

# **GENERAL CONDITIONS OF PURCHASE**

Notwithstanding any particular agreement with the Supplier, these General Conditions of Purchase (hereinafter referred to as the "GCP") set forth the conditions under which HAGER ("HAGER"), will purchase any items (including but not limited to volumes, local logistics needs, materials, equipment, or any service whatsoever) (hereinafter referred to as the "Product") from the Supplier.

Any purchase order made by HAGER is made on the terms set out in these GCP and any Product supplied accordingly by the Supplier to HAGER implies the full acceptance by the Supplier of these GCP and will be deemed at any given time to be covered by the GCP. The GCP will prevail over any inconsistent terms or conditions.

## **1. PURCHASE ORDERS**

The purchase orders (hereinafter referred to as "Purchase Order(s)"), which specify the place and date of delivery, will be made to the Supplier directly by HAGER on an ad hoc basis, for such quantities of Products as it shall determine to be necessary and on the terms set out in these GCP.

Purchase Orders shall be made on computer-produced order forms and sent to the Supplier by letter, by fax, by email or by EDI.

HAGER is entitled to modify the Purchase Orders until the acceptance by the Supplier. The Supplier shall return to HAGER the acknowledgements of receipt of Purchase Order within five (5) business days after the date on which the Purchase Order is sent. After this five (5) days period, the Purchase Order shall be deemed fully accepted (on the terms set out in these GCP) by the Supplier. Should the Supplier reply within the five (5) days period that it is unable to comply with the Purchase Order, he shall make within such five (5) days period a proposal which fits with HAGER requirements and shall be subject to the terms set out in these GCP. Otherwise, the Purchase Order shall be deemed to be fully accepted by the Supplier.

## **2. DELIVERY AND TRANSPORTATION**

The Delivery Dates (i.e. the dates of the material remittance of the Products by the Supplier to HAGER at the Delivery Place) set forth in the Purchase Order are binding (also for partial deliveries) and the compliance with the agreed Delivery Dates constitutes an essential obligation of the Supplier.

The packaging by the Supplier shall be carried out according to any specifications agreed upon with HAGER and in order to avoid any damage.

The Supplier is solely responsible for ensuring that all shipments are correct in all respects and suitable for immediate use without any inspection by HAGER. In any case, the Supplier undertakes to check the Products before consignment and any negative and/or harmful effects incurred by the inappropriate and/or inadequate and/or unsuitable carriage of the Products shall exclusively be borne by the Supplier.

Receipt of the Products at the Delivery Place (i.e. the place where the material remittance of the Products by the Supplier to HAGER shall take place), which is specified in the Purchase Order does not imply the acceptance of the Products by HAGER since HAGER is not in a position to check the Products upon receipt.

If a faster dispatch (freight, express delivery, etc.) becomes necessary due to the failure of the Supplier or is decided by the Supplier, the additional freight charges, costs and expenses shall be borne by the Supplier.

If the Supplier fails to comply with the Delivery Dates, it shall irrevocably pay full damages to HAGER to cover the damage sustained by HAGER. The foregoing damages shall include further remedies, in particular in case of claims asserted by the end customer against HAGER due to delayed (or failed) delivery.

Title to and risk relating to the Products are transferred to HAGER at the time of Delivery at the Delivery Place. However, the receipt of the Products at the Delivery Place does not imply the acceptance of the Products by HAGER until the latter is in a position to check the conformity of the Products.

## **3. PRICE AND PAYMENT**

The Supplier will be bound by the price negotiated with HAGER and stated in the Purchase Order. The price is exclusive of goods and services tax and shall be considered as fixed price which shall apply for any Purchase Orders, without being limited to a specific number of deliveries. Any surcharges shall require a written agreement between the Parties.

It is understood that the prices for the Products also include their packaging and labelling, import and export clearances, insurance charges, etc., together with all the services referred to in the Purchase Order provided by the Supplier in relation to the

Products, such as the delivery costs, quality control, marketing materials and traceability of the Products.

HAGER's payments are made even in the absence of examination of the Products upon receipt at their Delivery Place and do not constitute acknowledgment of quantity, price and quality. Thus, HAGER shall still be fully entitled to legal claims.

The invoices shall be sent to HAGER and shall refer to all the requirements provided for in Australian law. HAGER shall pay the invoices within the term of payment set forth in the Purchase Order.

Since the time for payment is not of the essence of the agreement between HAGER and the Supplier, any late payment will not entitle the Supplier to terminate the agreement.

## **4. INTELLECTUAL PROPERTY**

The Supplier owns the intellectual property rights in the Products and warrants that the Products do not infringe any third party's intellectual property (and notably does not constitute a counterfeit of a third party's product) and will bear all indemnities and expenses in case of any claim which shall arise regarding such matters, unless the Supplier demonstrates that the infringement is not attributable to his fault.

## **5. LIABILITY, WARRANTIES & INSURANCE**

The conformity of the Products delivered by the Supplier constitutes an essential obligation of the Supplier. The Supplier warrants that the Products delivered are in good operating condition free from any inherent structural defects or defects in construction and fit for the intended use.

The Supplier warrants for a period of two (2) years as of the time of Delivery, the Delivery of Products in full conformity and compliance, namely with the contractual qualities ordered and set forth in the relevant Purchase Order or with the technical specifications described in the specific conditions (hereinafter called the "Technical Specifications") or with the level of quality required by HAGER (hereinafter referred to as "the Warranty"). In particular, the Supplier shall comply with the Hager Group Quality Requirement Charter which terms the Supplier acknowledges to have received, read and agreed and which are hereby incorporated.

