



# Direct Procurement: Purchase Order Terms and Conditions

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## 1. Supply and delivery of goods

- 1.1. The Supplier must supply the Goods in accordance with the Contract.
- 1.2. The Supplier must deliver the Goods to the place and by the date specified in the Purchase Order, or if no date is specified, within a reasonable time.
- 1.3. If the Supplier does not deliver the Goods in accordance with clause 1.2, GPC AP may cancel the Purchase Order without incurring any cost.

## 2. Payment and set off

- 2.1 Subject to clause 2.3, GPC AP will pay the Supplier the Price for the Goods on the first Business Day of the second month following the month in which the Goods are receipted into GPC AP's inventory system (for supply into Australia) or 30 days from the date of invoice (for supply into New Zealand).
- 2.2 Unless the Purchase Order states otherwise, the Price includes all Associated Costs.
- 2.3 If the Goods are Defective Goods or GPC AP determines that an amount is owing from the Supplier to GPC AP, GPC AP may (acting reasonably) assess the reduction in the Price and set off that amount from the Price.
- 2.4 If the Supplier disagrees with GPC AP'S assessment in clause 2.3, it must comply with clause 11.

## 3. Ownership and risk

- 3.1 Title in the Goods passes to GPC AP when GPC AP receives the Goods.
- 3.2 Risk in the Goods passes to GPC AP after the Goods have been delivered and GPC AP has had a reasonable opportunity to inspect the Goods and confirm that they are not Defective Goods.

## 4. Intellectual Property

- 4.1 GPC AP acknowledges that the Intellectual Property Rights in the Goods remain vested in the Supplier.
- 4.2 The Supplier grants to GPC AP an irrevocable, transferrable, non-exclusive, royalty-free licence to use the Intellectual Property Rights in the Goods for the purpose of marketing and selling the Goods in Australia and New Zealand.
- 4.3 The Supplier must take all necessary steps to protect and register the Supplier's Intellectual Property Rights in Australia, New Zealand and any other jurisdiction in which the Supplier manufactures all or part of the Goods.
- 4.4 The Supplier warrants that it is entitled to grant the licence in clause 4.2.
- 4.5 The licence granted under clause 4.2 applies for as long as GPC AP holds the Goods.
- 4.6 The Supplier must not use GPC AP's Intellectual Property Rights without GPC AP's express written consent.

## 5. Warranties

- 5.1 The Supplier warrants that:
  - (a) it is authorised to enter into and perform the Contract;
  - (b) it owns the Goods;

- (c) the Goods do not infringe any Intellectual Property Rights;
- (d) the Goods are not Defective Goods; and
- (e) in performing the Contract, it will comply with all relevant Law.

## 6. Confidentiality

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

## 7. Insurance

- 7.1 The Supplier must hold and maintain a policy of public liability insurance of not less than \$10 million per claim for the duration of the Contract.
- 7.2 The policy must cover the Supplier for any Liability in connection with the Contract and arising from:
  - (a) personal injury or death; and
  - (b) loss or damage to property.
- 7.3 Upon request, the Supplier must provide GPC AP with a copy of the certificate of currency.

## 8. Indemnity and limit of liability

- 8.1 The Supplier is liable for and must indemnify GPC AP against any Liability arising out of or in connection with:
  - (a) the Supplier's breach of the Contract;
  - (b) Defective Goods;
  - (c) personal injury or death;
  - (d) any wilful, unlawful or negligent act by the Supplier or that of its employees, agents or contractors; and
  - (e) damage to property.
- 8.2 The Supplier's liability under clause 8.1 shall be reduced to the extent that any Liability is caused by GPC AP's wilful misconduct or negligence, or that of GPC AP's employees or agents.
- 8.3 GPC AP is not liable to the Supplier for any Consequential Loss, howsoever arising.

## 9. Product recall

- 9.1 If a Product Recall is instigated, the Supplier must:
  - (a) provide all necessary assistance to enable GPC AP to return the Goods to the Supplier;
  - (b) pay for the cost of all advertising, freight and any other costs incidental to the Product Recall, including GPC AP's internal costs; and
  - (c) refund to GPC AP the cost of the Goods.

## 10. Defective goods

- 10.1 If you deliver any Defective Goods, GPC AP may (in addition to its right under clause 2.3):
  - (a) reject the Defective Goods, in which case the Supplier must accept them;
  - (b) return them to the Supplier at the Supplier's risk and expense;



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- (c) require the Supplier to collect the Defective Goods; and
- (d) require the Supplier to replace the Defective Goods free of charge.

### 11. Disputes

- 11.1 If a dispute arises between the parties, either party may provide the other party with a Dispute Notice.
- 11.2 If a party receives a Dispute Notice, it must nominate a senior representative with authority to settle the dispute.
- 11.3 Within 10 Business Days of receiving the Dispute Notice, the senior representatives must meet at least once to attempt, in good faith, to settle the dispute.
- 11.4 If, after complying with clause 11.3, the dispute is not resolved, either party may immediately commence proceedings.
- 11.5 Nothing in this clause 11 prevents a party from seeking interlocutory relief.
- 11.6 If a dispute arises, the parties must continue to perform their obligations under the Contract.

### 12. Termination

- 12.1 If the Supplier breaches a material obligation under the Contract, GPC AP may immediately terminate the Contract and, subject to clause 2.3, will only be liable to pay the Supplier for the Goods supplied in accordance with the Contract.
- 12.2 If GPC AP breaches clause 2, the Supplier must comply with clause 11.
- 12.3 If either party becomes Insolvent, the other party may, by notice in writing, immediately terminate the Contract.

### 13. General

- 13.1 Clauses 4, 6, 8 and this clause 13.1 survive termination of the Contract.
- 13.2 The Contract is the entire agreement and no other terms govern the supply of the Goods by the Supplier.
- 13.3 The Contract cannot be amended except in writing signed by both parties.
- 13.4 GPC AP's rights under the Contract can only be waived by GPC AP in writing.
- 13.5 If a term of the Contract is held to be unenforceable, that term may be severed from the Contract without affecting the enforceability of the remaining terms.
- 13.6 The Contract is governed by the Laws of Victoria (for supply into Australia) and by the Laws of New Zealand (for supply into New Zealand).

### 14. Definitions

**Associated Costs** means costs of packaging, packing, insurance, freight and taxes (other than GST).

**Business Day** means a day other than a Saturday, Sunday or a public holiday in Melbourne, Victoria and New Zealand.

**Confidential Information** means information relating to the other party which has come into the party's possession as a

result of or in connection with the Contract, but excludes information which is required to be disclosed by Law.

**Contract** means the Purchase Order and the Terms and Conditions.

**Consequential Loss** means loss of profit, loss of revenue, loss of opportunity and loss of contract.

**Defective Goods** means Goods that do not comply with the Purchase Order, these Terms and Conditions or Law, are not new or of acceptable quality, design, workmanship or performance or are defective in any other way.

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

**GPC AP** means GPC Asia Pacific Pty Ltd, GPC Asia Pacific Limited and their Related Companies.

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

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

**Insolvent** means a party:

- (a) becomes or is presumed insolvent (as that term is defined under the *Corporations Act 2001* (Cth) or the *Companies Act 1993* (NZ)); or
- (b) is wound up, in liquidation, in provisional liquidation or under administration.

**Intellectual Property Rights** include:

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

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

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

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

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

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

**Related Companies** has the same meaning as *related bodies corporate* (as that term is defined in the *Corporations Act 2001* (Cth) or the *Companies Act 1993* (NZ)).

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

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