

## 1. Definitions

**CGA** means the Consumer Guarantees Act 1993.  
**Consideration** has the meaning given by the GST Law.  
**Chain of Responsibility Legislation** means Part 6C of the Land Transport Act 1998.  
**GST** has the meaning set out in the GST Law.  
**GST Law** means the Goods and Services Tax Act 1985.  
**Orora** means Orora Packaging New Zealand Limited and its subsidiaries.  
**Orora Sites** means the delivery locations specified in the Purchase Order or as otherwise notified by Orora to the Supplier from time to time.  
**Products** means all goods, products and services (including but not limited to consultancies and maintenance) covered by the Purchase Order, including new materials, processed materials or fabricated products.  
**Product Recall** means a request by Orora, the Supplier or a third party to return particular Products for repair or replacement due to defects or safety concerns.  
**Product Specifications** means the specifications set out in the Purchase Order or as otherwise agreed between the parties in writing from time to time.  
**Purchase Order** means any purchase order lodged by Orora with the Supplier for the purchase of Products.  
**Supplier** means the person, firm, partnership, company or other legal entity to which the Purchase Order is issued and includes its servants, agents and sub-contractors.  
**Tax Invoice** has the meaning given by the GST Law.  
**Taxable Supply** has the meaning given by the GST Law, but excludes a supply to which section 8(4B) of the GST Law applies.  
**Taxes** means any present or future tax, withholding tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) imposed by any government or other taxing authority in respect of any payment under these Conditions of Purchase, but does not include GST.

## 2. Application

2.1 Subject to Clause 3 below, the Supplier will be deemed to have accepted the application of these Conditions of Purchase upon accepting a Purchase Order from Orora.

## 3. Entire Agreement

3.1 These Conditions of Purchase, the Purchase Order and any applicable Product Specifications agreed by the Parties, represent the entire agreement between the parties and the Supplier shall, by accepting the Purchase Order, be bound by these Conditions of Purchase. These Conditions of Purchase shall apply to the exclusion of all other terms and conditions, whether contained in the Supplier's invoice or conditions of sale or otherwise.

## 4. Pricing and costs

4.1 The purchase price of the Products payable by Orora shall be that specified in the Purchase Order and shall be fixed firm, and cannot be varied without the prior written agreement of Orora.  
 4.2 The purchase price specified in the Purchase Order shall be on a DDP basis (as defined in Incoterms 2010) unless otherwise agreed.  
 4.3 If Orora notifies the Supplier that it is able to buy any Products at a lower delivered cost than similar Products supplied by the Supplier, then either the Supplier shall agree to meet the lower cost for those Products or Orora may cancel any outstanding Purchase Order for those Products from the Supplier and acquire the Products from the alternative source.  
 4.4 Without limiting any of Orora's rights under these Conditions of Purchase or under any law, in respect of any moneys due and payable by Orora to the Supplier for the Products, Orora is entitled to deduct from or set off against those moneys any bona fide claim which Orora may have against the Supplier or any of its related bodies corporate, whether as a result of a breach of these Conditions of Purchase or otherwise.

## 5. Terms of Payment

5.1 The terms of payment unless otherwise stated on the Purchase Order are 62 days from the completion of the month of invoice.

## 6. GST and taxes

6.1 All prices for the Products and other amounts specified in these Conditions of Purchase or any Purchase Order, (other than in the calculation of Consideration) are exclusive of GST but inclusive of all other Taxes unless otherwise stated.  
 6.2 If GST is payable on a Taxable Supply made in connection with these Conditions of Purchase, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.  
 6.3 No payment of any amount pursuant to clause 6.2 and no payment of the GST Amount where the Consideration for a Taxable Supply is expressly agreed to be GST inclusive, is required until the Supplier has provided a Tax Invoice or Adjustment Note as the case may be to Orora.  
 6.4 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

