

McPherson's Consumer Products Pty Ltd

Purchase Order

Terms, Provisions and Conditions

1. Supply of goods

- 1.1 Supplier agrees to provide the goods to McPherson's and McPherson's agrees to buy the goods described in the PO in accordance with this document.
- 1.2 This document starts from the date that McPherson's issues a PO to Supplier and ends when Supplier has discharged all its obligations under this document, including those related to remedying any defects in the goods supplied or delivered to McPherson's.

2. Payment and price

- 2.1 The price of the goods set out in a PO includes.
- all taxes (other than GST), duties and other imposts for which Supplier is liable;
 - all insurance costs;
 - all amounts payable for the use of the goods (whether in the course of making or supply of the goods e.g. use of the patents, copyright, registered designs, trademarks and other third party intellectual property rights);
 - all other charges for supply of the goods.

There must not be any extra Supplier imposed charges for testing, inspection, packing, delivery or otherwise in relation to the goods.

- 2.2 Subject to clauses 4 and 5, McPherson's must pay for the goods within 30 days after receipt of a valid Tax Invoice after acceptance of the goods by McPherson's in accordance with this document.
- 2.3 A Tax Invoice will be correctly rendered and accepted by McPherson's if it:
- is addressed as per the PO;
 - identifies the PO (including number (if any));
 - is accompanied by reasonably detailed documentation or an explanation supporting the amount of the Tax Invoice; and
 - complies with the GST Act (if applicable to the supply of goods).

3. Quality and performance

- 3.1 Supplier must supply all goods to McPherson's as ordered and as specified in the PO and this document.
- 3.2 Supplier must package, mark and label the goods delivered or to be delivered to McPherson's in a manner reasonably requested by McPherson's.
- 3.3 Supplier must supply the goods to McPherson's using all due care, skill and diligence and in accordance with any samples or specifications issued by McPherson's to Supplier either in the PO or otherwise.
- 3.4 The goods must be new, unused and free from defects in materials and workmanship. The goods must be of merchantable quality and be fit for their purpose. If a sample of the goods was provided by McPherson's to Supplier, then the goods supplied must match the sample.
- 3.6 In supplying the goods to McPherson's, Supplier must:
- keep McPherson's fully and regularly informed as to all matters affecting or relating to the supply of the goods;
 - where required by McPherson's, provide a hard copy of the Certificate of Analysis (COA) with the delivery documentation (and an email copy of the COA to coa@mcpher.com.au) (note that a failure to provide a valid COA with the delivery documentation (or emailed to coa@mcpher.com.au) may mean that the goods may be rejected and returned to the Supplier at the Supplier's cost and expense);
 - comply with all applicable laws, regulations and product standards in relation to the goods; and
 - ensure that all information provided to McPherson's about the goods is complete, accurate and not misleading.
- 3.7 Supplier must not subcontract the making or supply of the goods or assign or subcontract this document without McPherson's knowledge and prior written consent. If the making or supply of the goods is subcontracted, Supplier will remain primarily responsible to McPherson's for all acts or

omissions of any subcontractors. Any approved subcontractors must comply with the PO and this document.

- 3.8 Supplier must make sure that any subcontractor is aware of the PO and the goods ordered.

4. Inspection of goods and access to Supplier premises

- 4.1 McPherson's may inspect the goods at any time (and also on delivery) prior to acceptance to ensure compliance with a PO and this document.
- 4.2 Supplier must provide McPherson's representatives reasonable access to Supplier's premises (or subcontractor's premises) and records where Supplier (or subcontractor) is making or supplying the goods. McPherson's may copy any of Supplier's records relating to the supply of goods under this document. McPherson's must not unreasonably disrupt Supplier's business or operations in exercising its rights of access under this document.
- 4.3 If McPherson's becomes aware of a defect in the goods supplied or to be supplied under this document, McPherson's (acting reasonably and by providing reasonable prior notice to Supplier) may require Supplier to remedy the defects, complete the goods or remake or resupply the goods at no additional cost to McPherson's.

