

Definitions

Agreement means these general terms and conditions of purchase.

Business Day means a day (not being a Saturday, Sunday or public holiday) on which Australian banks (as defined in Section 9 of the Corporations Act) are open for general banking business in the capital city of the State.

Competition and Consumer Act means that Competition and Consumer Act 2010 (Cth).

Confidential Information means any written or oral information of a technical, business or financial nature or which is taken by any provision of this Agreement to be Confidential Information, or which Olympus makes the Supplier aware is considered by Olympus to be confidential and proprietary, and includes all information that is personal information for the purposes of the Privacy Act 1988 (Cth), but does not include information which the Supplier can establish:

- (a) was in the public domain when it was given to the Supplier;
- (b) becomes, after being given to the Supplier, part of the public domain, except through disclosure contrary to this Agreement;
- (c) was in the Supplier's possession when it was given to the Supplier and had not been acquired in some other way (directly or indirectly) from Olympus; or
- (d) was lawfully received from another person who had the unrestricted legal right to disclose that information free from any obligation to keep it confidential.

Corporations Act means the Corporations Act 2001 (Cth), as amended.

Delivery Date means the date for delivery of the Goods to the Delivery Point as specified by Olympus.

Delivery Point means the place where the Goods are to be delivered as specified by Olympus.

Goods means the goods purchased by Olympus from the Supplier as specified by Olympus in the Order.

GST has the meaning given to that term in the GST Law.

GST Law has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Insolvency Event means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

Intellectual Property Rights means all present and future rights throughout the world conferred by statute, common law or equity in or in relation to inventions, discoveries, innovations, know how, technical information and data, prototypes, processes, improvements, patent rights, circuitry, drawings, plans, specifications, copyright, trade mark rights, design rights, plant variety rights and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not registrable, registered, or patentable. These include all rights in all applications to register these rights, all renewals and extensions of these rights and all rights in the nature of these rights.

Offer Response means a written document provided by Olympus in response to a Supplier's Offer which includes the Delivery Date, Delivery Point, confirmation of the Goods to be purchased and confirmation of the price for the Goods to be purchased.

Olympus means Olympus Australia Pty Ltd (ABN 90 078 493 295) and its successors and assigns.

Order means a Purchase Order or Offer Response provided by Olympus to the Supplier.

Purchase Order means a written document provided by Olympus to the Supplier, containing the Delivery Date, Delivery Point, the Goods to be purchased and the price for Goods to be purchased.

RFQ means a request for quotation by Olympus.

Supplier's Offer has the meaning given to it in clause 2.3.

State means the state of Victoria in the Commonwealth of Australia.

1 Supply of Goods

1. Olympus agrees to purchase and the Supplier agrees to supply the Goods in accordance with this Agreement.
2. This Agreement shall apply to all Goods supplied by the Supplier to Olympus unless otherwise agreed in writing by Olympus' purchasing manager.
3. This Agreement is deemed to be incorporated into all contracts for the purchase of Goods by Olympus from the Supplier and will prevail over any inconsistent terms in any document of the Supplier unless otherwise agreed by Olympus' purchasing manager in writing.
4. If Olympus places an order with the Supplier for Goods or enters into a contract with the Supplier and the Goods provided to Olympus, or Olympus makes any payment, the Supplier is taken to have accepted the supply of such Goods on the terms of this Agreement.
5. To the extent the Supplier's terms and conditions are supplied with the Goods (including as printed on consignment notes or other documents) those terms and conditions will be of no legal effect and will not constitute part of any agreement to supply the Goods.

2 Request for Quotations and Orders

1. **Purchase Orders:** Olympus may place Purchase Orders (orally or in writing) for Goods. If Olympus does not receive a written notification from the Supplier that they are unable to supply the Goods according to the Purchaser Order within 24 hours of receipt of the Purchaser Order, the Supplier will be deemed to have accepted the Purchaser Order.
2. **Request for Quotation:** If Olympus provides the Supplier with a RFQ, the RFQ shall not constitute an offer by Olympus and Olympus may withdraw or alter the RFQ without notice. All responses to RFQs provided by the Supplier and received by Olympus in Olympus' standard form will constitute a valid quotation and offer for the supply of the Goods (**Supplier's Offer**). For the avoidance of doubt, the Supplier's Offer does not constitute an acceptance by Olympus of the Supplier's Offer.
3. **Offer Response:** The Supplier's Offer may be accepted by Olympus by providing an Offer Response to the Supplier in writing. A contract will be formed between Olympus and the Supplier upon the Supplier being provided with the Offer Responses from Olympus. The relevant Offer Response and this Agreement shall constitute the entire agreement between Olympus and the Supplier for the supply or provision of those Goods. For the avoidance of doubt, no representation or statement by an employee, agent not expressly stated in an Offer Response shall be binding on Olympus.

