

PURCHASE ORDER TERMS AND CONDITIONS

1. SUPPLY OF PRODUCTS

- 1.1 These Terms and Conditions apply where a SUPPLIER has accepted a Purchase Order placed by Unipod Pty Ltd either electronically or otherwise. The Purchase Order and these Terms and Conditions together constitute the entire agreement between the parties for the purchase or supply of the Products.
- 1.2 The SUPPLIER must supply to UNIPOD PTY LTD the Products in accordance with the Purchase Order and these Terms and Conditions (collectively “the Agreement”).
- 1.3 To the extent that the SUPPLIER’S terms and conditions are supplied with the Products (including as printed on consignment notes or other documents, those terms and conditions will be of no legal effect and will not constitute any agreement (even if any representative of UNIPOD PTY LTD signs those terms and conditions or annexes the terms and conditions to any Purchase Order.
- 1.4 These Terms and Conditions may be substituted by UNIPOD PTY LTD on 14 days notice to the SUPPLIER. The SUPPLIER must inform UNIPOD PTY LTD during that 14 days notice period if it does not accept the substituted Terms and Conditions and if it does so UNIPOD PTY LTD must enter into negotiations (as is reasonable) with the SUPPLIER. If the negotiations are not finalised to the satisfaction of both UNIPOD PTY LTD and the SUPPLIER within 1 month of the commencement of negotiations, UNIPOD PTY LTD may terminate the Agreement or, at its option withdraw the substituted Terms and Conditions. If UNIPOD PTY LTD does not receive a notice from the SUPPLIER as contemplated by this clause 1.4 within the 14 days notice period the substituted Terms and Conditions will apply from the expiry of that period.

2. AUTHORITY TO ISSUE PURCHASE ORDER

No Purchase Order imposes any binding obligation upon UNIPOD PTY LTD unless it is signed by a person who is currently an Authorised Officer of UNIPOD PTY LTD. Before commencing the supply of any Product pursuant to a Purchase Order issued or on its face purporting to have been issued by UNIPOD PTY LTD, the SUPPLIER must first use its best endeavours to satisfy itself that the Purchase Order has been executed by an Authorised Officer. UNIPOD PTY LTD and the SUPPLIER may from time to time agree a procedure for the satisfaction of any such enquiries, but in the absence of such agreement, all such enquiries should be directed to UNIPOD PTY LTD’s Representative.

3. DELIVERY & PACKAGING REQUIREMENTS

- 3.1 The SUPPLIER must deliver the Products to the Delivery Address by the Delivery Date.
- 3.2 The SUPPLIER must ensure that the Products are adequately packaged and marked to ensure their safe and secure transportation and storage and in particular packaging and marking must comply with any Federal, State and Local Government legislation, regulations or by-laws.
- 3.3 Packages must be clearly identified with the Purchase Order number, item number, destination, contents, quality, date and method of dispatch and weight of each package unless otherwise agreed between the parties.
- 3.4 If the Purchase Order specifies a lead time in respect of any Product and the Delivery Date specified in a Purchase Order for or including that Product does not allow for that lead time

the SUPPLIER's obligation to deliver that Product under that Purchase Order shall be to deliver it within the specified lead time.

- 3.5 If any of the Products constitute dangerous or hazardous goods, the SUPPLIER must clearly mark/label the Products with dangerous or hazardous goods information and must ensure that all applicable Federal and State Acts and Regulations and UNIPOD PTY LTD's requirements are fully complied with and implemented, without exception. Material Safety Data Sheets must be included with each delivery docket for Products which are dangerous or hazardous goods.
- 3.6 If UNIPOD PTY LTD determines that the packaging or marking of a Product is inadequate or inappropriate, then the Product concerned may be returned to the SUPPLIER for credit or replacement at the discretion of UNIPOD PTY LTD.
- 3.7 Replacement Products must be supplied to UNIPOD PTY LTD under these Terms and Conditions, save that the applicable lead time commences on the date on which the original Purchase Order was received by the SUPPLIER and the due date for delivery in accordance with clause 3.4 will not be extended.
- 3.8 Any delivery to the Delivery Address supplied under the Purchase Order must be made by the Delivery Date nominated on the applicable Purchase Order which must not be earlier than 2 working days after the date on which that Purchase Order is issued.
- 3.9 If any Product delivered fails to comply with the quality or specifications as stated in clause 6 or is inadequately or improperly packaged, marked or identified then for the purposes of this clause that Product will not be taken to have been "delivered".

