

# PURCHASE ORDER TERMS AND CONDITIONS

- 1. Application of Terms and Conditions**
  - 1.1** These Terms (**Terms**) apply to all Purchase Orders issued by Hetech Pty Ltd ACN 139 432 027 (**Hetech**) and override any terms or conditions which usually regulate the supply of Goods and Services by the Supplier.
  - 1.2** By accepting Hetech's Purchase Order, the Supplier agrees to meet all requirements of these Terms and to flow down such requirements to any sub-tier Supplier.
  - 1.3** Where marked on the Purchase Order, the QA Purchasing Requirements of Hetech shall be read into and interpreted as part of these Terms and in the case of any inconsistency, the QA Purchasing Requirements shall take precedence.
- 2. Definitions**
  - 2.1** **Agreement** means the agreement for the supply of the Goods and/or Services consisting of the Terms and the Purchase Order.
  - 2.2** **Business Day** means a day that is not a Saturday or Sunday or Public Holiday in Brisbane, Queensland.
  - 2.3** **Confidential Information** means information that:
    - a) is by its nature confidential;
    - b) is designated by the Parties as confidential;
    - c) is specified to be confidential pursuant to clause 14; or
    - d) the Parties know or ought to know is confidential and includes, without limitation, these Terms and all information about Hetech, its customers, employees, agents, policies and operations which is made available or which becomes known during the carrying out of business under these Terms but does not include information which:
      - (i) was in the public domain at the time of its provision by Hetech; or
      - (ii) became part of the public domain after its provision by Hetech, other than through a disclosure by the Supplier.
  - 2.4** **Counterfeit Goods** means an unauthorised copy, imitation, substitute or modified part (such as but not limited to material, part or component), which is misrepresented as a specified genuine part of an original or authorised manufacture.
  - 2.5** **Defect** means something causing or likely to cause an impairment of performance, durability or use of
- 2.15** **Supplier** means the party specified on the Purchase Order.
- 3. Supply of Goods and Services**
  - 3.1** The Supplier must supply the Goods and/or Services listed in the Purchase Order to Hetech in accordance with these Terms and any reasonable directions given by Hetech with the times and dates stated in the Purchase Order for delivery or completion, including any extension of such time or date granted in writing by Hetech, binding and be of the essence of the Purchase order.
  - the Goods or Services provided by the Supplier to Hetech, or otherwise reduce the value of such Goods or Services.
  - 2.6** **First Article Inspection** means the act of comparing the first made physical sample, part, component, product or alike with the corresponding specifications, during which each specified dimension or attribute is measured on the first made physical sample part, component, product or alike and compared against the inspection documents, drawings or specifications.
  - 2.7** **Goods** means the equipment, materials, manufactured articles or other goods supplied by the Supplier to Hetech.
  - 2.8** **Invoice** means an Invoice or other document issued by the Supplier to Hetech from time to time, indicating any amount due, owing and payable by Hetech for the provision of the Goods or Services.
  - 2.9** **Parties** means Hetech and the Supplier or Supplier who provide and sell Goods and Services.
  - 2.10** **Price** means the price specified in the Purchase Order.
  - 2.11** **Purchase Order** means a written order placed by Hetech with the Supplier for the provision of Goods and/or Services.
  - 2.12** **Quality Records** means any and all documentation that provide objective quality evidence including but not limited to documentation accompanying the Goods, raw material process certification, material certification, shelf- life certificate, special process certification, test reports, certificate of conformity, inspection and test documentation, statistical documentation, process control documentation, results of production process verification and any other quality assurance document as reasonably requested by Hetech.
  - 2.13** **Services** means the manufacturing services including the repair and / or design of Goods or any other service supplied by the Supplier for or on behalf of Hetech and includes any advice or recommendations whether in writing or verbally by an employee, contractor or consultant of the Supplier.
  - 2.14** **Sub-tier Supplier** means any entity that supplies materials, parts, components , or services to the Supplier for use in the Goods.
  - 3.2** The Supplier will deliver the Goods to the Delivery Point indicated in the Purchase Order or as required by Hetech by no later than the Delivery Date specified in the Purchase Order.
  - 3.3** Delivery of Goods to a third party nominated by Hetech is deemed to be delivery to Hetech, and Hetech will be responsible for the risk, loss or damage to the Goods as a result of such delivery.
  - 3.4** The cost of freight, delivery and insurance will be the Supplier's responsibility unless otherwise specified in the Purchase Order.