3 Cancellation and modification of Orders

1. Orders may be modified or cancelled by Olympus at any time prior to the Delivery Date provided that Olympus will be liable for the Supplier's reasonable costs associated with any work in progress. Olympus may cancel any order for Goods where the Supplier has failed to provide the Goods in whole or part by the Delivery Date and in accordance with clause 7.

4 Price and Payment

1. Unless Olympus consents in writing, any order for Goods may not be invoiced at a price higher than that set out in an Order.
2. Unless Olympus consents in writing, any order for the provision of Goods may not be invoiced at a price higher than that set out in an Order.
3. Save in the event of breach by the Supplier of this Agreement or the delivery of inadequate Goods by the Supplier, payment for Goods shall be made by Olympus to the Supplier no later than 30 days from the Delivery Date unless specified otherwise by Olympus.
4. In the event that the Supplier breaches this Agreement, the Supplier must refund to Olympus any monies paid pursuant to this Agreement within 30 days of a notification of breach.

5 GST

1. Unless otherwise stated, the price for the Goods is GST exclusive.
2. In addition to the price for the Goods, Olympus must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this Agreement.
3. Olympus must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as Olympus pays the price (or the corresponding first part of it if the Supplier agrees to Olympus paying the price by instalments).

6 Packing, Marking and Shipping

- The Supplier covenants to Olympus that:
1. all Goods shall be properly packed to prevent damage or deterioration and in such manner as will obtain the lowest transportation rates;
 2. the Supplier shall be responsible for all charges by way of preparation, crating, dunnage and other costs unless separately stated in this Agreement;
 3. all consignments shall be clearly marked with Olympus' order reference and name;
 4. each consignment shall be issued with a packing slip which shall clearly state Olympus' order number, the type of goods, quantities and product name; and
 5. the shipment of Goods to Olympus is deemed to be acceptance of this Agreement for the supply or provision of those Goods.

7 Delivery of Goods

1. The Supplier must deliver the Goods to Olympus on the Delivery Date and in accordance with the delivery terms specified in the Order.
2. The costs of attending the Delivery Point in order to provide the Goods will be at the Supplier's cost unless otherwise stated in the Order.
3. If the Supplier does not supply the Goods at the Delivery Point on the Delivery Date, Olympus may, in addition to any other remedy:
 - (a) obtain those Goods from another source;
 - (b) refuse to accept the late delivery of those Goods, and will not be liable for any payment for those Goods;
 - (c) at its election, accept or reject partial deliveries;
 - (d) require the Supplier to ship the Goods via air (where the context requires) or other expeditious route to minimise delay in delivery, and the Supplier must bear all costs occasioned thereby; and/or
 - (e) treat such default as a repudiation by the Supplier and accept such repudiation and terminate the agreement for the supply of those Goods by notice in writing whereupon Olympus' obligations to the Supplier shall terminate absolutely.

8 Inspection and Return

1. Notwithstanding any prior payment, all Goods are subject to inspection and acceptance by Olympus within a reasonable time after delivery at the Delivery Point.
2. If the Supplier delivers Goods to Olympus that Olympus considers in its sole discretion:
 - (a) do not match the description and quantity of the Goods ordered;
 - (b) are not fit for the purpose specified by Olympus;
 - (c) breach any of the warranties given in under clause 10; or
 - (d) are not of acceptable quality,then the Goods shall not be taken to be delivered for the purposes of clause 7.

9 Title and Risk

Title in Goods shall pass to Olympus at the time of delivery to the Delivery Point. Risk of damage or loss of the Goods shall pass to Olympus at such time as the Goods are delivered to the Delivery Point and Olympus has completed its inspection of the Goods and has accepted the Goods in accordance with clause 8. Until that time, the Goods remain at the risk of the Supplier.

10 Warranties

1. The Supplier acknowledges that where the supply of Goods are "consumer" supplies, under applicable State, Territory and Commonwealth law(s) (including, without limitation, the *Competition and Consumer Act 2010 (Cth)*) certain statutory express and implied guarantees and warranties will be implied into this Agreement (**Non-Excluded Guarantees**).
2. The Supplier acknowledges that nothing in this Agreement purports to modify or exclude the Non-Excluded Guarantees.
3. In addition to the Non-Excluded Guarantees, the Supplier hereby agrees that the Goods will be provided:
 - (a) in compliance with any applicable laws for the packaging, promotion, distribution, storage, sale, leasing or hire of the Goods in the Commonwealth of Australia;
 - (b) conform to the specification drawing samples or other descriptions furnished or specified by Olympus; and
 - (c) not infringe the Intellectual Property Rights of any third party.

