

## MURRAY ZIRCON PTY LTD - Terms and Conditions of Purchase

### Definition

Where the context permits:

**Agreement** means the agreement between the Vendor and the Customer for the supply of Goods by the Vendor to the Customer and shall be constituted by these terms of purchase, the Purchase Order and, if any, the Vendor's quotation.

**Confidential Information** means all information (including without limitation, trade secrets, know how, processes, supplier details, operating procedures and technical information) relating to the MZ Group, in any form or media whatsoever, that is provided or otherwise made available (directly or indirectly) to the Vendor or the Vendor's employees in connection with the Goods at any time before, on or after the date of the Purchase Order but does not include information which at the time of disclosure was or is in the public domain, except through disclosure by breach of these Terms or other obligation of confidentiality. **Customer** means Murray Zircon Pty Ltd ABN 75 147 048 744 or such other member of the MZ Group as provides a Purchase Order.

**Distress Event** means the happening of any of the following events in relation to a body corporate:

- (a) the body corporate becomes a Chapter 5 body corporate under the Corporations Act;
- (b) without limiting paragraph (a), a controller, administrator, receiver, receiver and manager or analogous person is appointed to the body corporate or any of the body corporate's property or any steps are taken for the appointment of such a person (except where the steps taken are reversed or abandoned within 10 Business Days);
- (c) any steps are taken (including, without limitation, the making or passing of an application, order or resolution) with respect to the appointment of a liquidator or provisional liquidator for the winding up of the body corporate (unless those steps are stayed, withdrawn or dismissed within 10 Business Days);
- (d) the body corporate is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act;
- (e) the body corporate is or becomes, or its directors state that it is, or has become, unable to pay its debts as and when they become due and payable;
- (f) any steps are taken to deregister the body corporate under the Corporations Act (except where the steps taken are reversed or abandoned within 10 Business Days); or
- (g) the body corporate ceases or threatens to cease to carry on its business or any major part of its business.

**Encumbrance** means any mortgage, pledge, lien, hypothecation, charge or other form of Security Interest or interest in the nature of a Security Interest (and **encumber** has a corresponding meaning);

**Goods** means the goods and services agreed to be supplied by the Vendor and purchased by the Customer pursuant to the Agreement.

**GST** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**), or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

**Purchase Order** has the meaning given to that term in clause 3 below.

**Security Interest** means:

- (a) any security interest under the *Personal Property Securities Act 2009* (Cth), mortgage, charge, pledge, lien, retention of title arrangement, set-off arrangement or other arrangement having the same or equivalent commercial effect as a grant of security; or

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- (b) any agreement to create or give rise to any interest or arrangement of the type referred to in paragraph (a);

**Vendor** means the person with whom the Customer has agreed to purchase the Goods pursuant to the Agreement.

### Quotations and Purchase Orders

- 1 Quotations from the Vendor are valid for a period of 30 days from the date of issue or as otherwise specified in the quotation.
- 2 To purchase the Goods, the Customer will place with the Vendor a written purchase order setting out an order number, the Vendor's quotation number (if applicable), full description of the Goods to be purchased, the delivery date, delivery point and any other information considered relevant by the Customer (**Purchase Order**). The Vendor is responsible for ensuring the accuracy of the details of the Purchase Order.
- 3 A contract is formed by and upon the Vendor's acceptance or deemed acceptance of the Purchase Order and the contract shall be governed solely by this Agreement to the exclusion of any conditions of sale appearing on any document of the Vendor. The Customer may withdraw the Purchase Order at any time prior to acceptance by the Vendor.
- 4 The Agreement prevails to the extent of any inconsistency between the Agreement and any other agreement between the parties with respect to the Purchase Order.

### Payment of purchase price

- 5 The purchase price, unless otherwise expressly stated, shall be inclusive of delivery charges, packaging, freight, assembly costs, installation costs, insurance or any statutory, sales, excise, goods and services or other taxes, duties or imposts.
- 6 Payment of the purchase price must be made in full within 30 days after the end of the month of invoice or otherwise in accordance with the Customer's credit arrangement with Vendor provided that the Vendor's invoice complies with this Agreement.
- 7 The Vendor acknowledges that the Customer is a member of a group of companies which have as their ultimate parent Murray Zircon Pty Ltd (**MZ Group**). The Vendor agrees that any member of the MZ Group is entitled to exercise a right of set off to the extent the Vendor is indebted to the Customer or to any member of the MZ Group against any monies due by the Customer or by any member of the MZ Group to the Vendor.
- 8 If GST is payable on a supply pursuant to the Agreement, the Customer will also pay to the Vendor an additional amount equal to the GST payable provided the Vendor has provided to the Customer a tax invoice that complies with the GST Act.

