



ConBulKS Australia Pty Ltd - Purchase Terms & Conditions

ABN 17 641 937 840

1. Definitions In these Terms and Conditions: (a) "ACDC" means the Australian Commercial Disputes Centre. (b) "Act" means the Corporations Act 2001 (Cth). (c) "ConBulKS " means ConBulKS Australia Pacific Pty Ltd (ACN: 641 937 840) (d) "ConBulKS Tools" means any tooling, dies, gauges, jigs, fixtures, moulds, equipment, patterns and other facilities supplied by ConBulKS or its Related Body Corporate, either directly or indirectly, to Supplier or paid or to be paid for by ConBulKS or its Related Body Corporate. (e) "Force Majeure" means an act of God, a strike, a lockout, act of public enemy, civil commotion, war, blockade, riot, state of emergency, lightning, fire, storm, flood, washout, explosion, Government restraint, or any form or Government intervention and any other cause which is not within the control of the party alleging it. (f) "Goods" means the products and, if any, services, specified in the Purchase Contract. (g) "GST" and "Tax Invoice" will have the meaning attributed to those terms in A New Tax System (Goods and Services Tax) Act 1999 (Cth). (h) "INCOTERMS" means the standard accepted commonly used trade Terms and Conditions utilised in international trade as published by the International Chamber of Commerce and entitled "Incoterms 2000". (i) "Insolvency Event" means in respect of Supplier death, liquidation, provisional liquidation, voluntary administration, compromise, arrangement, amalgamation, administration, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors, the appointment of a receiver, the inability of Supplier to pay its debts when they fall due, bankruptcy or the filing for bankruptcy under Chapter 11 of the United States Bankruptcy Code or any event that is analogous to the aforementioned events under any Law. (j) "Intellectual Property Rights" means patents, design rights, copyrights, trademarks and service marks (whether registered or not and applications for any of the foregoing) know-how and rights of a like nature throughout the world. (k) "Law" means any requirement of any statute, rule, regulation, proclamation, ordinance or by-law, present or future and whether state, federal or otherwise. (l) "Material Adverse Change" means any change to the circumstances of ConBulKS (beyond the control of ConBulKS) which ConBulKS believes has a material adverse impact on the ability of ConBulKS to observe the Purchase Contract. A Material Adverse Change includes, but is not limited to, the cancellation or variation of an order for products, into which the Goods have been incorporated, by an entity to which ConBulKS supplies the said products. (m) "Purchase Contract" means the purchase contract issued by ConBulKS and accepted by Supplier stipulating the Goods to be supplied, the agreed price for the Goods and other details relevant to the supply of the Goods. The Purchase Contract includes any document sent by ConBulKS to Supplier stipulating the quantity and timing of the delivery of the Goods. The Purchase Contract is subject to these Terms and Conditions. (n) "Related Body Corporate" has the same meaning as this term has under the Act. (o) "Rules" means the rules for Domestic Arbitration prescribed by the ACDC. (p) "Supplier" means the seller of the Goods specified in the Purchase Contract. (q) "Technical Materials" means all plans, designs, drawings, engineering information, data, specifications, reports, accounts and other material of a technical nature. (r) "Tender" means any document, drawing, specification or design issued by ConBulKS pursuant to which ConBulKS has agreed to purchase the Goods from Supplier as described in the Purchase Contract. This includes, but is not limited to, documents, drawings, specifications or designs of an entity to which ConBulKS supplies products. (s) "Tender Documents" means the documents applicable to the Tender. (t) "Terms and Conditions" means these "Terms and Conditions of Purchase Contract". (u) The terms "EXW",

"FCA", "FAS", "FOB", "CFR", "CIF", "CPT", "CIP", "DAF", "DES", "DEQ", "DDU" and "DDP" have the meaning these terms are given in the INCOTERMS.