11 Supplier liability

1. Subject to clause 10 and to the extent permitted by law, the liability of the Supplier and its employees or agents for a breach of any warranty or liability implied by this Agreement, is limited, at Olympus' option, to:

- (a) for a major failure, Olympus is entitled to a replacement or refund for the Goods and compensation for any reasonably foreseeable damage;
 - (b) the replacement of the Goods or the supply of equivalent Goods;
 - (c) the repair of the Goods;
 - (d) the payment of the costs of replacing the Goods or of acquiring equivalent goods; or
 - (e) the payment of the cost of having the Goods repaired.
2. Notwithstanding clause 11.1, the Supplier is liable for all liabilities and losses incurred by Olympus (and users of the Goods) in connection with a demand, action, arbitration or other proceeding, arising directly or indirectly as a result of or in connection with:
- (a) a breach by the Supplier of any representation or warranty or guarantee provided in this Agreement or implied by law;
 - (b) a breach or non-performance of any obligation of the Supplier under this Agreement, whether express or implied; and
 - (c) a claim that the Goods supplied to Olympus infringe any Intellectual Property Rights of a third party.
3. The Supplier is liable for all legal costs and other expenses, on a full indemnity basis, incurred by Olympus in connection with matters referred to in clause 11.2(a).
4. The provider of the warranties under this Agreement is the Supplier.
5. Other than as expressly provided for in this clause 11 and subject to the limitations in clause 10, Olympus, its contractors and/or agents will not be liable for any loss or damage (including consequential loss or damage, which includes without limitation, loss of profit and loss of revenue) suffered in connection with the Goods except in circumstances where such loss or damage is due to the gross negligence of Olympus, its contractors and/or agents.

12 Supplier Indemnity

1. Subject to clauses 10 and 11, the Supplier indemnifies Olympus from every liability, loss, damage, cost or expense directly or indirectly incurred or suffered by Olympus that is caused by or contributed to by any of the following:
- (a) Olympus' compliance with any of the Supplier's instructions about the Goods;
 - (b) the Supplier's or its employees' failure (or any third party associated with its failure) to:
 - (i) adequately provide safety information relating to the Goods;
 - (ii) comply with any laws relevant to providing the Goods;
 - (iii) take any reasonable precaution to bring to the attention of any potential users of the Goods any dangers associated with the Goods;
 - (iv) take any reasonable precaution to detect any matters to which Olympus may become liable in any way (for example, under the Competition and Consumer Act);
 - (v) provide correct information to Olympus; and
 - (vi) use and maintain the Goods prior to delivery to Olympus in accordance with the manufacturer's instructions and or any other written materials supplied with the Goods relating to the storage, installation and operation of the Goods.
 - (c) any negligence or breach of duty by the Supplier or any breach by any third party of this Agreement;
 - (d) any workmanship or procedure performed by the Supplier or a third party in connection with the Goods; and
 - (e) any misuse, neglect or alteration by the Supplier, its agents, its employees or any third party or the property of Olympus in connection with supplying the Goods.

13 Intellectual Property

Olympus grants to the Supplier a non-exclusive licence to use its Intellectual Property Rights for the sole purpose of fulfilling Orders in accordance with this Agreement. The Supplier acknowledges that there is no transfer of title, interest or ownership to the Supplier of any Intellectual Property Rights in the Intellectual Property Rights of Olympus.

14 Confidentiality

1. The Supplier must:
- (a) keep the Confidential Information private and secret;
 - (b) not access, use or reproduce Confidential Information for any purpose other than in connection with the Goods supplied to Olympus by the Supplier, nor assist or permit any other person to do so;
 - (c) not disclose Confidential Information except as permitted under this Agreement; and
 - (d) take all steps reasonably necessary to safeguard the Confidential Information from unauthorised access, use or disclosure.
2. The Supplier may disclose Confidential Information:
- (a) to their representatives on a need to know basis provided that the Supplier ensures that their representatives do not use, reproduce or disclose the Confidential Information other than in accordance with this Agreement and the Supplier accepts liability for any failure of their representatives to do so;
 - (b) if disclosure is required by law or the rules of any stock exchange, provided that the Supplier first notifies Olympus of the required disclosure (where practicable); or
 - (c) with Olympus' prior written consent.

15 Insurance

The Supplier must maintain insurance coverage for providing the Goods for the minimum amounts in relation to the following areas:

- (a) Public Liability Insurance to \$10,000,000;
- (b) Workers Compensation to the minimum amount required by the law;
- (c) Professional Indemnity to the minimum amount required by the law; and
- (d) any other insurance as nominated by Olympus from time to time.