### Warranties

- 9 The Vendor represents and warrants to the Customer that the Goods will:
  - (a) be new;
  - (b) be fit for their intended purpose;
  - (c) comply with the requirements of all relevant standards in Australia and with any other contractual obligations of the Customer to a third party (as disclosed to the Vendor by the Customer);
  - (d) are of merchantable quality;
  - (e) conform with all specifications, drawings, samples or other description furnished by the Customer to the Vendor; and

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- (f) be free from any defects in design, manufacturing, materials and workmanship.
- 10 The Vendor will provide to the Customer any compliance documentation relating to the Goods contemporaneously with delivery of the Goods. The Vendor warrants to the Customer that the Vendor and the Vendor's employees, agents, officers, representatives and other for whom the Vendor is responsible will comply with:
  - (a) all relevant occupational health and safety laws and regulations;
  - (b) the Customer's safety policies;
  - (c) all reasonable instructions given by the Customer to the Vendor

### **while accessing the Customer's premises. Defective Goods and refunds**

- 11 All Goods ordered are subject to final inspection and approval by the Customer. In the event that the Goods (or any part) fail (in the Customer's absolute discretion, acting reasonably) to conform with the Vendor's obligations, then the Customer may reject the Goods. The Vendor must refund the purchase price forthwith together with an amount to cover the Customer's inspection, handling, transportation and other reasonable charges or expenses.
- 12 Where the Customer rejects the Goods which are already installed, the Vendor must immediately upon written direction, remove the defective Goods, replace same and make good any damage to other property occasioned in such removal to the satisfaction of and at no cost to the Customer.
- 13 Acceptance of or payment for all or part of the Goods must not be deemed to be a waiver on the part of the Customer of its contractual, statutory or other rights in respect of the Goods.

### **Delivery**

- 14 The delivery of the Goods must be made to the location and in the manner nominated by the Customer.
- 15 If the Vendor is late in delivering any of the Goods or if any materials and equipment forming part of the Goods are delivered in excess of the quantity ordered by the Customer, then the Customer is entitled to terminate the Purchase Order or any part thereof without prejudice to any other rights available to the Customer. If the Purchase Order is terminated pursuant to this clause, the Vendor must bear the all costs incurred by the Customer in returning any Goods to the Vendor. .
- 16 Delivery must not be regarded as having been completed until the Goods are fully installed (if applicable), tested and commissioned and the Customer has given its final acceptance. Signed delivery dockets must not mean acceptance by the Customer of Goods delivered but only the number of packages or cartons delivered.

### **Title and risk**

- 17 The Vendor expressly waives any and all liens of any kind or nature to which the Vendor may otherwise be entitled, whether statutory or otherwise, and the Vendor agrees to indemnify and forever hold harmless the Customer against any claims from any third parties against the Vendor affecting directly or indirectly the Goods.
- 18 The Goods are at the Vendor's risk until delivery is completed in accordance with the Agreement.
- 19 The Vendor warrants to the Customer and undertakes that immediately prior to delivery of the Goods, the Goods are owned by the Vendor and are free from any Encumbrance which may affect the Customer obtaining clear title to the Goods.

### **Installation**

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- 20 Where the Goods are required to be installed by the Vendor, the Vendor must provide all work and materials necessary to carry out such installation. All work carried out by the Vendor will be included in the purchase price unless otherwise agreed between the parties and will be completed in a proper and workmanlike manner and the Vendor will exercise all due care.

### Insurance

- 21 The Vendor must maintain in full force product liability insurance in respect of the Goods for a minimum amount of \$20 Million. The Customer may from time to time as reasonable require production of certificates of currency to ensure that the Vendor has complied and continues to comply with this clause.
- 22 The Vendor will maintain any other insurance policies that would be reasonably be expected to be effected and maintained by operators of ordinary prudence.

### Indemnity

- 23 The Vendor indemnifies the Customer against any loss, damage, liability or claim, whether arising under contract, at common law, in equity or under any statute, which the Customer suffers or incurs arising out of or in connection with the supply or delivery of the Goods by the Vendor.

### Proprietary Information

- 24 In this clause, **Customer IP** means the copyright or any other intellectual property rights in any plans, designs, sketches, drawings, blue prints, patterns, models, tools, dyes, moulds, special appliances, materials and patents and in any other document or material furnished by the Customer (whether furnished by the Customer in connection with this Agreement or produced by the Vendor for the purposes of this Agreement).
- 25 The Vendor warrants that it is the owner of or, where appropriate, is the registered user of, any patents, trademarks, copyright, data or trade secrets connected directly or indirectly to the Goods and the Vendor agrees to indemnify and forever hold harmless the Customer against any actions arising from any breach of this warranty.
- 26 The Customer must at all times retain title to "Customer IP. During the term of this Agreement the Customer IP must be deemed to be held by the Vendor on consignment or as a bailee only and at the Vendor's sole risk.
- 27 Customer IP must only be used by the Vendor in the production for the Customer of the Goods or the performance of related work and must be returned to the Customer upon demand.
- 28 This Agreement must not be construed as being an implied or an express assignment or licence of any of the Customer IP or the rights therein. The Vendor must not be entitled to any lien, charge or other form of attachment whatsoever in respect of the Customer IP.
- 29 The Vendor must not disclose Customer IP to others without the prior written consent of the Customer.
- 30 The Vendor must not make any copies of the Customer IP.

