



## AUSTUNNEL (VIC) PTY LTD (ACN 639 806 910) TERMS AND CONDITIONS OF PURCHASE ORDER

These are Terms and Conditions of Purchase of all Goods purchased by AUSTUNNEL (VIC) PTY LTD (ACN 639 806 910) ("Company"). Except as otherwise expressly agreed upon in writing between a duly authorised officer of the Company and the Supplier, these Terms and Conditions will apply notwithstanding any provisions to the contrary which may appear on any order form or other document issued by any Supplier.

### 1. GENERAL

- 1.1 All orders placed by the Company are subject to these Terms and Conditions and the Company may, at any time and from time to time, vary or alter these Terms and Conditions. The Company will provide the Supplier with 30 days' notice of any changes to the Terms and Conditions in writing, and the new Terms and Conditions will apply to all orders placed after the expiry of that 30-day period. If the Supplier does not consent to any alteration to the Terms and Conditions, the Supplier may terminate their agreement with the Company, within the 30-day notice period, providing there are no outstanding orders to be delivered to the Company by the Supplier. These Terms and Conditions should be read in conjunction with the Company's Privacy Policy. These Terms and Conditions supersede all prior agreements and understandings and to the extent permissible by law any implied terms or representations are expressly excluded or negated.
- 1.2 If a Supplier cancels or alters any order or part order for special products or standard products with special materials at any time after the Company has ordered those products, then the Company reserves the right to cancel that order without payment, and the Supplier will refund the Company for any payments made in relation to the cancelled order.
- 1.3 Any representation, warranty, condition or undertaking that would be implied into these Terms and Conditions by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law. Nothing in these Terms and Conditions excludes, restricts or modifies any condition, warranty, right or remedy conferred on a party by the Competition and Consumer Act 2010 or any other applicable Australian law that cannot be excluded, restricted or modified by agreement.
- 1.4 The following definitions shall be used for the purpose of interpreting the Purchase Order and these Purchase Order Terms and Conditions:
  - 1.4.1 "Goods" includes without limitation any machinery, plant, equipment, apparatus, materials, articles, services and things of all kinds to be supplied, delivered or performed by Supplier in accordance with the Purchase Order. It also includes any special products or standard products.
  - 1.4.2 "Purchase Order" means an agreement between Purchaser and Supplier comprised of the Purchase Order Form, these Purchase Order terms and conditions, any special conditions and attachments. The Purchase Order supersedes all previous communications and negotiations and shall be acknowledged by the Company as sole authority for charging Goods to its account.

### 2. PRICING

- 2.1 This Purchase Order is placed on a firm price basis in accordance with the price(s) agreed between the Company and the Supplier.
- 2.2 Pricing is in Australian Dollars unless otherwise indicated.
- 2.3 If there is any error or omission in a quotation, Purchase Order or pricing, the Company reserves the right to fix the price at the price agreed between the Company and the Supplier.
- 2.4 Unless otherwise stated, all prices include any relevant tax amount imposed on the sale of that good or service.

### 3. TERMS OF PAYMENT

- 3.1 All payments due to the Supplier will be made within thirty (30) calendar days from the end of the calendar month during which the invoice was issued to the Company by the Supplier. Payment will be considered to be made when the funds have left the Company's bank account.
- 3.2 If the Company fails to make payment in accordance with the terms of clause **Error! Reference source not found.**, the Supplier will be entitled to:
  - 3.2.1 charge default interest at the rate of 5% per annum on the relevant outstanding invoice;
  - 3.2.2 following the non-payment of three consecutive invoices, provide a 30-day notice to the Company stating that they intend to cease all work remaining to be performed until the Company under the invoices and any additional interest have been paid; and
  - 3.2.3 place a hold on any agreement in relation to delivery of products that have not been delivered following the Company's third non-payment, until an agreement is reached between the Company and Supplier.

### 4. DELIVERY & INSPECTION

- 4.1 The Company will not be required to pay any deposit until an authorised representative of the Company has approved the pre-production samples of the Goods.