2. General (a) These Terms and Conditions override any inconsistent terms and conditions in any document or communication used by Supplier in relation to the supply of Goods (including any terms and conditions that may be printed on the underside of or attached to an invoice or delivery docket provided by Supplier) or any industry practice or earlier course of dealing. (b) If the Purchase Contract bears reference to a Tender the Tender Documents will apply in addition to these Terms and Conditions. Where the terms of the Tender Document and these Terms and Conditions are inconsistent these Terms and Conditions will prevail. (c) If any INCOTERM is nominated in the Purchase Contract, the terms of INCOTERMS applies except as otherwise provided or as inconsistent to these Terms and Conditions.

3. Acceptance If written acceptance of the Purchase Contract is not provided by Supplier to ConBulkS, the commencement of supply of Goods by Supplier will constitute acceptance by Supplier of the terms of the Purchase Contract, including these Terms and Conditions.

4. Price (a) The price of the Goods is fixed in accordance with the prices listed on the Purchase Contract and is not subject to increases in price without ConBulkS's prior approval in writing. Unless an INCOTERM to the contrary is agreed to by the parties and nominated on the Purchase Contract, the price of the Goods includes delivery to the destination stated in the Purchase Contract and the off-loading of the Goods by Supplier at the point of destination. (b) The Price includes any applicable GST. Where GST is payable either: (1) Supplier must provide ConBulkS with a Tax Invoice that complies with all requirements in the GST Act; or (2) ConBulkS may require Supplier to accept a Recipient Created Tax Invoice (as provided for in the GST Act) as created by ConBulkS. (c) Supplier must submit monthly-itemised invoices to ConBulkS in a form approved by ConBulkS. Unless otherwise stated on the face of the Purchase Contract, ConBulkS will have at least 30 days from the end of the month in which the invoice is received in which to pay Supplier the invoiced amount. ConBulkS may withhold any amount that it disputes in good faith until the dispute has been resolved. (d) No interest is payable on the late payment of any amounts by ConBulkS. (e) ConBulkS may set-off any amounts payable by Supplier pursuant to clauses 8.3 and 11 against any amounts payable to Supplier.

5. Delivery (a) Time is of the essence and deliveries must be made both in the quantities and at times specified in the Purchase Contract. Delivery should be made to the location nominated in the Purchase Contract or such other place nominated by ConBulkS by providing Supplier at least 12 hours' notice of any change of delivery location. (b) Supplier agrees that the cost of delivery is determined according to the INCOTERM nominated on the Purchase Contract, and if no INCOTERM has been nominated, delivery will be DDP. (c) If delivery is not made by the date specified in the Purchase Contract, or within a reasonable time if no date is specified, ConBulkS will be entitled to terminate the contract in respect of the Goods undelivered or delivered late and of any Goods already delivered under this contract which cannot be effectively and commercially used by ConBulkS by reason of the non-delivery or late delivery of the first mentioned goods. (d) Without limiting the generality of clause 13, upon termination according to clause 5(c) ConBulkS is entitled to: (1) Return to Supplier, at Supplier's risk and expense any Goods detailed in clause 5(c) and to recover from Supplier any money paid by ConBulkS in respect of such Goods, and Goods already delivered but which cannot be effectively and commercially used due to non-delivery or late delivery of other Goods; (2) Recover from Supplier any additional expenditure reasonably incurred by ConBulkS in obtaining other goods in replacement of the goods detailed in clause 5(c) and any other damages and losses incurred by ConBulkS arising from late or non-delivery of Goods or any part thereof. (e) A notice of shipment must be sent by Supplier to ConBulkS at the time the Goods are shipped, which must state the description of the Goods, the reference number of this Purchase Contract, the name

of the vessel, the port of shipment or delivery, shipping route, the quantity loaded, the invoice amount and other particulars from time to time, requested by ConBulkS. (f) Supplier must ensure that the Goods are suitably packed or otherwise prepared for shipment so as to secure the lowest transportation and insurance rates and in accordance with the carriers' requirements. (g) The packing and marking of the Goods must comply with the Law of Australia and any country from which the Goods are to be exported and in accordance with the instructions of ConBulkS. (h) All documents related to the shipping of the Goods must be provided to ConBulkS at the time that the Goods depart the port of export including, without limitation: (1) The bills of lading; (2) Certificate of insurance; (3) Packing declaration; (4) Declarations to customs and quarantine authorities; (5) Evidence of payment of all customs duties and other charges; and (6) Certificate of origin of the Goods. (i) If Supplier considers the Goods cannot be delivered in time in accordance with ConBulkS's Purchase Contract, Supplier must notify ConBulkS immediately and give to ConBulkS an estimate of the period of delay and details of the steps, which Supplier proposes to take to minimise the delay. Supplier must comply with ConBulkS's reasonable instructions in order to minimise the delay.