- 3.5** All Goods shall be packed and delivered in suitable (including atmospheric conditions) robust packages with adequate lifting and handling facilities. The packages shall have secure labels stating the Purchase Order number and shall be provided with an inventory listing the contents of each package.
- 3.6** In the event of an anticipated delay or actual delay, the Supplier will immediately notify Hetech in writing of the reason for the delay and actions taken to minimise the delay.
- 3.7** Hetech may require the Supplier to pay the costs and expenses incurred by Hetech or any late fee specified in the Purchase Order in the event that the delivery of the Goods and/or are delayed through no fault of Hetech.
- 4. Acceptance or Rejection of Goods and Services**
- 4.1** The Supplier shall be responsible for any discrepancies, errors or omissions in specifications, drawings or any particulars supplied to it and carefully check information of any kind provided to it by Hetech
- 4.2** The Goods and Services must comply with the description, specifications, quantity and quality specified in the Purchase Order together with any attached specifications and/or drawings.
- 4.3** The Supplier warrants, without limiting its other warranties under this Agreement or otherwise, that all Goods will:
- be new, of merchantable quality and fit for its intended purpose;
  - provide the full functionality and performance claimed for the Goods (Certificates of Conformance, Specifications/Reports, Materials Certificates or equivalent); and
  - operate in accordance with its specifications.
- 4.4** Services (excluding any Services which give rise to Goods) will be accepted as completed when Hetech confirms in writing that the Services have been completed to its reasonable satisfaction.
- 4.5** If Hetech does not give written notification of acceptance or rejection of the Goods within 30 days of delivery, acceptance of the Goods will be deemed to have occurred on the date of delivery.
- 4.6** If the Goods do not perform, or are not substantially in accordance with these Terms and/or the Purchase Order (including any specifications), Hetech may reject all or part of the Goods by giving written notice (including the reasons for rejection) to the Supplier within thirty (30) days of Delivery.
- 4.7** If Hetech rejects the Goods in accordance with clause 4.6, Hetech is not obliged to pay for any rejected Goods and the Supplier must, at its sole cost, collect and remove any rejected Goods as soon as practicable. If the Supplier fails to collect and remove the rejected Goods within fourteen (14) days of receiving written notice, Hetech may return the Goods to the Supplier at the Supplier's expense, or, following further notification, destroy or otherwise dispose of the Goods at its discretion.
- 5. Quality Standards**
- 5.1** The Supplier shall establish and maintain Quality Records as evidence of conformity with the contractual requirements and to demonstrate the Supplier's effective operation of its quality management system with such Quality Records to be maintained for a minimum of seven (7) years.
- 5.2** Quality Records must be made available to Hetech, its customers and/or any regulatory authorities upon request.
- 5.3** The Supplier must, upon request, provide its procedures(s) for controlling relevant Quality Records for Hetech to review.
- 5.4** The Supplier must:
- Notify Hetech of any nonconforming Goods and/or Services immediately upon becoming aware of the nonconformity and shall not rectify such nonconformity without Hetech's written approval;
  - Notify Hetech of any lack of clarity in a drawing or specification immediately upon becoming aware of it;
  - Notify Hetech of any data breach (cyber or otherwise) regardless of whether same has any direct impact on Hetech or any Confidential Information.
- 5.5** Following receipt of approval under Clause 4.4(a), the Supplier shall:
- maintain evidence of such approval;
  - take action to determine the cause of the nonconformity in order to prevent reoccurrence; and
  - provide evidence that corrective actions have been successfully implemented.
- 5.6** Where nonconforming Goods or Services have been released to Hetech then the Supplier must notify Hetech with three (3) Business Days of such release and Hetech shall be entitled (without prejudice to any other remedy) to reject such Goods or Services.
- 6. Access, Audit and Inspection**
- 6.1** Hetech, its customers and regulatory authorities have access to the Supplier and Sub-tier Supplier facilities at all reasonable times for any purpose in connection with the performance by the Supplier under the Agreement. The Supplier shall secure the same rights of access to the premises of its Sub-tier Suppliers.
- 6.2** All Goods under this Agreement are subject to in-process quality surveillance by Hetech, its customer and regulatory authorities. Hetech shall be entitled to audit the Supplier's quality management system.
- 6.3** The Supplier shall provide advance notification to Hetech no less than three (3) Business Days prior to any Goods being available for an in-process quality surveillance as may be requested by Hetech from time to time.
- 6.4** Upon request by Hetech, the Supplier shall provide evidence to demonstrate that their personnel are aware of:
- Their contribution to conformity of the Goods;
  - Their contribution to the safety of the Goods;
  - The importance of competency, qualification and ethical behaviour of their employees.
- 7. Counterfeit Goods**
- 7.1** The Supplier shall ensure that Counterfeit Goods are not delivered to Hetech. In fulfilling its obligations under the Purchase Order, the Supplier shall only purchase goods to be delivered or incorporated as Goods to Hetech directly from the organisation that is the originating source for the production of legitimate components or equipment. Goods shall not be acquired from distributors that are independent from the originating organisation's authorised distribution chain, without written approval from Hetech.
- 7.2** The Supplier shall as soon as practicable notify Hetech if the Supplier becomes aware or suspects that it has acquired Counterfeit Goods. When requested by Hetech, the Supplier shall provide documentation that authenticates traceability of the affected Goods to the organisation that is the originating source for the