The Supplier also warrants that the Products are fit for the intended purpose. The Warranty also covers, for the same period, all Product defects, including but not limited to defects in design, manufacturing, in material, workmanship, industrialization and reliability, including latent defects.

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The Supplier warrants and undertakes that all operations and deliveries comply with the applicable laws and regulations and that all relevant licenses and permits have been obtained.

The Supplier shall inform HAGER immediately in writing of any defect it discovers in its supplied products, components or materials that pose a risk of fire, electrocution or any other damage when used as intended in HAGER's processes and products.

In case of non-compliance or non-conformity of the Products, the Supplier shall, at HAGER's direction and its own cost, arrange for immediate rectification and/or replacement of the Products within 48 hours, and even after acceptance of the Products, irrespective of the date.

The Supplier shall indemnify and hold HAGER harmless from all or any claims (whether or not successful, compromised or settled), actions, liabilities, demands or proceedings whether under this agreement or otherwise (including tortious and negligence claims) ("Proceedings") brought or established against HAGER by any third party and/or all direct and indirect consequences losses, damages costs, injury, charges or expenses (including without limitation installation and removal costs, transportation costs, any contractual penalties and legal fees), indirect or consequential liabilities, (including without limitation loss of profits, [loss of reputation], loss of business and similar pure and financial loss), incurred or paid by HAGER (the "Losses") as a result of or in connection with defective workmanship, quality or materials in or relating to the Products to the extent that such Proceedings and/or Losses were caused by, relate to or arise from the Products as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance by the Supplier. Furthermore, the Supplier agrees to hold HAGER harmless from any third party Proceedings, and from all and any costs incurred (including without limitation recall, preventive customer service measures etc.) to prevent further damages (the "Indemnities").

The foregoing warranties do not exclude further remedies and HAGER's rights under the GCP are in addition to the statutory terms implied in favor of HAGER by the Australian Consumer Law and any other statutes or regulations applicable anywhere in the world.

According to the negotiation between the Parties, the Supplier shall undertake to have a security stock of Products (hereafter called the "Security Stock") –which details are set out in the Purchase Orders. Such Security Stock will enable the Supplier to ensure the compliance with its obligations and commitments, as well as, in case of emergency, to make possible the Delivery

within forty-eight (48) hours of Products needed by HAGER. The Supplier confirms that he has subscribed to and undertakes to maintain an exhaustive insurance policy covering its full business risk as well as full product liability insurance policy with an appropriate amount so as to cover the consequences of his liability.

### **6. TERMINATION**

HAGER may terminate its obligations in whole or in part towards the Supplier [under this agreement or any framework agreement in place with the Supplier], without prejudice to any damages or indemnity which might be claimed from the Supplier if:

- (i) the Supplier commits any breach of its obligations under the GCP (in particular pursuant to Clauses 2 and 5) or the Purchase Order (or the Hager Group Quality Requirement Charter); or
- (ii) an order is made or a resolution is passed for the winding-up of the Supplier or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the Supplier; or
- (iii) an order is made for the appointment of an administrator to manage the affairs, business and property of the Supplier, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Supplier, or notice of intention to appoint an administrator is given by the Supplier or its directors or by a secured party (entitled under s.436c of the *Corporations Act 2001*); or
- (iv) a receiver is appointment of any of the Supplier's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Supplier or if any other person takes possession of or sells the Supplier's assets; or
- (v) the Supplier makes any arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for the protection of its creditors in any way or becomes bankrupt; or
- (vi) the Supplier ceases, or threatens to cease, to trade; or;
- (vii) there is a change of control of the Supplier within the meaning of section 50AA of the *Corporations Act 2001*; or
- (viii) the Supplier takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

Notwithstanding the termination of this agreement (for whatever reason) the provisions relating to the warranties and Indemnities set out in this agreement (and in particular in Clause 5 hereof) will survive termination and continue in force until such time that the matters giving rise to the entitlement to be so indemnified pursuant to this agreement are resolved to the reasonable satisfaction of HAGER.

### **7. GENERAL**

A reference to a statute or statutory provision in these GCP is a reference to it as amended, extended or re-enacted from time to time.

While the Clauses or paragraphs set out in these GCP are considered reasonable by the parties, it is agreed that if any Clause is found to be void but would be valid if some part of it were deleted, such Clause or paragraph will apply with such deletion as may be necessary to make it valid and effective.

Assignment Clause : the Supplier is not entitled to assign the contract without Hager's written consent.

Force Majeure Clause : neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed, provided that if the period of delay or non-performance continues for four (4) weeks, the party not affected may terminate this agreement by giving fourteen (14) days' written notice to other party.

### **8. LAW & JURISDICTION**

These GCP and any disputes or claims arising out of or in connection with it or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Australia, without regard to conflict of laws principles and to the exclusion of the Convention on Contracts for the International Sale of Goods dated April 11, 1980.

The Parties expressly agree that any dispute arising with respect or in connection with the GCP and any disputes or claims arising out of or in connection with it or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be solely submitted to the competent Courts of Australia even in case of plurality of defendants, which Courts will rule according to the law of Australia.