5. Acceptance or rejection of goods

- 5.1 McPherson's may inspect the goods at any time (and also on delivery) prior to acceptance and will reject any defective goods or goods that are not supplied in accordance with this document (including, but not limited to, because of a failure by the Supplier to provide a valid COA to McPherson's with the delivery of the goods or emailed separately in relation to the goods to coa@mcpher.com.au).
- 5.2 McPherson's will not be liable to pay for any rejected or defective goods or for any damage or costs arising from inspection or rejection of defective goods except to the extent that any negligent act or omission of McPherson's caused the damage or cost.
- 5.3 Before accepting any goods, McPherson's may carry out such inspections and tests as it reasonably requires before accepting delivery of the goods and Supplier must provide all reasonable assistance to McPherson's in this regard. If, after conducting the inspections or testing, McPherson's reasonably determines that the goods do not conform with the specifications as set out in a PO or (if the PO is silent) as stated in any quotation provided by Supplier to McPherson's in connection with the supply of the goods (**Specifications**) and informs Supplier accordingly in writing setting out the deviations from the Specifications, Supplier must promptly take all reasonably necessary actions so that the goods conform with the Specifications and inform McPherson's when this has been done. If McPherson's reasonably determines that the goods do not conform to the Specifications, then McPherson's, may either reject those goods that do not conform to the Specifications or terminate this document.
- 5.4 If McPherson's rejects any goods or determines during the Warranty Period that the goods are defective, Supplier must, within a reasonable time but no later than 30 days from receiving notification by McPherson's under this clause 5 and without prejudice to McPherson's rights otherwise arising under this document or the common law:
- replace, without cost to McPherson's, the rejected goods with goods complying in all respects with the PO and this document;
 - refund payment for the rejected goods; or
 - repair the goods, on site or otherwise, to the reasonable satisfaction of McPherson's.

In the case of clauses 5.4(a) or 5.4(b), McPherson's may remove the rejected goods at Supplier's expense.

- 5.5 If prior to the issue of the PO, McPherson's requires Supplier to submit samples of goods, Supplier must not proceed to make or supply the entirety of the goods set out in any PO until McPherson's has approved the samples.
- 5.6 Title in, and risk of loss of or damage to, the goods pass to McPherson's on delivery.

6. Insurances

Supplier must take out and maintain reasonably appropriate insurances in respect of any risks under a PO or this document relating to the supply of the goods to McPherson's. Supplier must provide annual certificates of currency of such insurances to McPherson's upon request.

7. Intellectual Property

- 7.1 The title to and ownership of Intellectual Property in all Material will vest immediately upon its creation in McPherson's. To the extent that Supplier owns any Intellectual Property in the Material, Supplier hereby assigns all of its right, title and interest in such Intellectual Property to McPherson's.
- 7.2 This document does not affect Supplier's or McPherson's ownership of its Prior IP. However, Supplier grants to McPherson's a perpetual, irrevocable, royalty-free, non-exclusive licence (including a right of sublicense) to use, reproduce, publish, adapt and exploit the Prior IP anywhere in the world insofar as it relates to and is necessary for McPherson's full use of the Material and for full benefit of this document.
- 7.3 In conjunction with the goods, Supplier grants an irrevocable, permanent, worldwide licence (including a right of sublicense) to use any software provided as part of the goods to enable McPherson's to use the goods.
- 7.4 Supplier must not use McPherson's name or logo in a manner that suggests that McPherson's endorses or is associated with Supplier's business, products or services. Supplier must not use any McPherson's trademark or logo without McPherson's prior written consent.

8. Confidentiality and disclosure of information

- 8.1 **Confidential Information** means information that:
- (a) is by its nature confidential;
 - (b) is designated by a party to be confidential;
 - (c) either party knows or ought to know the information is confidential;
 - (d) is comprised in or relates to Material or confidential information McPherson's provides to Supplier in connection with this document including documents, equipment, information and data stored by any means,
- but does not include information which:
- (e) is or becomes public knowledge other than by breach of this document or any other confidentiality obligations; or
 - (f) either party has independently developed or acquired.
- 8.2 Neither party, its employees, agents, and subcontractors may disclose any Confidential Information of the other party without the prior consent in writing of that party except in accordance with this document, if required to do so by law or a securities exchange, or as strictly required in relation to legal proceedings relating to this document.
- 8.3 McPherson's may disclose any of Supplier Confidential Information:
- (a) to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency having authority over McPherson's (including the Australian Securities Exchange);
 - (b) for any other reporting requirements of McPherson's; or
 - (c) to McPherson's employees, professional advisers or contractors on a need-to-know basis where they have entered into an arrangement to preserve the confidentiality of the information.
- 8.4 This clause will survive the end of the agreement for a period of 2 years.