## 7. Purchase orders and delivery

7.1 To obtain supplies of the Products, Orora will issue a Purchase Order to the Supplier, setting out the quantity of the Products required, the time and date of delivery of the Products, and the Orora Site(s) to which the Products are to be delivered. The Products must be delivered by the Supplier in accordance with the applicable Purchase Order.  
 7.2 Orora will not be responsible for any order unless it is issued on a Purchase Order. No variation of a Purchase Order will be effective unless approved in writing by Orora. The number appearing on the Purchase Order must be quoted on all invoices, delivery dockets and parcels.  
 7.3 Orora may vary the time, date or place of delivery specified in a Purchase Order by notice in writing to the Supplier any time prior to delivery. Orora may cancel or vary a Purchase Order or any part of it without any liability at any time prior to delivery. Where the Supplier receives a notice of variation from Orora, the Supplier must vary the Purchase Order accordingly and must provide to Orora an adjusted Price for the Products within 30 days of the date of variation.  
 7.4 Time is of the essence in so far as it applies to all obligations of the Supplier under these Conditions of Purchase. Without prejudice to any other rights which Orora may have pursuant to these Conditions of Purchase, if any Products are not, or are expected to not be delivered within the time specified in the relevant Purchase Order (or as otherwise notified by Orora), then Orora may:  
 (a) refuse to accept such Products and terminate the Purchase Order; or  
 (b) require the Supplier to deliver the Products by the most expeditious means, whereupon any additional delivery charges must be borne by the Supplier; or  
 (c) extend the time for completion and/or delivery of the Products.  
 7.5 If any Products are not delivered to the Orora Sites specified by Orora, the Supplier will be responsible for any additional expense incurred in delivering them to their correct destination.  
 7.6 Orora is entitled to reject any Products by written notice to the Supplier if all or any of the Products do not conform in any way whatsoever to the Product Specifications in the Purchase Order (**Defective Products**). The Supplier must (at its own cost):  
 (a) collect the Defective Products from Orora and, at Orora's sole option, either:

- (b) immediately replace them with Products that conform with the requirements of these Conditions of Purchase; or
  - (c) reimburse Orora the full purchase price for the Products and any costs incurred by Orora in connection with the rejection of such Defective Products; or
  - (d) reimburse Orora for any expenses Orora incurs in making good any Defective Products or having any services re-supplied.
- 7.7 Without prejudice to Orora's rights under these Conditions of Purchase, Orora may, in its absolute discretion, accept delivery of the Defective Products at a discounted price (as agreed between the parties).
- 7.8 If Orora specifies a time for delivery, the Supplier must promptly advise in writing whether it considers that complying with that time would involve a breach of the Chain of Responsibility Legislation and, if so, the time for delivery that would not breach that law. Any time specified by the Supplier or, where a notice given by the Supplier under this clause is given, Supplier will be liable for any loss or damage howsoever arising as a result or consequence of any failure to deliver or for delay in delivery or other instructions given by Orora to Supplier.
- 7.9 Nothing in this clause 7 is deemed to affect in any way the liability of the Supplier to Orora under any other provisions of these Conditions of Purchase in respect of the supply of Defective Products.

## **8. Inspection prior to dispatch**

- 8.1 The Supplier must permit Orora to enter any premises at which it manufactures the Products, upon reasonable notice and during normal business hours, to inspect the Products prior to their dispatch. Orora shall have the power to reject any work performed or Products that do not conform to a Purchase Order and require that such products be reproduced or works re-performed at no additional cost to Orora. Any such inspection does not relieve the Supplier of any obligations contained in a Purchase Order, these Conditions of Purchase or at law.

## **9. Title and risk**

- 9.1 Without prejudice to any right of rejection or other rights which Orora has under these Conditions of Purchase, title to and risk of loss in the Products will pass to Orora on delivery by the Supplier to the relevant Orora Site.

## **10. Sub-Contracting and Assignment**

- 10.1 The Supplier shall not assign its rights or obligations hereunder or sub-contract any work to be performed pursuant to the Purchase Order without the prior written consent of Orora.
- 10.2 Orora's consent to the Supplier sub-contracting any work to be performed pursuant to the Purchase Order shall not relieve the Supplier of its responsibility for the whole of the work to be performed pursuant to the Purchase Order or of any obligations contained in the Purchase Order or at law.