production of legitimate components, goods or equipment.

**7.3** In the event that Goods delivered under the Purchase Order constitute or include Counterfeit Goods, the Supplier shall, at its expense promptly replace such Counterfeit Goods with genuine Goods conforming to the requirements of the Purchase Order. Notwithstanding any other provision in the Purchase Order, the Supplier shall be liable for all costs relating to the removal and replacement of Counterfeit Goods, including without limitation Hetech's costs of removing Counterfeit Goods, of reinserting replacement Goods and of any testing necessitated by the reinstallation of Goods after Counterfeit Goods have been exchanged.

## **8. Ownership of Goods / Title and Risk**

**8.1** Title in the Goods will pass to Hetech upon acceptance of the Goods.

**8.2** However, if part or full payment for the Goods and/or Services is made prior to Delivery, title in the Goods passes to Hetech upon the manufacture or creation of the Goods.

**8.3** Regardless of when Title passes to Hetech, The Supplier agrees the risk in the Goods shall remain with the Supplier until the Goods have been accepted by Hetech.

**8.4** The provisions of this clause 8 will survive termination of these Terms or any other agreement between Hetech and the Supplier for the sale of Goods, for whatever reason.

## **9. Price**

**9.1** Unless otherwise stated, all prices included in the Purchase Order are:

- a) Fixed;
- b) Inclusive of all taxes (excluding GST), costs, duties, freight and certification (as applicable); and
- c) Included in Australian dollars.

**9.2** The Supplier may not charge Hetech any additional fee or amount for packaging, transport, insurance, loading, unloading, storage or any other costs unless specifically included on the Purchase Order.

