaulting Party**):
 - (a) breaches this Agreement in a material respect and, in the reasonable opinion of the Terminating Party, the breach:
 - (1) cannot be remedied; or
 - (2) can be remedied, but is not remedied by the Defaulting Party within 60 Business Days after the Terminating Party gives the Defaulting Party notice of the breach; or
 - (b) becomes Insolvent.
- 16.2 The Buyer may at its option, terminate all or any part of this Agreement at any time and for any reason by giving 30 days written notice to the Supplier.
- 16.3 After receipt of a notice of termination the Supplier must unless otherwise directed by the Buyer, immediately terminate all work under this Agreement and must:
 - (a) terminate all orders and sub-contracts relating to the performance of the work terminated and settle all claims arising out of the termination of such orders and sub-contractors,
 - (b) transfer title of, and deliver to the Buyer all completed work which conforms in quality to the requirements of this Agreement and does not exceed the amount authorised for production by the Buyer; and
 - (c) submit to the Buyer promptly but in any event no later than one month from the effective date of termination, its termination claim.
- 16.4 Upon termination by the Buyer under clause 16.2, the Buyer must pay to the Supplier, without duplication, the price for all Products which have been completed in accordance with this Agreement delivered to the Buyer, but which in respect of which payment has not previously been made.
- 16.5 The Buyer is not liable to the Supplier under clause 16.4 to make any payment:
 - (a) in respect of any claims of the Supplier's subcontractors or for any consequential or indirect loss or loss of profits or for interest on claims or for unamortised depreciation costs; or
 - (b) which exceeds the aggregate price specified in the Purchase Order less payments otherwise made or to be made.

17 Confidentiality

- 17.1 Subject to clause 17.2, the Supplier must not disclose Confidential Information without the prior consent of the Buyer (which consent must not be unreasonably withheld).
- 17.2 The Supplier may disclose Confidential Information which:
 - (a) at the time of disclosure is in the public domain, but not as result of a breach of clause 17.1;
 - (b) is required to be disclosed for the purpose of performing its obligations under this Agreement; or
 - (c) is required by law to be disclosed.
- 17.3 The Supplier must procure confidentiality undertakings (on terms satisfactory to the Buyer) from its suppliers in relation to any further disclosure of Confidential Information.
- 17.4 The Supplier must return any Confidential Information to the Buyer on demand.

18 General

- 18.1 These terms and conditions are governed by the laws of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of that State and courts entitled to hear appeals from those courts.
- 18.2 These terms and conditions together with the terms of the Purchase Order and any Special Terms and Specifications constitute the entire agreement between the Supplier and the Buyer.
- 18.3 (a) A party waives a right under this Agreement only if it does so in writing.
(b) A waiver of one breach of a term of this Agreement does not operate as a waiver of another breach of the same term or any other term.
- 18.4 A variation of any terms of this Agreement must be in writing and signed by the parties.
- 18.5 Unless otherwise provided in this Agreement, the Supplier must not assign, create an interest in or otherwise deal with its rights or obligations under this Agreement without the prior written consent of the Buyer. A change in the effective control of the Supplier will be deemed to be an assignment of these terms and conditions for the purposes of this clause 18.5. If there is a change in the effective control or ownership of the Buyer, the Buyer may terminate all or any part of this Agreement by written notice to the Supplier. Upon termination by the Buyer under this clause 18.5, the Buyer must pay to the Supplier the amount set out in clause 16.4.
- 18.6 The Supplier and the Buyer are independent contracting parties and nothing in this Agreement shall make either party the agent or legal representative of the other or grant either party any authority to assume or create an obligation on behalf of the other.
- 18.7 Any provision of, or the application of any provision of these conditions which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.
- 18.8 The Supplier must not subcontract any or all of its obligations under this Agreement without first obtaining the Buyer's consent in writing.