4. FAILURE TO DELIVER

- 4.1 If the SUPPLIER fails to deliver any Products in accordance with clause 3, THEN, in addition to any other remedy, UNIPOD PTY LTD may at its option either:
 1. cancel the relevant Purchase Order and obtain the Products concerned or equivalent products from any other source and any extra costs incurred by UNIPOD PTY LTD shall be deducted from moneys owing or which become owing to the SUPPLIER; or
 2. direct the SUPPLIER to use another form of express delivery (including air express) nominated by UNIPOD PTY LTD at the SUPPLIER's expense.
- 4.2 The SUPPLIER shall be bound by the election made by UNIPOD PTY LTD on each occasion which election UNIPOD PTY LTD may make orally or in writing and if orally must be confirmed in writing.

5. TRADING FACILITIES

During the term of the Agreement, UNIPOD PTY LTD may seek to implement various electronic information transfer and/or trading facilities. These may include remote monitoring of product stock levels and alternative methods for transmission of Purchase Orders and remittances. If UNIPOD PTY LTD implements any of the facilities described in this clause 5, the SUPPLIER must align its systems accordingly, at no additional costs to UNIPOD PTY LTD.

6. QUALITY AND SPECIFICATIONS

- 6.1 All Products supplied under the Purchase Order must conform strictly to all relevant specifications, drawings, samples and descriptions.
- 6.2 Where the SUPPLIER supplies to UNIPOD PTY LTD a sample of the Product, the Product must be of the same nature and quality as the sample given.

- 6.3 All Products must fit for the purpose for which goods of the same kind are commonly supplied or bought and for any other purpose UNIPOD PTY LTD specifies.
- 6.4 All Products must be of merchantable quality and, unless otherwise specified in the Purchase Order, must be new.
- 6.5 The SUPPLIER shall not supply or substitute alternative or equivalent Products unless it has first obtained written approval from UNIPOD PTY LTD (which UNIPOD PTY LTD may withhold in its absolute discretion).

7. PRODUCT TESTING

UNIPOD PTY LTD may implement random product testing to ensure compliance of the Products with any specifications. Should tests conducted by or on behalf of UNIPOD PTY LTD establish an unacceptable departure from the specifications, payment for the Products may be withheld or reduced in proportion to the diminished effectiveness in UNIPOD PTY LTD's operations, at UNIPOD PTY LTD's sole and absolute discretion or UNIPOD PTY LTD may reject the Products in accordance with clause 8.

8. DEFECTIVE PRODUCTS

- 8.1 Where Products are received by UNIPOD PTY LTD which are not in accordance with the requirements of the Purchase Order or in connection with which there is a breach of warranty or any of the Products are damaged, deficient, faulty, inadequate or incomplete ("Defective Products"), UNIPOD PTY LTD reserves the right to reject the Defective Products concerned and from time to time return them to the SUPPLIER for replacement or credit as UNIPOD PTY LTD determines. No time limitation for rejection shall apply. All costs associated with return (and re-supply if necessary) of any rejected Products via UNIPOD PTY LTD's designated carrier shall be borne by the SUPPLIER.
- 8.2 If the Defective Products are standard stock items, UNIPOD PTY LTD at its option may at any time cancel or terminate the Purchase Order in respect of any Products not then delivered or in transit without further obligation.
- 8.3 If the Defective Products are manufactured or fabricated to the specifications of UNIPOD PTY LTD then at any time prior to completion of the work to be performed, UNIPOD PTY LTD may at its option cancel the Purchase Order upon written notice to the SUPPLIER and upon the effective date of the cancellation (being the date of UNIPOD PTY LTD's notice or the later date (if any) specified in that notice), the SUPPLIER must stop all work pertaining to the Purchase Order (except as otherwise directed by UNIPOD PTY LTD), must not place any further order in connection with the Purchase Order made, must preserve and protect all materials acquired, work in progress and finished Products connected with the Purchase Order at its own premises or its subcontractors premises pending UNIPOD PTY LTD's instructions and must dispose of the same as UNIPOD PTY LTD instructs. Upon cancellation directly referable to the Purchase Order under this clause 8.3 UNIPOD PTY LTD will pay to the SUPPLIER:
- (a) The SUPPLIER's costs and expenses to the date of cancellation including its expenses in connection with cancellation of any sub-contracts, all as determined by Buyer plus five per cent (5%) of such costs and expenses (to cover the SUPPLIER's overheads and profit), but in no event will the total amount to be paid (when added to all previous payments made or becoming payable under the Purchaser Order) exceed the purchase price specified on the face of the Purchase Order and if the SUPPLIER, at the time notice of cancellation is given, is in default in delivery or under any other terms or conditions applicable to the Purchase Order, the SUPPLIER will not be entitled to the additional five per cent (5%) of its costs and expenses; and
 - (b) The SUPPLIER must provide to UNIPOD PTY LTD all documentation which UNIPOD PTY LTD requires to verify the SUPPLIER's costs and expenses. Upon payment under this clause 8 any Products and uncompleted portions of the work and materials acquired by the SUPPLIER for incorporation into the Products will be the property