## **10. Invoicing and Payment**

**10.1** The Supplier must submit a tax invoice for payment to Hetech on or following acceptance of the Goods that specifies:

- a) the Purchase Order number;
- b) the Goods and/or Services supplied to Hetech by the Supplier;
- c) the location and date of delivery;
- d) if Services are charged by time, particulars as to time spent;
- e) any other details Hetech reasonably requires; and
- f) all information required by law to be included in a tax invoice including for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**10.2** Unless otherwise agreed and/or specified in the Purchase Order, Hetech will pay the Price to the Supplier within fourteen (14) days of receipt of a correct invoice.

**10.3** If is a Taxable Supply, Hetech will pay to the Supplier the GST in respect of the Taxable Supply.

**10.4** If Hetech disputes the invoiced amount, it will pay the undisputed amount (if any) and notify the Supplier of the amount in dispute. The parties will endeavour to resolve any such dispute in accordance with clause 16.

**10.5** Payment of an invoice is not to be taken as evidence that the Goods have been supplied in accordance with the

Purchase Order but must be taken only as payment on account.

**10.6** Hetech may set off, from any monies due to the Supplier, any sum payable by the Supplier to Hetech.

## **11. Defects**

**11.1** The Supplier warrants that any Goods sold to Hetech will be free from Defects in material or workmanship for a period of one (1) year from the date of Delivery or such longer period as specified in the Purchase Order issued by Hetech (**Defect Liability Period**).

**11.2** The Supplier will be responsible to Hetech, and any customer of Hetech, for any Defect in the Goods during the Defect Liability Period.

**11.3** If a Defect appears, the Supplier will, at its own cost, rectify all defects occurring with all defective Goods to be made available for collection by the Supplier. Such rectification or replacement of the Goods must be completed by the Supplier within twenty (20) Business Days from the date the defect is advised to the Supplier in writing.

**11.4** Hetech may exercise its rights under this clause regardless of whether or not Hetech has accepted, and/or paid for the Goods or Services.

**11.5** Any repairs and replacement of the Goods will be subject to a further Defects Liability Period.

## **12. Insurance**

**12.1** The Supplier must obtain and maintain the following insurance policies at its sole expense:

- a) Public liability policy for an amount not less than \$20 million per occurrence;
- b) Product liability insurance covering loss or damage to the Goods to the value specified in the Purchase Order or, if no value is specified, to the value sufficient to cover any loss or costs that may be incurred. Product liability insurance must be maintained for the greater of either three (3) years from acceptance of the Goods or the Defects Liability Period;
- c) If the Services involve any consulting and/or design, professional indemnity policy for an amount of not less than \$5 million per occurrence; and
- d) Such insurance as is legally required under any Workers' Compensation legislation applicable in the location where the Supplier's work is performed.

**12.2** On Hetech's request, the Supplier must, within ten (10) Business Days, provide Hetech with evidence of the currency of any insurance it is required to obtain.

## **13. Termination**

**13.1** Hetech may terminate the Agreement with immediate effect (or with effect from a specified date) by giving written notice to the Supplier if the Supplier:

- a) fails to provide the Goods in accordance with the Terms;
- b) breaches any provision of the Terms and, where that breach is capable of remedy, fails to remedy the breach within fourteen (14) days of receiving written notice (or such later date as may be specified in that notice);
- c) breaches any provision of the Terms that is not capable of remedy;
- d) commits fraud, dishonesty or any other serious misconduct in association with the supply of the Goods;

