

PURCHASE ORDER TERMS AND CONDITIONS - GENERAL

1. General

- (a) Subject to Section 1(b), these terms and conditions are deemed to automatically apply to any Purchase Order accepted by the Supplier notwithstanding any inconsistencies or other terms and conditions which the Supplier may seek to introduce in the Supplier's acceptance of the Purchase Order.
- (b) These terms and conditions will not apply to the accepted Purchase Order, and instead the terms of the 'Current Agreement' will be deemed to apply, if there is an on-foot executed agreement in writing between the Supplier and Philip Morris Limited (**PML**) which contemplates the provision of the goods or services which are the subject of the Purchase Order (**Current Agreement**).

2. Prices and Tax Invoices

- (a) There shall be no increase in the price quoted by the Supplier for any reason unless agreed to by PML in writing. All prices are free into store unless otherwise stated and are inclusive of all taxes, including, without limitation, all GST payable in respect of any Taxable Supply made by the Supplier to PML. The Supplier must provide PML with a Tax Invoice in respect of any Taxable Supply made by the Supplier to PML. The Tax Invoice must specify separately both the amount of the GST and the GST inclusive price. "GST", "Taxable Supply" and "Tax Invoice" have the meanings given in Section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) ("**GST Act**").

- (b) Accounts must include all Third Party costs. The Supplier must provide copies of all Third Party invoices when submitting accounts. "Third Party" means any person or entity not party to the Purchase Order which is involved in the provision of goods or services including sub-contractors, agents and consultants but excluding suppliers of raw materials

3. Terms of Payment

- Subject to Section 8 and unless otherwise agreed by PML in writing, payments will be made by PML within 60 days of the date of receipt of a Tax Invoice (as defined in Section 2(a)).

4. Written Orders

PML will not be responsible for goods delivered or services provided by the Supplier unless the same is authorised by a written Purchase Order.

5. Performance and Delivery

- (a) The delivery of all goods and the performance of all services must be made at the time and place and in the manner stated in the Purchase Order, unless otherwise specified by PML in writing.
- (b) The Supplier shall comply with all Commonwealth, State and local laws and regulations relating to the provision and delivery of the goods or services.
- (c) Any time specified for delivery must be strictly adhered to and the Supplier will be liable for any loss (including consequential loss and loss of profit) or damage howsoever arising as a result or consequence of any failure to deliver or delay in delivery. If delivery is not made within the time specified the Purchase Order may be cancelled at PML's option.
- (d) The Supplier must supply a detailed and accurate delivery docket when delivering the goods to PML. The details on the delivery docket must correlate with the details on the Purchase Order as to number of items or weight or any other form of quantification used. If the delivery docket does not contain the required details PML may return those goods to the Supplier at the Supplier's risk and expense and PML shall not be liable to make payment in respect of those goods.

6. Description

- (a) The Supplier is not permitted to modify PML's specifications in any way without PML's prior written approval.
- (b) PML need not accept nor pay for goods supplied or services provided by the Supplier if they do not conform with PML's specifications, drawings, samples or descriptions.

7. Supplier's Warranties

- (a) The Supplier warrants that the goods will:
- (1) conform with the specification, description or sample (if any);
 - (2) be fit for any purpose expressly or impliedly made known to the Supplier;
 - (3) be of merchantable quality;
 - (4) comply with any relevant Australian Standard or Regulation applicable to the goods, or if there is no applicable Australian Standard or Regulation, then comply with any Standard or Regulation relating to goods of the same type in force in the United States of America;
 - (5) be able to be used, assembled, handled, stored, dismantled, decommissioned and disposed of without risk to the health or safety of any person;
 - (6) be accompanied by appropriate warnings and instructions; and
 - (7) be free of any defects.
- (b) The Supplier warrants that the services will be provided:
- (1) as reasonably directed by PML;
 - (2) in a timely and professional manner;
 - (3) to the standard of expertise which the Supplier has represented to PML that the Supplier's employees, agents and sub-contractors possess;
 - (4) by persons who have the necessary skill and experience to perform the services and under the supervision of the Supplier;
 - (5) with proper care, skill and diligence; and
 - (6) in accordance with any key performance indicators set out in the Purchase Order.
- (c) The Supplier warrants that neither it, nor any of its "Related Bodies Corporate" (as that term is defined in the *Corporations Act 2001* (Cth)) (nor any director, officer or to its knowledge, employee of it or any of its Related Bodies Corporate) nor any of its agents or subcontractors, is a person, or is owned or controlled by a person that is (i) the subject of any Sanctions; (ii) engaged in any activities that could trigger a designation under the Sanctions administered by the relevant authorities or (iii) employs, uses, procures or subcontracts any workers or labour originating from or attributable to North Korea. For the purpose of this Section 7(c) "**Sanctions**" means any economic or financial sanctions or trade embargoes implemented, administered or enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control, the U.S. Departments of State or Commerce or any other US government authority, the United Nations Security Council, the European Union, Switzerland or other such Sanctions authority in a jurisdiction of relevance to these terms and conditions.