of UNIPOD PTY LTD and subject to its disposition. Notwithstanding anything contained in this clause

8 the SUPPLIER will not be entitled to any anticipatory profits or any damages caused by the cancellation.

Nothing contained in this clause 8 will affect UNIPOD PTY LTD's right to terminate the Purchase Order on account of a default by the SUPPLIER under any of the terms and condition applicable to the Purchase Order or to pursue remedies as provided by law for such default.

9. PRICE AND PAYMENT

9.1 The SUPPLIER shall supply to UNIPOD PTY LTD all Products at the prices listed on the Purchase Order.

9.2 Subject to clause 13 (GST), the prices for the Products set out in the Purchase Order must be inclusive of all costs of producing and supplying the Products to the Delivery Address and all taxes and duties connected with the supply of the Products.

10. INVOICE

10.1 The SUPPLIER shall provide UNIPOD PTY LTD with an invoice in respect of the Products the subject matter of each Purchase Order which have been delivered to Delivery Address as soon as practicable after and in any event within seven (7) days of each delivery of Products, specifying:

- (a) the relevant Purchase Order Number;
- (b) the amount due to the SUPPLIER in Australian Dollars;
- (c) the date of delivery of the Products to which the invoice relates;
- (d) a description (including the quantity) of the Products delivered; and
- (e) which constitutes a Tax Invoice for the purposes of clause 13 (GST) and as defined in clause 13 (GST).

11. STATEMENT OF ACCOUNT

The SUPPLIER shall provide a monthly statement of account to UNIPOD PTY LTD detailing each invoice for the preceding month. The monthly statement of account shall be supplied to UNIPOD PTY LTD no later than the 25th day of the month and shall be paid by UNIPOD PTY LTD within sixty (60) days of receipt, subject to the statement being an accurate reflection of the transactions to which the statement relates, and the Products to which the statement relates having been received by UNIPOD PTY LTD

12. PAYMENT WITHHELD

UNIPOD PTY LTD reserves the right to withhold payment in respect of the monthly statement of account where an invoice detailed in the statement does not accurately reflect a transaction, or Products have not been received by UNIPOD PTY LTD. The amount which UNIPOD PTY LTD may withhold is the amount which applies to the invoice or Products concerned. Upon agreement between the SUPPLIER and UNIPOD PTY LTD, UNIPOD PTY LTD shall then pay any outstanding amounts.

13. GOODS AND SERVICES TAX

13.1 *Definitions*

“GST” means a goods and services tax imposed by the GST Legislation;

“GST Act” means the A New Tax System (Goods and Services Tax) Act 1999;

“GST Legislation” means the GST Act and associated legislation and regulations and words defined in the GST Legislation have the same meaning in this Agreement;

“GST Rate” at any particular time, means, the rate (expressed as a percentage) at which GST is payable by the Supplier of a Taxable Supply at that time;

“Input Tax Credit” means the amount of input tax credit available to a party under Division 11 and/or Division 15 of the GST Act;

“Price” has the same meaning attributed to "price" in Section 9-75 of the GST Act;

“Recipient” means either party when it is the recipient of a Supply;

“Supplier” means either party when it makes a Supply;

“Supply” means any supply pursuant to this Agreement including but not limited to a Taxable Supply;

“Tax Invoice” has the same meaning as "tax invoice" in Section 29-70 of the GST Act;

“Taxable Supply” has the same meaning as in Section 9-5 of the GST Act;

“Value” is the GST exclusive value of a Supply and has the same meaning attributed to “value” in Section 9-75 of the GST Act.