- 4.2 The Supplier must ensure that the Goods are in accordance with and conform to any specifications, drawings, pre-production samples or other description provided by the Company to the Supplier.
- 4.3 All Goods are received subject to inspection of the Goods. The Company will inspect the Goods within 30 days after delivery at the Company's discretion irrespective of date of payment.
- 4.4 Signed delivery dockets do not mean acceptance by the Company of Goods delivered, but only the number of packages or cartons delivered.
- 4.5 The Company will notify the Supplier of any defects appearing in Goods delivered by the Supplier within 30 days of the date of delivery, and will return the defective Goods to the Supplier, the cost and freight charges of which will be payable or refundable by the Supplier and at the Supplier's risk.
- 4.6 The Supplier will not be liable for any mis-delivery, shortage, defect or damage unless the Supplier receives details in writing within the 30-day period after the date of delivery.
- 4.7 Any additional reasonable expense incurred by the Company in such return is payable by the Supplier and may be set off by the Company against any moneys otherwise due by the Company to the Supplier.
- 4.8 Any delivery date or time agreed by the Company and the Supplier is final and the Supplier must endeavour to meet that date or time.
- 4.9 Failure to meet the agreed delivery date or time will confer to the Company a right to:
  - 4.9.1 terminate the agreement;
  - 4.9.2 impose penalties; and/or
  - 4.9.3 cancel the order without making payment,and the Supplier will be liable for any loss or damages directly or indirectly sustained by the Company as a result thereof.
- 4.10 In accordance with clause 4.9.2 the Company will be entitled to impose the following penalties on the Supplier if there is a delay (and that delay is not communicated to the Company before shipment of the order) in delivery of the Goods:
  - 4.10.1 Between 1 to 7 days: 5% off the total order price;
  - 4.10.2 Between 8-14 days: 10% off the total order price;
  - 4.10.3 Between 15- 21 days: 15% off the total order price;
  - 4.10.4 Between 22-30 days: 20% off the total order price; and
  - 4.10.5 After 30 days the Company will cancel the order without making payment.
- 4.11 The Supplier's obligation to deliver will be discharged on arrival of the products at the Company's nominated delivery destination, nominated transport company, nominated agent or the address appearing on the Purchase Order.
- 4.12 Purchase orders with Free on Board terms will be delivered free of charge to the Company's receiving facility and total freight charges will be at the Supplier's expense.

### 5. SUPPLIER OBLIGATIONS

- 5.1 The Supplier must provide the Company with all necessary assistance, cooperation and input in all matters associated with the Goods.
- 5.2 The Supplier must ensure that all technical drawings are issued prior to the Goods being supplied (or the services commencing, if applicable) and are provided in a timely fashion to the Company as required by the Company.
- 5.3 Upon receipt of Purchase Order, the Supplier shall confirm that there are no discrepancies. The Supplier must acknowledge the Purchase Order by signing and returning the Purchase Order to the Company within five (5) days of receipt of Purchase Order. In the absence of such acknowledgment, the performance of the Purchase Order by Supplier shall constitute acceptance of the Purchase Order.
- 5.4 The Supplier must not impose a penalty/penalties on any act or omission on the part of the Company during the course of the provision of any Goods (including but not limited to any services) other than as set out in these Terms and Conditions.
- 5.5 The Supplier represents and warrants that all information and representations that it, or any person acting on its behalf has given in relation to the Goods (including but not limited to any services) are true and correct. The Supplier also warrants that it has disclosed everything relevant to the Goods (and the services) that may affect the Company's decision to supply Goods or services. The Supplier confirms that there are no outstanding court proceedings or current disputes which may have an adverse effect on it performing its obligations under these Terms and Conditions.
- 5.6 The Supplier must always adhere to and discharge its obligations under the applicable work health and safety legislation and take all necessary action to safeguard the health and safety of any employees, contractors, agents, or representatives of the Company during the provision of goods or services under this agreement.

### 6. PROPERTY AND RISK

- 6.1 The title and risk in any products supplied will pass to the Company upon actual delivery to the Company.
- 6.2 To the extent permitted at law, the Company will not be liable to the Supplier or any third party for liquidated damages in any form, any consequential loss including

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(without limitation) any loss of profits, loss of revenue, loss of production, loss of business opportunity, loss of goodwill, loss of business reputation, economic loss or any indirect, remote and/or unforeseeable loss. The aggregate liability of the Company in damages (however arising) in respect of any act or omission of the Company in connection with its obligations under these Terms and Conditions will not exceed the amount of one hundred dollars (AUD\$100), even if the Company has been advised by the Supplier as to the possibility of such loss being incurred.

## 7. CONSUMER LAW

- 7.1** The supplied Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Company is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Company is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure. The term "major failure" has a defined meaning under the Australian Consumer Law.
- 7.2** Consumers may rely upon their statutory rights and remedies under the Australian Consumer Law.
- 7.3** The Supplier can be contacted in relation to claims as follows:

Telephone Number:

Email Address:

Mailing address:

- 7.4** Any cost incurred in contacting the Supplier or delivering the product to the Supplier resulting from any claims will be borne by the Supplier.