- e) commits any act or does anything that may be prejudicial or otherwise detrimental to the reputation of Hetech;
- f) suffers from an insolvency event; or
- g) ceases to carry on its business.
- 13.2** Hetech may terminate the Agreement for any other reason or without cause by providing fourteen (14) days written notice to the Supplier. If so:
- a) the Supplier will immediately comply with any directions contained in the notice and do all things possible to mitigate its losses arising from the termination of the Agreement;
- b) Hetech will pay the Supplier for the Goods delivered in accordance with the Agreement up to the date of the termination and the unavoidable and substantiated costs incurred by the Supplier as a direct result of the termination, excluding for loss of profit.
- 13.3** The Supplier may terminate the Agreement by giving at least thirty (30) days written notice to Hetech if Hetech fails to pay the amounts due under the Agreement.
- 13.4** On termination of the Agreement, Hetech has no other liability to the Supplier in relation to that termination.
- 13.5** Termination or expiry does not affect accrued rights or remedies and will not prejudice any right of action or remedy which may have accrued to either party prior to termination or expiry.
- 13.6** On termination or expiry, the Supplier must immediately, following instructions issued by Hetech, cease using all materials that contain any Confidential Information by either destroying the materials or returning the materials at no additional cost to Hetech.
- 14. Liability and Indemnity**
- 14.1** In the Event of a breach of these Terms by Hetech, any remedy available to the Supplier is limited to damages. The Supplier will not have any claim for damages greater than the cost of the Goods or Services provided.
- 14.2** The Supplier indemnifies Hetech against all claims, liabilities, loss, costs, damages, or expenses arising out of any breach of the Suppliers obligations under the Agreement.
- 15. Confidentiality and Privacy**
- 15.1** The Supplier acknowledges the following information is Confidential Information:
- a) Information contained in the Purchase Order, including but not limited to Price;
- b) Application of the Good/s by Hetech and in Hetech plant and equipment;
- c) Specifications particular to Hetech application;
- d) Hetech technologies; and
- e) Any other information that Hetech expressly states to be confidential.
- 15.2** The Supplier must keep the Confidential Information confidential and secure and must not use, disclose or otherwise make available any Confidential Information to any other person except to the extent as strictly necessary for the purposes of the delivery of the Goods and Services or as required by law.
- 15.3** The Supplier warrants that it will not:
- a) sell, distribute, or lease Hetech's Confidential Information to a third party unless the Supplier has Hetech's permission or is required by law to do so; or
- b) attempt to gain Confidential Information from other individuals or organisations about Hetech.
- 15.4** In providing the Goods and Services, the Supplier and Hetech agree to comply with the National Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.
- 16. Dispute Resolution**
- 16.1** If a dispute arises between the parties under or in connection with these Terms, Purchase Order, Invoice or otherwise, either party may give written notice to the other requesting a meeting between senior representatives of each party to seek a resolution of the Dispute in good faith.
- 16.2** If the Dispute is not resolved within fourteen (14) days, it will be referred to mediation with each party bearing their own cost.
- 16.3** Neither party may commence litigation until this dispute resolution process has been completed, except in the case of an urgent application for an injunction.
- 16.4** The parties will continue to perform their respective obligations under this Agreement pending the resolution of a Dispute.
- 17. General**
- 17.1** These Terms will bind the Supplier, its successors, heirs and permitted assigns and likewise be for the benefit of Hetech, its successors and permitted assigns
- 17.2** The Supplier cannot and must not assign or attempt to assign any of its rights or obligations under the Agreement Terms without first obtaining the approval and consent in writing of Hetech, which may be refused and/or withheld at the sole discretion of Hetech.
- 17.3** Hetech may vary or waive any of these Terms at any time at its sole discretion. However, the waiver of any breach of a term or condition contained herein does not constitute a waiver of another breach of the same or any other term or condition under these Terms.
- 17.4** The Agreement is formed in, construed and governed by the laws in the State of Queensland.
- 17.5** The Agreement represents the entire agreement between Hetech and the Supplier in relation to the provision of Goods and Services to Hetech by the Supplier and supersedes all prior negotiations and conversations, quotes, fee estimates or scopes of work that may have been discussed with, or provided by Hetech to the Supplier unless subsequently confirmed in a Purchase Order.
- 17.6** If any part or all of a clause of these Terms is deemed void, illegal or unenforceable, the offending part or clause may be severed from the Terms without affecting the enforceability of the remaining clauses of the Terms.