9. Privacy

- 9.1 In supplying the goods to McPherson's, Supplier must comply, and ensure that its officers, employees, agents and subcontractors comply, with the Privacy Act 1988 (Cth) and not do anything which, if done by McPherson's, would breach an Australian Privacy Principle as defined in that Act. Supplier will notify McPherson's if it becomes aware that it may be required to disclose Personal Information by law or to the Australian Information Commissioner.
- 9.2 Supplier undertakes to notify McPherson's when it experiences a data breach or a potential data breach as soon as possible but no later than three (3) days after the breach and to comply with the Notifiable Data Breach Scheme.
- 9.3 Supplier will only use and store information on Australian-based servers.
- 9.4 This clause will survive the termination of this document.

10. Conflict of interest

- 10.1 Supplier warrants to the best of its knowledge and belief that, at the date of accepting a PO, no conflict of interest exists or is likely to arise in its performance of this document which McPherson's has not already consented to in writing.
- 10.2 If, during this document, a risk of conflict of interest arises, Supplier must notify McPherson's immediately in writing of that risk and to take steps as McPherson's reasonably requires dealing with the conflict of interest or potential conflict of interest. McPherson's may terminate this document if Supplier does not deal with the conflict as requested by McPherson's.

11. Compliance with McPherson's reasonable directions

Supplier must comply with all reasonable directions of McPherson's in relation to the making, supply, packaging and delivery of the goods to McPherson's.

12. Termination for convenience

- 12.1 McPherson's may terminate this document, or any part of it, at any time by giving Supplier written notice of termination and Supplier must cease or reduce work according to comply with the written notice and must immediately do everything possible to mitigate consequential losses.
- 12.2 If McPherson's terminates this document, or any part of it, under clause 12.1, McPherson's is only liable for:
- (a) payment of the price for the goods Supplier has made as finished product or has delivered as accepted goods to McPherson's before the date of termination, provided Supplier supplied those goods in accordance with this document and Supplier is not otherwise in material breach of this document; and
 - (b) subject to this clause, any unavoidable Loss Supplier incurs or sustains and directly attributable to the termination of this document, provided that Supplier reasonably explains the costs to McPherson's.

13. Other termination

- 13.1 In addition to its rights at common law, McPherson's may by notice in writing to Supplier immediately terminate this document if Supplier:
- (a) suffers an Insolvency Event;
 - (b) materially breaches this document and the breach is not capable of remedy;
 - (c) materially breaches this document and Supplier does not remedy the breach within 14 days after written notice of the breach from McPherson's;
 - (d) engages in fraud or gross misconduct or otherwise puts McPherson's reputation at material risk of harm; or
 - (e) fails to perform its obligations under this document for over 60 days due to an Unforeseen Occurrence that McPherson's did not cause.
- 13.2 Where, before this document ends under clause 13.1, McPherson's has made any payment in advance to Supplier and it has not received delivery of the goods, the amount of that advance payment must be repaid by Supplier to McPherson's immediately on termination and, if not repaid, it becomes a debt due and payable.
- 13.3 If this document is terminated under clause 13.1:
- (a) subject to the terms of this document, the parties will be relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
 - (b) any rights to damages are not affected; and
 - (c) Supplier must comply with all obligations in this document relating to Material.

14. Indemnity

- 14.1 Supplier indemnifies McPherson's against all Loss that McPherson's may suffer as a result of any breach of the PO or this document by Supplier and any negligent act or omission of Supplier except to the extent that any negligent act or omission of McPherson's contributed to the Loss.
- 14.2 Supplier must pay and indemnify McPherson's against the amount of GST if any payment under an indemnity to McPherson's gives rise to a liability for GST.
- 14.3 This clause will survive the termination of this document.