13.2 *Adjustment for GST*

All amounts specified in this Agreement as being payable by either party to the other are exclusive of any GST applicable.

If a Supply under or in connection with this Agreement constitutes a Taxable Supply, the Supplier may recover from the Recipient an amount on account of GST in addition to any payment or other consideration for the Supply.

The additional amount is equal to the Value for the Supply multiplied by the prevailing GST rate.

13.3 *Tax Invoice*

If any Supply is a Taxable Supply, then:

The invoice provided by the Supplier under clause 9 must be in the form of a Tax Invoice; and notwithstanding any contrary provision in this Agreement, the Recipient is not obliged to make any payment under this Agreement unless the Supplier has provided a Tax Invoice in respect of the Taxable Supply attributable to that payment.

13.4 *Reimbursable Costs*

If the Contractor purchases or acquires a Taxable Supply for which it is entitled to be reimbursed by the Company under the terms of this Agreement, the Contractor agrees that the reimbursable amount shall be reduced by the full amount of the Input Tax Credit to which the Contractor is entitled.

14. REPRESENTATIVES

14.1 UNIPOD PTY LTD and the SUPPLIER shall each nominate a Representative who shall be responsible for ensuring compliance with the Agreement.

14.2 The Representative of each party may, by written notice to the other party, delegate all or any of the Representative’s authority as specified in the notice from time to time provided always

that such action is expressed in writing. A delegation of authority may be revoked at any time by like notice.

15. RISK AND TITLE

- 15.1 Ownership of Products shall vest with the SUPPLIER until such time as Products have been received and accepted by UNIPOD PTY LTD at the point of delivery.
- 15.2 The SUPPLIER shall be responsible for and shall bear exposure to all risk associated with manufacture, transport, supply and delivery of Products until such time as delivery is effected and the Products concerned are unloaded and accepted by UNIPOD PTY LTD.
- 15.3 Acceptance by UNIPOD PTY LTD at the point of delivery does not prejudice UNIPOD PTY LTD's right to subsequently reject the Product so accepted.
- 15.4 Where Products are destroyed or damaged prior to delivery UNIPOD PTY LTD will be entitled to cancel the Purchase Order in respect of those Products without the SUPPLIER being entitled to any payment or compensation and where any payment has been made by UNIPOD PTY LTD in respect of those Products the SUPPLIER must immediately refund the amount paid in full.
- 15.5 Where any payment is made by UNIPOD PTY LTD to the SUPPLIER in relation to goods or services that have not yet been supplied or not yet supplied in full, the SUPPLIER will hold the entirety of those payments on separate and distinct account as bare trustee for UNIPOD PTY LTD. Such trust will end only upon delivery in full and acceptance by UNIPOD PTY LTD, of all goods and services to which the payments relate; at which time the payments will become the property of the SUPPLIER.

16. INSURANCE

- 16.1 The SUPPLIER must effect and maintain from the date of the Purchase Order any appropriate insurance that may impact on the supply or performance of the Products supplied, including but not limited to those listed in and in accordance with the purchase order.
- 16.2 It is the SUPPLIER's responsibility to ensure that all appropriate insurances are in place to an appropriate level and that UNIPOD PTY LTD's interest is noted, and the relevant policy contains an undertaking by the insurer not to allow cancellation or amendment of the policy without 30 days prior notice to UNIPOD PTY LTD.
- 16.3 The SUPPLIER must produce to UNIPOD PTY LTD evidence of such insurances as and when required by UNIPOD PTY LTD.

17. SUPPLY WARRANTIES

- 17.1 The SUPPLIER warrants that the Products:
- (a) will comply with the Specifications;
 - (b) will be of merchantable quality;
 - (c) are and will be fit for the purpose for which the Products would ordinarily be used;
 - (d) will be of a consistent quality;
 - (e) will be free from all defects;
 - (f) will not infringe or contribute to the infringement of any patent, registered design or copyright or any intellectual property rights of any third party; and
 - (g) will conform to any legally applicable standards and comply with all relevant legislation.