6. Warranties 6.1 (a) These Terms and Conditions are additional to all warranties, conditions and undertakings express or implied by the Trade Practices Act 1974 (Cth) or any other Law or as set out in the Tender Documents. (b) Supplier warrants that all Goods meet the description, specification drawings, data or samples and quality standards provided by Supplier or set out in the Purchase Contract or other document issued by ConBulkS or its representatives to Supplier regarding ConBulkS's requirements for the Goods including, without limitation, the Tender Documents. Any in-progress inspection by ConBulkS's employees or agents or other representative does not affect this warranty. (c) Supplier warrants that the Goods are new, of good title, of merchantable quality, made of good materials and workmanship and free from defects, encumbrance, and lien or security interest. ABN: 17 641 937 840(d) Supplier warrants that all Goods are fit for the purpose for which goods of the same kind are commonly supplied and any purpose which ConBulkS or its representatives make known to Supplier, and must be accompanied by any necessary instructions, technical documents, operating and service manuals and any applicable warranties. If a standard of performance is specified Supplier warrants that Goods will be capable of such performance. (e) The Goods must carry any applicable manufacturer's warranty, which passes on to any buyer or customer from ConBulkS without liability to ConBulkS. Supplier must assign to ConBulkS at the request of ConBulkS the benefit of any warranty or guarantee that Supplier has received from any supplier (whether under contract or by implication or operation of law). (f) Supplier warrants to ConBulkS that it will provide all information required by ConBulkS to report the export, import or transport of the Goods in a timely and accurate manner to enable ConBulkS to observe its requirements pursuant to any Law. (g) Supplier warrants to ConBulkS that it holds good title to any Intellectual Property Rights in or associated with the Goods and provides ConBulkS, the successors, assigns, customers and users of ConBulkS's products (incorporating the Goods) and any Related Body Corporate of ConBulkS a license to use any Intellectual Property Rights in or associated with the Goods. 6.2 Supplier agrees to defend, protect and completely indemnify (including legal expenses on the requisite hourly basis set by ConBulkS's lawyers) ConBulkS, its successor, assigns, customers and the users of ConBulkS's products (incorporating the Goods) and any Related Body Corporate of ConBulkS from and against any claim arising by reason of the use of the Goods, including all claims for actual or alleged infringement of any Intellectual Property Rights.

6.3 Without limiting the effect of clause 8.1, Supplier agrees to indemnify and keep indemnified ConBulkS against all and any liability arising from the breach of any warranty provided pursuant to clause 6.1.

7. Inspection and return (a) All Goods are received subject to inspection within a reasonable time after delivery or before delivery at ConBulkS's discretion irrespective of the date of payment. Signed

delivery dockets do not mean acceptance by ConBulKS of the Goods delivered but only the number of packages or cartons delivered. (b) ConBulKS may reject any Goods or parts thereof that are not in accordance with the Purchase Contract or these Terms and Conditions. Notice of rejection will be provided to Supplier in writing by ConBulKS and must specify the reasons for rejection. ConBulKS is entitled to return the rejected Goods to Supplier at Supplier's expense and risk. (c) In all cases of rejection ConBulKS will be entitled to require Supplier to replace the rejected Goods with Goods which are acceptable to ConBulKS or request repayment of any money paid to Supplier in respect of the rejected Goods or may terminate this contract. (d) Without limiting the generality of clause 13, upon termination according to this clause: (1) ConBulKS is entitled to return to Supplier at Supplier's risk and expense any Goods previously delivered to ConBulKS which cannot be effectively and commercially used by ConBulKS by reason of not having the rejected Goods and to recover from Supplier any moneys paid by ConBulKS in respect of such Goods; and (2) Supplier is liable for any costs, loss or damage suffered or incurred by ConBulKS in relation to Goods that are rejected including the cost of replacement goods.