## **11. Packaging, Storage & Hazardous Products**

- 11.1 The Products shall be properly packed to avoid being damaged during delivery of loading and unloading. All packages shall be clearly marked with the Purchase Order number and the location of delivery.
- 11.2 All Products which are hazardous must be marked by the Supplier with international danger symbol(s) and display the name of the material in English. Delivery and other documents must include disclosure of the hazard(s) and name the material in English. Products must be accompanied by emergency material in English in the form of written instructions, labels or markings and Material Safety Data Sheets, as well as any information that may be required under the Hazardous Substances and New Organisms Act 1996 and any regulations made pursuant to that Act.
- 11.3 All information held by or reasonably available to the Supplier regarding any potential hazards or special requirements known or believed to assist in the transport, packaging, storage, handling or use of the Products shall be immediately communicated to Orora.

- 11.4 The Products shall be packed, in the case of dangerous Products, to comply with the requirements of all applicable laws, regulations, and codes, and marked accordingly with the relevant approvals. Such packaging shall also be marked with the appropriate information required by the Hazardous Substances and New Organisms Act 1996. In all other cases, the Products shall be packed in accordance with any packaging requirements or specifications communicated by Orora to the Supplier. Any proposed alteration to Orora's packaging requirements or specification shall be subject to Orora's prior approval.
- 11.5 Where required by Orora or at law, the Supplier shall provide all necessary Certificates of Conformance, Certificates of Analysis and Test Certificates together with the Code deliver pursuant to the Purchase Order.

## **12. Compliance with laws & policies**

- 12.1 All employees, agents or sub-contractors of the Supplier required to attend an Orora Site must comply with all policies or procedures, including the terms of any safety manuals, that are implemented by Orora from time to time and comply with any reasonable written or oral instructions given by Orora Site management while attending an Orora Site.
- 12.2 The Supplier must comply with all applicable laws, rules, statutory and legal requirements and regulations relating to the safety, manufacture, production, importation, packaging, labelling, transportation, delivery, unloading, and sale of the Products and the nature, substance, quality, weight and measurement of the Products.
- 12.3 The Supplier is responsible for obtaining, at its own cost, any licence, concession, permit, approval, authority or consent required in relation to the safety, manufacture, production, importation, packaging, labelling, transportation, delivery, unloading, and sale of the Products.

## **13. Insurance**

- 13.1 For the duration of these Conditions of Purchase, the Supplier must arrange and maintain at its own expense Public and Product liability insurance for an amount not less than \$10 million for the Supplier's own risk and that of its own employees, agents and subcontractors including without limitation, workers' compensation with the interest of Orora noted as principle and including a cross liability clause.
- 13.2 Confirmation consisting of a certificate of currency shall be provided, on request, to Orora. The Supplier shall not at any time do or suffer anything to be done whereby such insurance may be rendered void or voidable.

## **14. Warranties**

- 14.1 The Supplier warrants that all Products which it supplies to Orora under these Conditions of Purchase will:
- (a) meet the Product Specifications and all other requirements set out in these Conditions of Purchase or in a relevant Purchase Order;
  - (b) strictly conform to any description or sample of the Products provided to Orora by the Supplier;
  - (c) be of merchantable quality and fit for any purpose which Orora makes known to the Supplier (expressly or impliedly) or for which the Products are commonly supplied;
  - (d) be performed with due care and skill and by appropriately qualified and trained personnel;
  - (e) be safe and free from defects in design, material and workmanship;
  - (f) be free from all security interests of third persons (and that the Supplier has good title thereto) and will not be subject to any Security Interests in favour of the Supplier (or any of its related bodies corporate) arising under this Agreement or otherwise;
  - (g) it has not granted any Security Interest over the Product; or will immediately release or procure the release of any Security Interests that are granted and/or registered over the Product;

- (h) not infringe any Intellectual Property Rights of any third person, and the Supplier further warrants that the sale or use of the Products by Orora or any other person will not amount to such an infringement.
- 14.2 The Supplier warrants that it understands and has been compliant with, and will continue to act in compliance with, the Chain of Responsibility Legislation.
- 14.3 Notwithstanding any other rights which Orora may have under these Conditions of Purchase or at law (including the CGA), if the Supplier breaches any of the warranties set out in this clause 14, Orora may at its option:
- (a) require the Supplier to resupply the Products at the Supplier's cost (including all transport, delivery and other costs which may be incurred by Orora in storing and returning unsatisfactory Product to the Supplier) within a reasonable time; or
  - (b) terminate the relevant Purchase Order and require the repayment by the Supplier of any amounts which it may have made pursuant to that Purchase Order.
- 14.4 These representations and warranties are in addition to any representation, warranty or guarantee given by the Supplier in respect of the Products or any representation, warranty, guarantee or term set out in a Purchase Order or implied or imposed by law (including the CGA). Any inspection of the Products exercised under Clause 8 does not affect the representations and warranties provided in this Clause 14.