### Termination

- 31 Either party may, without prejudice to any other rights or remedies it may have, terminate the Agreement or any part hereof for cause if:
- (a) the other party has failed to remedy a breach of this Agreement within 7 days of receipt of a written notice to remedy breach;
  - (b) the other party is subject to a Distress Event;

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- (c) a representation, warranty or statement is made by the other party which is untrue or misleading.
- 32 The Customer may terminate this Agreement if the Customer incurs late deliveries, deliveries of products which are defective or which do not conform with the Purchase Order and the Vendor fails to provide to the Customer, upon request, reasonable assurances of future performance.
- 33 In the event of termination by the Customer for cause under clauses 31 or 32:
- (a) the Customer will not be liable to Vendor for any amount, and Vendor will be liable to Customer for any and all damages sustained by reason of the default which gave rise to the termination;
  - (b) the Vendor must immediately stop all work hereunder, and must immediately cause any of its suppliers or subcontractors to cease such work;
  - (c) the Customer may forfeit any retention, take possession of any premises, materials, tools and appliances and finish the work by whatever means it may deem expedient; and
  - (d) the Vendor will not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Vendor's suppliers or subcontractors which Vendor could reasonably have avoided.
- 34 If permitted to do so by law, the Customer has the right to terminate the Agreement or any part hereof for its sole convenience on provision of written notice to the Vendor and:
- (a) in the event of such termination, the Vendor shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work;
  - (b) the Vendor will be paid reasonable charges, consisting of the work performed prior to the notice of termination; and
  - (c) the Vendor will not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Vendor's suppliers or subcontractors which Vendor could reasonably have avoided.

### **'Dispute Resolution**

- 35
- (a) A party to this Agreement claiming that a dispute has arisen must notify the other party and escalate the issue to each party's management to use reasonable efforts to resolve the dispute during the 20 business day period after a notice of dispute is given.
  - (b) Each party must use its reasonable efforts to resolve the dispute.
  - (c) If the dispute is not resolved within the period referred to in clause 35(a), each party is free to commence legal proceedings to resolve the dispute.
  - (d) Nothing in this clause prevents a party from seeking urgent or interlocutory relief.

### **Miscellaneous**

- 36 No variation of this Agreement will be effective unless such variation is in writing and signed by the Customer.
- 37 The fact that the Customer fails to do, or delays in doing, something it is entitled to do under the Agreement, does not amount to a waiver of its right to do it. Any waiver must be agreed in writing by the Customer.
- 38 The Goods are for use of or re-sale by the Customer or any other member of the MZ Group

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company and may be incorporated in any products. In no event may any claim for royalties or other additional compensation be made by the Vendor by reason of such use, re-sale or manufacture.

- 39 The parties acknowledge that these Terms are subject to, do not purport to exclude, restrict or modify and do not have the effect of excluding, restricting or modifying, any laws which cannot be excluded, restricted or modified, and these Terms will be read and applied accordingly.
- 40 If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from these Terms and Conditions of Purchase, but the rest of the Agreement is not affected.
- 41 The Customer will not be liable for any failure to fulfil or any delay in fulfilling any obligation arising from the Agreement if the failure or delay has been caused directly or indirectly by any act of God, war or other civil commotion, strikes, lockouts, stoppages and restraints of labour, breakdown of machinery, inability to obtain raw materials or fuel, fire or explosion, any government action or any other cause beyond the reasonable control of the Customer and not a consequence of the Customer's negligence.
- 42 Any notice to be given to a party under the Agreement must be in writing and must be sent by post or email to the address of that party shown in the quotation or Purchase Order. 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.
- 43 The Agreement is governed by and must be interpreted in accordance with the laws of the State of South Australia. The Vendor unconditionally submits to the non-exclusive jurisdiction of the courts of that State.
- 44 Where there is more than one Vendor then the liability of each is joint and several.
- 45 The rights and remedies provided in the Agreement will not affect any other rights or remedies available to the Customer.
- 46 The Agreement cannot be transferred, novated, sub-contracted or assigned by the Vendor without the prior written consent of the Customer.
- 47 Any requirement for written notice in this Agreement may include writing by any electronic means agreed by the parties from time to time.
- 48 The Vendor must keep accurate records relating to the provision of the Goods and must make copies of such records available to the Customer upon reasonable request.
- 49 The Vendor must not, and must ensure that its employees, agents and permitted sub-contractors do not, without the prior written consent of the Customer, disclose any Confidential Information.
- 50 The Customer will not be bound by any written, verbal or implied agreement subsequent to this Agreement unless it is recorded in writing and signed by two directors of the Customer. For the avoidance of doubt, the Customer does not authorise any agent or party to bind it to any agreement other than pursuant to this clause.
- 51 .
- 52 **Australian Consumer Law** Notwithstanding any other provision in this agreement, nothing in this agreement excludes, restricts, modifies or is intended to have the effect of contracting out of any applicable provisions of the Australian Consumer Law and nothing in this agreement will limit our liability to you in respect of liability which cannot be lawfully excluded or limited.

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- 53 In the event that the Customer breaches a provision of the Australian Consumer Law, our liability will be limited to providing the relevant remedy available under the Australian Consumer Law.