8. Defective goods 8.1 Should any Goods fail to conform to the warranties contain in clause 6, ConBulKS will notify Supplier and Supplier must, if requested by ConBulKS, indemnify ConBulKS for any incidental and consequential damages cause by such non-conforming Goods, including but not limited to, costs, expenses and losses incurred by ConBulKS: (a) In inspecting, sorting, repairing or replacing such nonconforming goods; (b) Resulting from production interruptions; (c) Conducting recall campaigns or other corrective services actions regardless of whether such campaigns are conducted by ConBulKS or an entity that ConBulKS supplies to and regardless of whether the recall campaign relates to the Goods or a product in which the Goods have been incorporated; and (d) Claims for personal injury (including death) or property damage cause by such non-conforming Goods. 8.2 If Supplier becomes aware of any matter which may affect the Goods or ConBulKS's use of the Goods, Supplier must notify ConBulKS in writing immediately of the matter giving full details of all relevant information. This includes anything which may affect the composition, characteristics or ConBulKS's use of the Goods, the health, hygiene or safety of any person and Suppliers', ConBulKS's or the Good's compliance with any Law, standard or code of practice. 8.3 ConBulKS may set-off the amounts owing under clause 8.1 against any amounts otherwise payable by ConBulKS to Supplier.

9. Tooling to remain ConBulKS's property (a) The ConBulKS Tools remain ConBulKS's property whether during or after the termination of this Purchase Contract. (b) Supplier must keep the ConBulKS Tools in good condition and when necessary repair the ConBulKS Tools at its own expense. (c) Supplier agrees that it will not use any ConBulKS Tools for any purpose other than to supply Goods to ConBulKS and will return and deliver up the ConBulKS Tools following the expiry or termination of this Purchase Contract. (d) Without limiting the generality of Clause 16, ConBulKS retains all Intellectual Property Rights in ConBulKS Tools.

10. Changes, Cancellation and Variations (a) ConBulKS may at any time direct Supplier in writing to change the Goods or any aspect of the supply of the Goods. Supplier's obligation to supply the Goods following such a change will be subject to the parties agreeing upon the applicable prices, rates or charges acting reasonably and with reference to the prices, rates and charges set out in the Purchase Contract. (b) ConBulKS may cancel or vary the Purchase Contract (in whole or part) at any time in response to a legitimate business need of ConBulKS including, without limitation, a Material Adverse Change. ConBulKS must give Supplier written notice of such cancellation or variation and must pay Supplier for all Goods delivered up to the date of cancellation or variation. Unless otherwise agreed, ConBulKS must also purchase Goods which have actually been produced by Supplier but not delivered by Supplier and work in progress and other materials produced or acquired by Supplier to manufacture the Goods but only to the extent to which such items cannot be

used by Supplier producing goods for itself. Save as expressly set out in this clause, ConBulkS will have no liability to Supplier for cancelling or varying the Purchase contract.

11. Deduction & Set-Off ConBulkS may deduct or set-off against any amount payable to Supplier any amount payable by Supplier to ConBulkS, including but not limited to any amount due by Supplier for Goods rejected by ConBulkS or for warranty claims made by ConBulkS or by its customers that relate to the Goods.

12. Notification of certain events Supplier must promptly notify ConBulkS in writing if any of the following events occur or is likely to occur to Supplier: (a) A change in trade name, or place of business; (b) Change in the ownership or control of Supplier; (c) The sale or transfer of all or any part of Supplier's business; (d) The acquisition by any competitor of ConBulkS of any interest of any kind in the ownership of Supplier; (e) An Insolvency Event concerning Supplier or a Related Body Corporate; and (f) Any other matter or thing, which may affect Supplier's ability or capacity to supply the Goods to ConBulkS.