- 17.2 The SUPPLIER warrants that the SUPPLIER is the sole legal owner of all Products supplied under the Supply Agreement, free from all mortgages, charges, encumbrances, liens and other third party rights and claims.
- 17.3 The SUPPLIER shall keep confidential and not disclose to any party, any information or details whatsoever contained in or relating to the Purchase Order, any Purchase Order, UNIPOD PTY LTD's operations or any matters relating to UNIPOD PTY LTD's affairs as long as the same remain unpublished and not available to the public at large without first obtaining the written consent of UNIPOD PTY LTD.
- 17.4 The SUPPLIER warrants to UNIPOD PTY LTD and its successors in title that the manufacture, sale or use of the Product will not infringe or contribute to the infringement of any patent, trademark, design or copyright in Australia or in any other country.
- 17.5 *Indemnity with regards to Intellectual Property*
The SUPPLIER will, at its expense, indemnify, hold harmless and defend UNIPOD PTY LTD and its successors in title against any claim, suit or proceeding brought against UNIPOD PTY LTD which is based upon a claim, whether rightful or otherwise, that any Product, process or material, or any part thereof, furnished by the SUPPLIER under the Purchase Order, constitutes an infringement of any patent, trademark, design or copyright and the SUPPLIER will pay all damages and costs awarded against UNIPOD PTY LTD resulting there from.

If a court rules that any Product, process or material, or any part thereof infringes a patent, trademark, design or copyright or if an injunction is granted prohibiting their use, the SUPPLIER will at its expense, subject to the following provisions, either procure for UNIPOD PTY LTD an irrevocable royalty-free licence to continue using the Product, process or material concerned, or with UNIPOD PTY LTD's prior written approval, replace them with substantially equal but non-infringing items or modify them so they become non-infringing, provided that no replacement or modification will in any way amend or relieve the SUPPLIER of its warranties and guarantees set forth in or applicable to the Purchase Order.

This indemnity is given upon the condition that UNIPOD PTY LTD promptly notifies the SUPPLIER of any claim or proceeding involving UNIPOD PTY LTD in which an infringement is alleged, and UNIPOD PTY LTD must permit the SUPPLIER to control the defence or compromise of any allegation of infringement and UNIPOD PTY LTD must render reasonable assistance, at the SUPPLIER's cost, in the defence thereof as the SUPPLIER may require.

18. SUPPLIER'S INDEMNITY

- 18.1 The SUPPLIER will indemnify UNIPOD PTY LTD and keep UNIPOD PTY LTD fully indemnified against any loss, liability claim or cause of action or suit (whether or not resulting in damage to property or injury to person) arising out of:
- (a) any negligent act or omission or willful misconduct of the SUPPLIER, its employees, agents or sub-contractors;
 - (b) any breach of the Agreement; or
 - (c) any defect in the Products; or
 - (d) from failure of the Products to comply with all applicable Australian Federal, State and Municipal laws, ordinances and regulations.
- 18.2 The SUPPLIER will further indemnify UNIPOD PTY LTD against any and all loss, damage or external costs and all reasonably incurred internal costs (including administration costs) associated with any recall of any of the Products, whether initiated by the SUPPLIER or any other authorised person or civil body.

- 18.3 The SUPPLIER shall not be obliged to indemnify, UNIPOD PTY LTD pursuant to clause 18.1 to the extent that the relevant loss of or damage to property or injury to or death of any person is caused by the negligence of UNIPOD PTY LTD.
- 18.4 The rights of UNIPOD PTY LTD under clause 18 are without prejudice to any other right that UNIPOD PTY LTD may have arising out of:
- (a) any negligent act or omission or willful misconduct of the SUPPLIER, its employees, agents or subcontractors;
 - (b) any breach of the Agreement; or
 - (c) any defect in the Products.