15. Amendment

- 15.1 The parties may only amend a PO or this document in writing which must be signed by the parties.
- 15.2 The PO and this document (and anything contemplated by this document) represents the entire agreement between the parties and supersedes all previous correspondence, contracts and arrangements between the parties relating to the supply of the goods (except to the extent the PO or this document incorporates them).

16. Notices

A party may deliver notices under this document by ordinary post, by hand, by courier or by e-mail transmission to the other party at the last known address (or email address) of a party or such other address (or email address) notified in writing to the other party or the address (or email address) on their 'Contact Us' page of their website.

17. Unforeseen Occurrence

If an Unforeseen Occurrence occurs, the non-performing party is relieved from performing their obligations under this document affected for the duration of the Unforeseen Occurrence provided the non-performing party is without fault in causing or reasonably failing to prevent the failure or delay and continues to use reasonable endeavours to recommence performance whenever and to whatever extent possible as soon as reasonably practicable. Any party delayed in its performance of its obligations hereunder will promptly notify the other party to whom performance is due and explain in reasonable detail the circumstances causing the delay.

18. ESG (including Modern Slavery and Supplier Code of Conduct)

- 18.1 In this clause, **Modern Slavery** has the same meaning as in the *Modern Slavery Act 2018* (Cth).
- 18.2 Supplier must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the supply of the goods.
- 18.3 If at any time Supplier becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of the PO or this document, Supplier must as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.
- 18.4 Supplier must comply with the principles set out in McPherson's Supplier Code of Conduct found [here](#) or if Supplier has its own supplier code of conduct (or similar code) that covers substantially the same principles as the McPherson's Supplier Code of Conduct then Supplier must comply with its own supplier code of conduct (or similar code). Supplier must provide a copy of any Supplier's supplier code of conduct (or similar code) to McPherson's on request or direct McPherson's to Supplier's website to access such code.

19. Goods and Services Tax

- 19.1 Unless expressly stated otherwise, all amounts specified in a PO or this document are GST exclusive.
- 19.2 If GST is imposed on any supply made by one party (**GST Supplier**) to the other party under this document, the recipient of the supply must pay, in addition to any consideration payable for the supply, an additional amount for the supply calculated by multiplying the prevailing GST rate by the relevant consideration provided that the GST Supplier issues a valid tax invoice.

20. Dispute Resolution

- 20.1 If a dispute arises between the parties in relation to a matter arising under a PO or these terms (which must not be vexatious, frivolous or an abuse of process), the party claiming that there is a dispute must notify the other party in writing, setting out the date of the notice and with adequate details and nature of the dispute (**Dispute Notice**).
- 20.2 If a Dispute Notice is issued under this clause, the parties must negotiate in good faith and attempt to resolve the dispute as soon as possible. The parties must meet within 10 Business Days after a party receives, or is deemed to receive, a Dispute Notice for this purpose.
- 20.3 If either party reasonably requests further information from the other party in relation to the Dispute Notice, the other party must provide that information as soon as possible and, in any event, within 5 Business Days after the request is made.
- 20.4 For the avoidance of doubt, despite the initiation of a dispute under this document McPherson's must pay and continue to pay all amounts due and payable to Supplier for the supply of the goods that are not the subject of the Dispute Notice and Supplier must continue to supply the goods to McPherson's during this time.
- 20.5 If the parties are unable to resolve the dispute the subject of the Dispute Notice within 15 Business Days after a party receives a Dispute Notice, the dispute may be referred by either party to an independent expert selected by agreement between the parties (**Independent Expert**) for a binding determination.
- 20.6 If the parties are not able to agree on the appointment of the Independent Expert within 5 Business Days, the party referring the dispute must arrange for an Independent Expert to be appointed by the President or Chief Executive Officer for the time being of the Law Society of New South Wales.
- 20.7 The Independent Expert must be requested to determine any dispute within 10 Business Days after the date of the Independent Expert's appointment.
- 20.8 The determination by the Independent Expert will be final and binding on the parties.