13. Termination (a) In addition to termination rights set out elsewhere in these Terms and Conditions ConBulkS may terminate this Purchase Contract by written notice to Supplier if: (1) Supplier is in default of any of its obligations set out in the Purchase Contract (including these Terms and Conditions) that is not capable of remedy, or if capable of remedy is not remedied within 30 days of written notice by ConBulkS of such default; (2) Supplier breaches any warranties Supplier has provided under these Terms and Conditions; (3) An event in clause 12, has occurred in relation to Supplier other than a change of trade name or place of business; (4) An Insolvency Event has occurred in relation to a Related Body Corporate of the Supplier; or (5) A Material Adverse Change has occurred in relation to ConBulkS. (b) Upon termination under this clause 13: (1) ConBulkS will have the right to withhold any payment for any Goods not yet delivered by Supplier; (2) Supplier will be liable to ConBulkS for any incidental or consequential losses incurred by ConBulkS as a result of Supplier's default under these Terms and Conditions; and (3) Supplier must return the ConBulkS Tools and grant to ConBulkS an irrevocable license to enter Supplier's premises for the purpose of taking possession of the ConBulkS Tools. (c) Supplier does not have any claim whatsoever at law or equity against ConBulkS if ConBulkS cancels an order under this clause.

14. Property and risk (a) Property and risk in the Goods will pass according to the INCOTERM elected under the Purchase Contract. (b) Where no INCOTERM is elected under the Purchase Contract property and risk in the Goods will pass to ConBulkS upon ConBulkS taking delivery of the Goods and the Goods having been inspected and accepted by an authorized representative of ConBulkS. Where Goods are delivered in instalments the property and risk in the Goods pass to ConBulkS upon delivery of that instalment. The passing of property and risk in the Goods will be without prejudice to any right of rejection which ConBulkS is entitled under these conditions. (c) If ConBulkS pays for Goods before they are accepted, that does not constitute acceptance of the Goods.

15. Insurance Supplier must maintain at its sole expense insurance with reputable and financially responsible insurance companies, which adequately covers Supplier's liability against ConBulkS and third parties for any incidental and consequential loss or damage arising out of or incidental to any recall campaign pursuant to defective Goods or Goods suspected of being defective. ABN: 17 641 937 840 ConBulkS is entitled to require certain insurance coverage's and amounts be taken out by Supplier. ConBulkS may request to see, and Supplier will be required to produce within 48 hours, evidence that this clause has been complied with.

16. Intellectual Property (a) ConBulkS retains the Intellectual Property Rights in any Technical Materials provided to Supplier under the Purchase Contract. (b) In return for the payment of the purchase price, the Supplier assigns to ConBulkS all Intellectual Property Rights in any Technical

Material created by the Supplier or on the Supplier's behalf for the purpose of the Purchase contract other than any pre-existing Intellectual Property Rights of the Supplier.

17. Confidentiality Unless otherwise required by Law, Supplier must keep confidential the terms of the Purchase Contract (including but not limited to prices), these Terms and Conditions and all confidential information it receives from ConBulKS or which relates to the Goods or ConBulKS's business, Intellectual Property Rights or other products. Supplier must not make any public announcements or disclosure in relation to the Goods, these Terms and Conditions or its relationship with ConBulKS without ConBulKS's prior written consent. The obligations of this clause continue to apply after the fulfillment of any part of the Purchase Contract or termination or cancellation of the Purchase Contract.

18. Force Majeure (a) Any delay or failure by either party to perform its obligation will be excused if, and to the extent that, it is caused by Force Majeure, provided notice of such delay or failure (including the anticipated duration of the delay or failure) is given by the affected party to the other party as soon as possible after the Force Majeure (but in no event more than 3 days thereafter). (b) During the period of such delay or failure to perform by Supplier, ConBulKS may, at its option, purchase Goods from other sources and reduce its scheduled purchases from Supplier by such quantities, without liability to ConBulKS, or have Supplier provide the Goods from other sources in quantities and at times requested by ConBulKS, and at the price set out on the Purchase Contract. (c) In addition, Supplier, at its expense must take such actions as are necessary to ensure the supply of Goods to ConBulKS for a period of at least 30 days during any anticipated labour disruption or resulting from the expiration of Supplier's labour agreements or contracts. If requested by ConBulKS, Supplier must, within 10 days, provide adequate assurances that the delay will not exceed 30 days. If the delay lasts more than 30 days or Supplier does not provide adequate assurance that the delay will cease within 30 days, ConBulKS may immediately terminate this contract without liability.