## 8. FORCE MAJEURE

- 8.1** The Supplier will not be liable for any failure or delay in supply, delivery where such failure or delay is wholly or partly due to any cause or circumstances whatsoever outside the reasonable control of the Supplier including, but not limited to war, government restrictions or intervention, fire, act of God, storms or tempest (each an "Event of Force Majeure"). The Supplier's obligations will be suspended until the Event of Force Majeure ceases to cause the failure or delay (as the case may be).
- 8.2** The Supplier must provide the Company with written notice of any failure or delay in its obligations as soon as practicable after an Event of Force Majeure occurs. The Company may withhold any impending payments in relation to a purchase order until the Supplier has resumed its obligations under this agreement.

## 9. DESIGN RIGHTS

- 9.1** The Supplier agrees to defend, protect, and indemnify the Company, its successors, and assigns, from and against any claim arising from the lawful use of the Goods by the Company or third parties. This includes all claims for actual or alleged infringement of any patents, trademarks, copyright, design, confidential information, or similar protection whether granted by the Commonwealth of Australia or any foreign state or the common law. This is provided that the Supplier will not indemnify the Company, from or against any claim to the extent that such claim arises as a result of the negligence, wilful misconduct, fraud or breach of duty by the Company or its employees or agents.
- 9.2** Special dyes, tools, patterns and drawings specially created or commissioned by the Supplier at the cost of the Company for the manufacture of the Goods (Company's Tools), remain the Company's property whether during or after the termination of this agreement.
- 9.3** The Supplier must use reasonable endeavours to keep the Company's Tools in good condition.
- 9.4** The Supplier agrees that it will not without the Company's prior written consent use any of the Company's Tools in the production, manufacture or design of any other articles, nor of larger quantities of the Goods than those required on this order.
- 9.5** While the Supplier is in possession of the Company's Tools, it acknowledges that it is a bailee of them and owes the Company and owes the Company the duties, responsibilities and liabilities of a bailee.
- 9.6** At the termination of this agreement each of the Company's Tools must be disposed of as the Company directs.

## 10. CONFIDENTIAL INFORMATION

- 10.1** Any Goods or work made or done according to the Company's design or specifications or developed for the Company at the direction of the Company, or any original or copy designs or specifications supplied by the Company are held by the Supplier on the Company's behalf and at the Company's disposal and must not be disposed of or furnished to any other person, firm or business without the Company's written consent. The Supplier must take all reasonable precautions to protect such confidentiality.
- 10.2** The Supplier must not, without the Company's prior written consent, advertise or publish the fact that the Supplier and the Company have entered into an agreement for the manufacturing or the sale of the Goods.

## 11. LICENCE

- 11.1** The Supplier hereby irrevocably grants to the Company, its agents and servants an unrestricted licence, without notice, to enter premises occupied by the Supplier to identify and remove any of the Goods the property of the Company, in accordance with these Terms and Conditions without in any way being liable to the Supplier or

any person claiming through the Supplier. The Company will have the right to sell or dispose of any such Goods removed or otherwise in its sole discretion and will not be liable for any loss occasioned thereby.

## 12. INSURANCE

- 12.1** The Supplier must take out and maintain for the duration of the services (and in relation to Professional Indemnity Insurance for a period of 7 years after the conclusion of the services) the following insurance at least to the level set out in the table below, based on the total of the fees payable for the services:
- 12.1.1** Under \$30,000.00 in Fees payable - Public Liability Insurance \$10 million per event and Professional Indemnity Insurance \$2 million per event.
- 12.1.2** Above \$30,000.00 but less than \$50,000.00 in Fees payable - Public Liability Insurance \$10 million per event and Professional Indemnity Insurance \$5 million per event.
- 12.1.3** Above \$50,000.00 but less than \$2,000,000.00 in Fees payable - Public Liability Insurance \$10 million per event and Professional Indemnity Insurance \$10 million per event.
- 12.1.4** Above \$2,000,000.00 in Fees payable - Public Liability Insurance \$20 million per event and Professional Indemnity Insurance \$20 million per event.
- 12.2** The Company may change the required insurance levels for any Supplier from time to time at its sole discretion by writing to the relevant Supplier.
- 12.3** The Supplier will produce a certificate of currency and copies of the insurance policies in relation to the above insurances on the request of the Company.