16 Default and termination

1. **Event of Default:** Any of the following events or conditions shall constitute an event of default by the Supplier under this Agreement:
- (a) the Supplier becomes affected by one or more Insolvency Event;
 - (b) the Supplier violates any term of this Agreement and fails to correct such violation within 14 days after written notice from Olympus; and
 - (c) the Supplier consolidates with or merges with or into any entity, or sells or otherwise transfers a majority of its assets or stock to any entity, or incurs a substantial amount of indebtedness other than in the ordinary course of its business, unless in each case and before the event in question, the Supplier's obligations are assumed or guaranteed in a manner satisfactory to Olympus (in Olympus' sole and absolute discretion).

2. Upon the occurrence of an event of default by the Supplier described in clause 16.1, in addition to any other remedies Olympus has under this agreement, the Supplier agrees that Olympus may terminate this Agreement without prior notice.
3. Without prejudice to any other rights or remedies of Olympus, the Supplier shall pay to Olympus on demand any costs and expenses incurred by Olympus in relation to a default and/or termination of this Agreement.
4. The Supplier has no right to terminate this Agreement.
5. Termination of this Agreement shall be without prejudice to the rights and obligations of the parties accrued up to the date of termination.

17 Severability

Any provision of these terms which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make these terms enforceable, unless this would materially change the intended effect of these terms.

18 Assignment

1. The Supplier may not sub-contract, assign, transfer or otherwise deal with its rights, interests or obligations under this Agreement without Olympus' prior written consent.
2. In the event that Olympus grants its prior written consent for the Supplier to sub-contract, assign, transfer or otherwise deal with its rights or obligations under this Agreement in accordance with clause 18.1, the Supplier must ensure that the third party assignee supplies the Goods to Olympus in accordance with the terms of this Agreement. The Supplier acknowledges and agrees that any sub-contracting, assignment or transfer of its rights, interests or obligations permitted under this clause 18 does not discharge the Supplier from its obligations and/or liabilities under this Agreement.
3. Olympus may assign, transfer, novate or otherwise deal with its rights, interests and obligations under this Agreement, or any document entered into pursuant to it without the consent of, or notice to, the Supplier.
4. Olympus may assign, pledge or otherwise dispose of its rights in any of the Goods without notice to the Supplier to one or more third party assignees.
5. In the event that Olympus assigns, pledges or otherwise disposes of its rights in the Goods in accordance with clause 18.4, the parties acknowledge and agree that both Olympus and the Supplier are liable for the performance of each of their respective obligations under this Agreement and that the Supplier may not seek to require any third party assignee to perform any of Olympus' obligations under this Agreement.

19 Variation

Olympus is entitled to vary this Agreement in respect of future orders for Goods at any time by providing the Supplier with 10 Business Days prior written notice.

20 Entire agreement

These terms, the Supplier's Offer and the Offer Response (as applicable) constitute the entire agreement between the Company and the Customer concerning the subject matter and supersede all prior representations, contracts, statements and understandings, whether verbal or in writing. All other terms and conditions are excluded to the fullest extent permitted by law including any terms and conditions which the Customer may from time to time seek to impose.

21 Further assurance

Each party will promptly execute all documents and do all things that another party from time to time reasonably requires of it to effect, perfect or complete the terms and conditions of this Agreement and any transaction contemplated by it.

22 Non-exclusive

Olympus reserves the rights to acquire the Goods from a third party or parties at any time.

23 Survival

Clauses 9, 10, 11, 12, 14, 16, 17, 18, 20, 25 and 26 continue despite the termination of this Agreement.

24 Relationship

Unless this Agreement expressly provides otherwise, nothing in this Agreement may be construed as creating a relationship of partnership, joint venture, employment agreement, relationship of principal and agent or of trustee and beneficiary. For the avoidance of doubt, the Supplier acknowledges and agrees that nothing in this Agreement grants the Supplier with the right or authority to enter into any agreement or arrangement on Olympus' behalf and that the Supplier must not represent or hold itself out to a third party to have such authority.

25 Waiver

1. A single or partial exercise or waiver of a right relating to this agreement will not prevent any other exercise of that right or the exercise of any other right.
2. A party will not be liable for any loss, cost or expense of any other party caused or contributed to by any waiver, exercise, attempted exercise or failure to exercise, or any delay in the exercise of, a right.

26 Governing law

1. These terms will be governed by and construed in accordance with the laws in force in Victoria, Australia.
2. Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria, Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with these terms, and waives any right it might have to claim that those courts are an inconvenient forum.