19. Limit of liability (a) The maximum liability of ConBulKS to Supplier as a result of a breach of any of these Terms and Conditions by ConBulKS will be limited to the amount of liquidated damages nominated on the Purchase Contract. This amount represents a genuine estimate of the maximum amount of damages Supplier will suffer in the event of default by ConBulKS. (b) Should an amount of liquidated damages not be nominated on the Purchase Contract the maximum liability of ConBulKS for breach of the Purchase Contract or these Terms and Conditions will be the total price of Goods ordered under the Purchase Contract. (c) ConBulKS will in no circumstances be liable to the Supplier, whether in contract or tort or any other basis, for any special, incidental, consequential, indirect or exemplary damages.

20. Compliance with Laws Supplier must comply at all times with all requirements of any Laws of Australia or of the country of origin of the Goods applying to the Goods including, but not limited to, the manufacture, labelling, transportation, importation, exportation, licensing, approval or certification of the Goods and all other Laws from which liability may accrue to ConBulKS from violation and Supplier agrees to defend, protect and completely indemnify (including legal expenses on the requisite hourly basis set by ConBulKS's lawyers) ConBulKS, its successor and assigns and any Related Body Corporate of ConBulKS from and against any claim arising from any breach of this clause by Supplier.

21. Claims Any claims that a party has not complied with its requirements under the Purchase Contract or these Terms and Conditions must be brought within a reasonable time.

22. Governing law This Purchase Contract is governed by the Law of the State of Western Australia without giving effect to international principles of the conflict of laws and Supplier and ConBulKS expressly exclude the application of the 1980 United Nations Convention on Contracts for the

International Sale of Goods with respect to sales covered by this Purchase Contract. ConBulKS and Supplier submit to the non-exclusive jurisdiction of the Courts of Western Australia.

23. Dispute resolution 23.1 In the case of a dispute between the parties, the following process for resolution will be followed: (a) Internal management conference between the parties within 14 days; (b) Mediation within a further 14 days conducted in accordance with Guidelines for Commercial Mediation issued from time to time by the ACDC and in force at the date of the dispute; (c) If the party making the claim remains dissatisfied after the meeting convened under clause 23.1, or at any time during or at the conclusion of any mediation held pursuant to clause 23.2, that party may then institute proceedings against the other party. 23.2 For the purposes of clause 23.1: (a) The language of the dispute resolution will be English; (b) The venue of the dispute resolution will be Australia; (c) Each party will bear their own costs and one-half of the costs of any mediation. (d) Each party is entitled to legal representation at all stages; and (e) The process set out in clause 23.1 will not exclude the rights of the parties to seek urgent interlocutory relief. 23.3 This clause 23 does not constitute an arbitration agreement within the meaning of the Commercial Arbitration Act 1985.

24. Assignment (a) ConBulKS is entitled to assign any rights, benefits or duties under the Purchase Contract to a Related Body Corporate without requiring the consent of Supplier. (b) Supplier will not assign or delegate its rights or obligations under the Purchase Contract without the prior written consent of ConBulKS. For these purposes any change to the directors or shareholders of Supplier from the date of this Purchase Contract will require the prior written consent of ConBulKS.

25. Rights are cumulative the rights of ConBulKS under these Terms and Conditions are cumulative and additional to any other rights ConBulKS may have at Law or in equity.

26. Severability If any term or condition or part of these Terms and Conditions is illegal, unenforceable or invalid, those Terms and Conditions or part of the Terms and Conditions are to be treated as removed from these Terms and Conditions, but the rest of these Terms and Conditions are not affected.

27. Waiver ConBulKS will not be deemed to have waived any of its rights or remedies under these Terms and Conditions or at Law by allowing any time or indulgence or by not exercising any right or remedy arising out of any default by Supplier.

28. Variation and replacement (a) No variation of the Purchase Contract will be of any force unless it is in writing and signed by both parties. (b) ConBulKS may at any time replace or amend these Terms and Conditions, such replacement to be effective from the date specified by ConBulKS in its notice to Supplier and (c) Vising of the replacement or amendment.

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