21. Miscellaneous

- 21.1 No terms, provisions or conditions from Supplier, or purporting to apply to this document from Supplier, will apply to or be incorporated into this document, unless otherwise agreed in writing.
- 21.2 Supplier must comply with all applicable workplace health and safety laws and regulations in relation to the supply of goods to McPherson's under this document.
- 21.3 Nothing in this document makes Supplier an employee, partner or agent of McPherson's. Supplier and its employees, agents and contractors must not represent themselves as being employees, agents or contractors of McPherson's.

22. Interpretation

- 22.1 In this document:
- Agreement** means the agreement formed by the parties by the giving and accepting a PO on these terms and any amendment to this document agreed in writing by the parties.
- Business Day** means a day that is not a Saturday, Sunday or gazetted public holiday in Sydney, Australia.
- Claim** means any claim, demand, action, proceeding, litigation, Liability, indebtedness, obligation, investigation or judgment, however it arises and whether it is present or

future, fixed or unascertained, actual or contingent (including by way of contribution or indemnity).

Certificate of Analysis or COA used for 'release for supply' purposes is a document certified as a truthful statement of the tests and test results for an individual, manufactured batch of a particular finished product and contains information about:

- the manufacturer;
- the product name;
- the batch number of the product;
- the date of manufacture of the batch, the date of the testing and the date of the certificate;
- the tests, the tests results, acceptance criteria and a reference to each test method; and
- the signature of the appropriate company official.

goods means the goods as described in the PO to be supplied under this document and which may include additional goods as agreed in writing with McPherson's.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Insolvency Event means any of:

- being a company, Supplier enters into liquidation or has a controller liquidator or administrator appointed except to reconstruct or amalgamate while solvent or enters into, or resolves to enter into, a scheme of arrangement or composition with all or any class of its creditors, or it proposes a reorganisation or moratorium involving any of them;
- being a natural person, Supplier is declared bankrupt or assigns their estate for the benefit of creditors;
- being a partnership, Supplier takes any step to dissolve the partnership; or
- anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Intellectual Property means, in relation to the goods under a PO or these terms, all intellectual property rights including current and future registered and unregistered rights in respect of copyright, trademarks, designs, circuit layouts, trade secrets, know-how, confidential information, plant breeders rights, patents, inventions and discoveries and all other intellectual property as defined in Article 2 of the *Convention Establishing the World Intellectual Property Organisation 1967*.

Liability means any debt or other monetary liability or penalty, fine or payment or any damages, losses, indebtedness, costs, break costs, charges, outgoings or expenses of whatever description.

Loss means a loss, Claim, action, damage, Liability, cost, charge, expense, penalty, compensation, fine, outgoing or payment suffered, paid or incurred.

Material means all material created or required to be developed or created as part of, or for performing, including documents, equipment, information and data stored by any means.

Moral Right means right of integrity of authorship, right of attribution of authorship, right not to have authorship falsely attributed, and any right of a similar nature conferred by statute that exists, or may come to exist, in Material.

PO means a purchase order form issued by McPherson's to Supplier together with any other documents incorporated by reference in that form.

Prior IP means any Intellectual Property owned or controlled by a party, prior to the start of this document or developed independently of this document, which a party contributes to the goods.

Supplier means the person or entity identified on the PO who is to supply the goods, and where Supplier includes more than one person, those persons jointly and severally.

Terms or these terms means these PO terms, provisions and conditions as set out in this document.

Unforeseen Occurrence means any occurrence which is not within the reasonable control of the party affected but does not include any act or omission of the other party (including any employee, agent or contractor) to the agreement.

Warranty Period means 12 months from the date of delivery of the goods by Supplier.

- 22.2 Unless otherwise defined in this document, words or expressions used in this document which are defined in the GST Act have the same meaning in this document.
- 22.3 If there is inconsistency between the provisions of this document, the PO prevails to the extent of that inconsistency.
- 22.4 A party's failure or delay exercising a power or right does not operate as a waiver of the power or right. A waiver is not effective unless in writing.
- 22.5 The laws applying in New South Wales, Australia will govern this document (**Governing Law**) and the parties agree to submit to the non-exclusive jurisdiction of the courts of the Governing Law in respect of those matters not governed by Dispute Resolution.