These warranties are in addition to any warranty or guarantee given by the Supplier in respect of the goods and services or any warranty, guarantee or term implied by law.

8. Inspection and Rejection

- (a) PML shall have the right to inspect the goods during manufacture. All goods and services are received by PML subject to its inspection and approval within a reasonable time after delivery.
- (b) PML reserves the right to reject at any time goods or services which it finds to be unsatisfactory, defective or of inferior quality or workmanship or fail to meet PML's specifications or requirements in any way whatsoever. In the case of such goods, PML may repair the goods at the Supplier's risk and expense or return those goods to the Supplier, and if it does return the goods, PML shall not be liable to make payment in respect of those goods. In the case of such services, PML may require the Supplier to re-supply the services at the Supplier's expense.

9. Property and Risk

Property and risk in the goods shall not pass to PML until the goods have been delivered to PML, subject to inspection and rejection of the goods under Section 8.

10. Termination

- (a) PML may at its option vary, modify or cancel this Purchase Order at any time prior to delivery of the goods or performance of the services and the Supplier shall immediately do everything possible to mitigate any cost incurred by it consequent upon such variation, modification or cancellation. PML's liability shall be limited to the direct costs incurred by the Supplier to the date of variation, modification or cancellation and PML shall not be liable in any way whatsoever for any indirect or consequential loss or loss of profit as a result of the variation, modification or cancellation of this order. "Costs" shall be net of any Input Tax Credits to which the Supplier may be entitled. "Input Tax Credits" has the meaning given in Section 195-1 of the GST Act.
- (b) PML may by notice in writing terminate this Purchase Order immediately if the Supplier: (1) subject to the statutory stay provision in Part 5.1 of the *Corporations Act 2001* (Cth), becomes insolvent (as defined in the *Corporations Act 2001* (Cth)); or (2) or any of its employees, agents or sub-contractors contravene any provision of the PML Supplier Charter.
- (c) The rights and obligations of the parties in Sections 11 (Indemnity), 12 (Intellectual Property), 19 (Confidentiality) and 20 (Protection of personal information) will survive termination or expiry of the Purchase Order.

11. Indemnity

- (a) The Supplier indemnifies and holds harmless, and will at all times keep indemnified and hold harmless, PML and its Related Bodies Corporate from and against any and all loss (including consequential loss and loss of profit), damage or liability, legal fees and all other costs and expenses incurred by PML or any of its Related Bodies Corporate as a result of a breach by the Supplier of any of these terms and conditions or the neglect or default of, or any act, matter or thing permitted or omitted by, the Supplier or the Supplier's employees, agents or sub-contractors arising from or in connection with the supply of the goods or the performance of the services.

- (b) Any amount received by PML under Section 11(a) shall be increased by any GST (as defined in Section 2(a)) payable by PML in respect of such amount.

12. Intellectual Property

- (a) The Supplier warrants that the supply of the goods or the provision of the services shall not infringe any patent, design, trademark or copyright (**Intellectual Property Right**) of any person.

- (b) All Intellectual Property Rights in all materials (including illustrations, drawings, toolings, samples and specifications) supplied by PML to the Supplier (**PML Materials**) remains the property of PML and shall be treated as confidential by the Supplier. PML Materials shall be used by the Supplier solely for the purpose of preparing a quotation for PML or completing the Purchase Order. The Supplier shall: (1) not copy, sell, lend or otherwise dispose of or use the PML Materials without the prior written consent of PML; and (2) promptly return all PML Materials to PML at any time upon demand.

- (c) PML will own all Intellectual Property Rights in all new materials specifically created by or on behalf of the Supplier for PML, arising out of the provision of services (**Developed Material**). The Supplier assigns to PML immediately upon creation any Intellectual Property Rights in all Developed Material and the Supplier will, and will ensure its personnel, execute all documents and do all acts and things required by PML for the purpose of giving effect to this sub-section.