19. MISCELLANEOUS

19.1 Termination

UNIPOD PTY LTD may terminate or cancel a Purchase Order in its absolute discretion by giving the SUPPLIER 7 days' notice in writing prior to the Delivery Date. In such case no payment will be made by UNIPOD PTY LTD. Termination of the Purchase Order pursuant to this clause shall be without prejudice to the rights of either party accruing before termination.

19.2 Compliance with Statutory Requirements

The SUPPLIER shall comply with the requirements of all Acts of the Parliament of the Commonwealth of Australia and the State of Australia in which the Products are supplied, and the requirements of all ordinances, regulations, by-laws, orders and proclamations made or issued there under and with the lawful requirements of public, municipal and other authorities in any way affecting or applicable to the Purchase Order. The SUPPLIER shall give all notices necessary to comply with the requirements mentioned in clause 19.1 and shall pay all fees payable in connection with those requirements.

19.3 Variation

A variation of the Purchase Order or the Agreement must be in writing and signed by each party.

19.4 Governing Law

The Purchase Order will be governed by the laws of the State in which the Delivery Address is located. The parties submit to the non-exclusive jurisdiction of the courts of that State.

19.4 Severance

Every provision of the Purchase Order and these Terms and Conditions is independent of each other provision. A provision which is prohibited or unenforceable in any jurisdiction will be ineffective to the extent only of such prohibition or unenforceability, and the other provisions will remain in force.

19.5 Costs

Each party will pay its own costs and expenses in relation to the negotiation, preparation and execution of the Purchase Order save that the SUPPLIER will be responsible for all stamp duty associated with the stamping of the Purchase Order.

19.6 Notices

- (a) In addition to any other means of giving notice, a notice will be taken to have been given if it is in writing and signed by or on behalf of the party giving the notice and either:

- (i) delivered personally;
 - (ii) sent by ordinary pre-paid post to the other party at the address set out in the Purchase Order or another address advised in writing; or
 - (iii) sent by electronic mail to the address specified in the Purchase Order or another electronic mail address advised in writing.
- (b) A notice is deemed given if:
- (i) personally delivered, upon delivery;
 - (ii) mailed to an address in Australia, on actual delivery to the addressee as evidenced by Australia Post documentation or three (3) clear days after the date of posting (whether actually received or not), whichever is the earlier;
 - (iii) sent by electronic mail, on the date and time of transmission by the party sending the electronic mail, and only if the sender makes verbal contact with the party receiving the electronic mail to confirm that the notice was received in its entirety.

19.7 *Conflict of Interest*

The SUPPLIER must not engage in any activity that would in any way adversely affect the SUPPLIER's ability to deliver the Products in an independent and reliable manner. The SUPPLIER will not accept any payment, gift or favour from any person in relation to the delivery of the Products unless the SUPPLIER first obtains UNIPOD PTY LTD consent. The SUPPLIER warrants to UNIPOD PTY LTD that it has no professional or contractual obligations which currently, or will during the term of the Purchase Order, conflict with the delivery of the Products.

19.8 *Media*

The SUPPLIER and its employees, agents and contractors must not make any statement to the media on behalf of UNIPOD PTY LTD or in relation to the delivery or recall of any of the Products or in relation to any matter concerning the Principal. All enquiries from the media must be referred to UNIPOD PTY LTD. The SUPPLIER must immediately notify UNIPOD PTY LTD of all events that arise in the course of delivering the Products, which are likely to receive attention from the media.

20. DEFINITIONS

20.1 In the Agreement, unless the context otherwise requires:

"Authorised Officer" means a person employed or engaged by the Buyer with authority to sign Purchase Orders binding the Buyer and listed at the relevant time, in the list of Authorised Officers maintained by the Buyer in relation to this Document and the placing of Purchase Orders hereunder.

"Delivery Address" means, the point of delivery specified on the Purchase Order;

"Delivery Date" means the delivery date specified on the Purchase Order, or a date subsequently notified in writing by UNIPOD PTY LTD to the SUPPLIER;

"Products" means the products to be purchased by the UNIPOD PTY LTD as shown on the Purchase Order.

“Purchase Order” means an order for a specific quantity of one or more of the Products issued by the Buyer from time to time containing amongst other things, a description or specification of the Products;

“Purchase Order Number” means the number displayed on the Purchase Order;

“Representative” means a party’s representative as specified in clause 14 of these Terms and Conditions.

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