## 13. INDEMNITY

- 13.1** To the extent permitted at law, the Supplier indemnifies the Company, its employees, and agents from and against all Loss which incurred or sustained in respect of or by reason of or arising out of:
- 13.1.1** any negligence or other wrongful act or omission of the Supplier, its employees, contractors, agents, licensees, invitees or visitors or of any other persons for whose acts or omissions the Supplier is vicariously liable;
- 13.1.2** death, injury, loss of or damage to the Supplier, or its employees, agents, contractors, licensees, invitees, or visitors; or
- 13.1.3** any material breach of these Terms and Conditions by the Supplier.
- 13.2** For the purposes of clause 13.1, Loss includes (to the full extent of and so far as the law allows) claim, action, suit, demand, loss, or damages whether suffered or incurred in contract, tort, under statute or otherwise (including as a result of negligence) and any other loss, damage, cost or expense including any legal expense.

## 14. DISPUTE RESOLUTION

- 14.1** If at any time during the duration of these Terms and Conditions, a dispute arises, both parties agree to comply with the dispute resolution process set out in clauses 14.2 to 14.6 below.
- 14.2** A party with a complaint against the other is first required to notify the other of the dispute by giving written notice specifying the nature of the dispute, the outcome required, and the action believed necessary under the circumstances that will assist both in settling the dispute. The other party must respond within ten (10) business days of receipt of the notice, responding to the allegations and proposing remedial action.
- 14.3** If not accepted by the other party, both parties will then in good faith attempt to resolve the dispute by negotiation.
- 14.4** If negotiation is not successful, the parties will agree to a process of mediation between the parties.
- 14.5** The parties agree that any Court proceedings commenced by any party before the above dispute resolution process is adhered to, must be stayed until the process is completed.
- 14.6** Clauses 14.2 to 14.5 do not prevent either party from bringing an urgent interlocutory application or injunction.

## 15. TERMINATION

- 15.1** The Company may terminate the agreement or cancel an order where:
- 15.1.1** the Supplier fails to comply with any of these Terms and Conditions;
- 15.1.2** being a natural person or persons commits an act of bankruptcy or being a corporation passes a resolution for winding up or liquidation (other than for the purpose of reorganisation or reconstruction) or enters into any composition or arrangement with creditors or if a receiver, manager, receiver manager or administrator is appointed for any property or assets of the Supplier or becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up, or if a Liquidator or Provisional Liquidator is appointed;
- 15.1.3** the Supplier delivers the Goods after the delivery date.
- 15.2** Where the Company cancels an order under 15.1.3 within 2 days after the delivery date has lapsed, the Supplier does not have and may not prosecute any claim whatsoever at law or in equity against the Company. This is provided that the failure of the supplier to deliver the Goods on the delivery date was not due to the conduct of the Company.
- 15.3** The Company may, in addition to exercising all or any of its rights against the Supplier, suspend any further deliveries and immediately enter premises occupied by the Supplier to recover possession of any Goods owned by the Company in

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accordance with these Terms and Conditions without in any way being liable to the Supplier or any person claiming through the Supplier.

**15.4** The Supplier may terminate the agreement or cancel an order where:

- 15.4.1** the Company fails to comply with their obligations under these Terms and Conditions after reasonable notice has been given to the Company to allow the Company to remedy the default where the default is remediable, and the default has not been remedied after that period of notice;
- 15.4.2** the Company passes a resolution for winding up or liquidation (other than for the purpose of reorganisation or reconstruction) or enters into any composition or arrangement with creditors or if a receiver, manager, receiver manager or administrator is appointed for any property or assets of the Supplier or becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up, or if a Liquidator or Provisional Liquidator is appointed; or
- 15.4.3** the Company fails to make payment for the Goods in accordance with these Terms and Conditions after 30 days' notice of termination has been given to the Company to allow the Company to remedy the default and the default has not been remedied after that period of notice.

**16. NOTICES**

- 16.1** Any notice to be given to the Company or Supplier under these Terms and Conditions must be in writing and must be sent by post, facsimile, or email to the address of that party shown in the Purchase Order.
- 16.2** Notice is deemed to have been given at the time it would have been received in the normal course of post if sent by post, or if otherwise given at the time it was actually received.

**17. COUNTERPARTS**

- 17.1** This agreement may be executed in any number of counterparts, and in that case, each is an original and all counterparts together constitute the same document.

**18. GOVERNING LAW AND JURISDICTION**

- 18.1** The Supplier agrees that these Terms and Conditions will be construed according to the Laws of the State of New South Wales. The Customer consents to any proceedings being instituted and heard by any appropriate Court sitting in the State of New South Wales applying the Laws of New South Wales.

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