## **15. Release and indemnity**

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- 15.1 The Supplier hereby indemnifies, releases and holds Orora, its directors, officers, employees, related bodies corporate and agents harmless from and against all actions, claims, charges, costs (including those incurred by Orora resulting from a Product Recall), expenses (including legal fees), losses, damages and other liabilities whatsoever arising directly, indirectly or consequentially out of or otherwise in connection with:
- (a) a breach of these Conditions of Purchase by the Supplier;
  - (b) a breach of the terms of any Purchase Order by the Supplier;
  - (c) a breach of any formal written agreement between the Supplier and Orora;
  - (d) a breach of any of the warranties set out in clause 14;
  - (e) the Supplier's negligent act or omission;
  - (f) any other conduct, act or omission by the Supplier in connection with:
    - (i) the manufacture, production, importation, packaging, labelling, transportation, delivery, unloading, or sale of the Products by the Supplier; or
    - (ii) the use, sale or supply of the Products by Orora or any customer of Orora.
- 15.2 The Supplier hereby releases and forever discharges Orora and its officers, directors, employees, related bodies corporate and agents from all actions, claims, charges, costs, expenses, losses, damages and other liabilities for which the Supplier is required to indemnify Orora pursuant to this clause 15.

## **16. Confidentiality**

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- 16.1 Suppliers are to keep confidential any information relating to, or contained in, this Agreement, volumes, prices and specifications developed specifically for Orora or disclosed by Orora or its related bodies corporate or made available to the Supplier in accordance with or as a result of the supply of Products under these Conditions of Purchase, a Purchase Order or a formal written agreement between Orora and the Supplier.

## **17. Force majeure**

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- 17.1 Neither the Supplier nor Orora shall be liable to the other for default or delay in performing its obligations under the Purchase Order caused by any occurrence beyond its reasonable control, including, without limitation, fire, strike, lock-out, industrial disturbance, riot, war, act of God and governmental order or regulation, provided that the party

affected by such occurrence gives written notice thereof to the other party within 7 days of the commencement of that occurrence.

## **18. Intellectual property**

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- 18.1 The Supplier shall indemnify Orora in respect of any loss, damage, expense, claim or liability suffered or incurred by Orora as a result of any claim by a third party alleging infringement of any intellectual property rights in relation to the Products or any work to be performed pursuant to the Purchase Order. Any intellectual property rights developed by either Supplier or Orora or on behalf of Orora in relation to the Products or as a result of any work to be performed pursuant to a Purchase Order or under these Conditions of Purchase shall belong to and be vested in Orora.

## **19. General**

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- 19.1 The Supplier must not assign, novate or otherwise deal with any of its rights or obligations under these Conditions of Purchase or a Purchase Order without the prior written consent of Orora. Orora may assign or novate any of its rights or obligations under these Conditions of Purchase or an individual Purchase Order upon prior written notice to the Supplier.
- 19.2 No variation to these Conditions of Purchase will be binding upon Orora or the Supplier unless the variation has been signed by Orora's authorised representative.
- 19.3 No failure to exercise, or any delay in exercising any right, power or remedy by a party under these Conditions of Purchase operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- 19.4 These Conditions of Purchase are governed by the laws of New Zealand and each party will submit to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with all matters concerning these Conditions of Purchase.
- 19.5 No clause in these Conditions of Purchase is to be construed as requiring any person to act in a manner, or to direct another person to act in a manner that is contrary to the Chain of Responsibility Legislation.
- 19.6 Nothing in these Conditions of Purchase is intended to exclude, restrict or modify rights which Orora may have under common law, legislation (including the CGA) or otherwise which may not be excluded, restricted or modified by agreement.
- 19.7 Any provision of these Conditions of Purchase that is deemed illegal or unenforceable in the circumstances is to be interpreted in such a manner that allows it to be read as enforceable. Where there is no such interpretation, the parts of the clause(s) that are deemed illegal are unenforceable and are to be severed from these Conditions of Purchase and all other provisions will remain unchanged.