13. Assignment and Sub-Contracting

This Purchase Order is personal to the Supplier and shall not be assigned to any third party. The Supplier will not without the prior written approval of PML be permitted to sub-contract the production, manufacture or supply of the whole or part of the goods or services to be supplied.

14. Safety

The Supplier, its employees and agents shall (and the Supplier agrees to ensure that any approved sub-contractors shall) at all times when on PML's site adhere to PML's safety, environmental and equal opportunity policies and all lawful directions of PML staff.

15. Authority to Vary

Any approval or agreement required from PML under these terms and conditions and any variation of these terms and conditions shall not be effective or binding on PML unless it is in writing and signed by either:

- (a) the relevant functional director of PML; or
- (b) a statutory director of PML.

16. Set-off

PML may without prior notice or demand apply any amount owing from the Supplier to PML in or towards satisfaction of any amount owing or unpaid from PML to the Supplier.

17. Governing Law

Contracts shall be governed and construed in accordance with the laws of Victoria, Australia and the parties hereby submit to the jurisdiction of the courts of Victoria, Australia.

18. Insurance

- (a) The Supplier must effect and maintain during the term of this Purchase Order:
- (1) a public liability insurance policy for a minimum of \$3,000,000 for any 1 event; and
 - (2) a Worker's Compensation Insurance policy as required by the Accident Compensation Act 1985 (Vic) and/or equivalent legislation in all States and Territories if the services are to be performed in these jurisdictions.
- (b) The Supplier will provide to the PML Representative copies and proof of the currency of the insurance policies referred to in section 18(a).

19. Confidentiality

The Supplier will hold any and all information it obtains pertaining to the business of PML and/or its Related Bodies Corporate in strict confidence. The Supplier will ensure that it and each of its employees, agents and subcontractors:

- (1) does not disclose any of that information to any person without the prior written consent of PML;
- (2) does not make any use of that information or any part of it except for the proper performance of its obligations under these terms and conditions;
- (3) does not make any use of that information or any part of it to the competitive disadvantage of PML; and
- (4) sign a confidentiality agreement, if requested by PML.

(b) The provisions of section 19(a) do not apply to:

- (1) information which was already lawfully in the possession of the Supplier as at the date of the accepted Purchase Order;
 - (2) information after it becomes generally available to the public other than because of a breach of section 19(a); or
 - (3) the disclosure of information in order to comply with any applicable law or legally binding order of any court, government, semi-government authority or administrative or judicial body.
- (c) Before any use or disclosure in reliance on section 19(b)(3), the Supplier will notify PML of the full details of the circumstances of the proposed use or disclosure and of the relevant information to be used or disclosed and:
- (1) will give PML a reasonable opportunity to challenge in a court of law or other appropriate body whether the proposed use or disclosure is in accordance with section 19(b)(3); and
 - (2) will use its reasonable endeavors to obtain confidential treatment of the information which is to be disclosed.

20. Protection of personal information

Notwithstanding any permitted handling of PML's confidential information, the Supplier must, in respect of any personal information (as that term is defined in the *Privacy Act 1988* (Cth)) provided by or on behalf of PML or accessed by Supplier or its employees, agents and sub-contractors in connection with these the goods and services set out in the Purchase Order:

- (a) comply with the Privacy Requirements, as though they are binding on the Supplier;
- (b) only use and disclose the information to the extent necessary to provide the goods and services;
- (c) promptly notify PML of any actual, apparent or anticipated breach of this Section 20;
- (d) if requested by PML or on expiry or termination of these terms and conditions, immediately return or permanently destroy, all documents and materials containing the information;
- (e) liaise and co-operate with PML in the event of any privacy breach, complaint or request relating to the information;
- (f) give PML or its nominee or regulator access to all premises, personnel, materials and systems to assess Supplier's compliance with all or any part of this Section 20;
- (g) obtain consents from relevant individuals to the collection and handling of their personal information in the manner contemplated by the Purchase Order; and
- (h) ensure that any person who is authorised by the Supplier to have access to the information complies and agrees comply with this Section 20 to the same extent as the Supplier.

For the purpose of this Section, "**Privacy Requirements**" means the *Privacy Act 1988* (Cth), the Australian Privacy Principles under that Act and any requirement law or industry code applicable to either party in relation to privacy, data protection, surveillance, security, direct marketing or the handling of personal information.

21. Supplier Charter

The PML Supplier Charter, as updated by PML and sent to the Supplier from time to time, forms part of and is incorporated into these terms and conditions. The Supplier must, and must ensure that its employees, agents and sub-contractors, comply with the Supplier Charter at all times.