

## TERMS AND CONDITIONS OF SUPPLY

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### 1. Acceptance of Quote

- 1.1. Unless otherwise agreed in writing, each Quote is open for acceptance for ten (10) Business Days after receipt by the Customer.
- 1.2. A Quote may be accepted by the Customer:
  - (a) submitting a Purchase Order to the Supplier after receipt of a Quote; or
  - (b) otherwise instructing the Supplier to provide the Goods described in the Quote after receipt of a Quote.
- 1.3. A Purchase Order under clause 1.2(a) must, at a minimum, specify:
  - (a) the name of the Customer and, if applicable, their ABN;
  - (b) the Supplier's details;
  - (c) the Quantities, Goods and Price set out in the Quote; and
  - (d) the place for delivery of the Goods (if different to the Customer's ordinary place of business).
- 1.4. Notwithstanding anything in this clause 1, no Purchase Order shall be binding upon the Supplier unless accepted by the Supplier in writing at their sole discretion.

### 2. Delivery and title

- 2.1. In consideration of payment of the Price and within a reasonable period of time, the Supplier will deliver the Goods to the Customer at:
  - (a) the address for delivery nominated in writing, if any; or
  - (b) the Customer's ordinary place of business if no other address is specified.
- 2.2. The parties acknowledge that any delivery date provided by the Supplier is an estimate only. The Supplier will not be liable under any circumstances for any loss, damage or delay occasioned to the Customer arising from late or non-delivery.
- 2.3. Subject in all respects to clause 6, risk in connection with the Goods passes to the Customer upon the earlier of:
  - (a) the delivery of the Goods to the Customer; and
  - (b) the time the Goods leave the Supplier's place of business for the purpose of being delivered to the Customer (whether or not the Supplier carries out or arranges the transport of the Goods to the Customer).

### 3. Invoicing and Payment

- 3.1. The Supplier will provide the Customer with a tax invoice for the Goods as per the agreed terms.
- 3.2. The Customer must pay to the Supplier the invoiced Price (including GST where applicable) within fourteen (14) days of receipt of the Tax Invoice or as per agreed terms without set-off or deduction.
- 3.3. Payment must be made in the currency as stated on the tax invoice, and must be paid in the manner directed in the relevant tax invoice.
- 3.4. If the Customer fails to pay any monies to the Supplier as and when they are due and payable, without prejudice to

any other rights of the Supplier under these Terms or at law, the Customer must pay to the Supplier:

- (a) \$15.00 per month in late fees; and
  - (b) interest at the rate which is 2% higher than the rate fixed by the *Penalty Interest Rates Act 1983* (Vic) calculated daily on the amount from the date the payment was due and payable until that amount is paid in full.
- 3.5. The parties agree that the late fees payable under clause 3.4(a) are a genuine pre-estimate of the losses that the Supplier would incur as a result of any late or failed payment.

### 4. Testing and certification

- 4.1. The Supplier may, at the Customer's express written request, procure testing and certification of certain Goods prior to delivery to the Customer, for an additional fee to be mutually agreed.
- 4.2. If the Customer provides a request in writing to the Supplier prior to the Supplier arranging for the shipment of the Goods, the Supplier agrees to provide or make available a reasonable sample of the Goods ("**Sample**") to the Customer for the Customer or their consultants to perform any reasonable tests to the Sample ("**Tests**").
- 4.3. If:
  - (a) the Sample do not pass the Tests;
  - (b) the Customer provides written evidence of the Sample not passing the Tests; and
  - (c) the Supplier re-performs the Tests with the consultants appointed by the Supplier at their sole discretion (at the Customer's cost and expense) and the Sample does not pass the Tests completed by the Supplier or the Supplier's consultants,

the Supplier agrees to assist with the return of all or part of the Goods that relate to the Sample which has not passed the Tests and replace such Goods with Goods which have passed the Tests in an efficient and timely manner.

- 4.4. The Customer acknowledges and agrees that if the results of the Tests are not available by the time the Supplier is ready and able to deliver of the Goods, the Customer will not make any objection to or refuse the delivery of the Goods for any reason related to or connected with (either directly or indirectly) the Tests.
- 4.5. The Customer acknowledges and accepts that:
  - (a) the Supplier is not the manufacturer of the Goods;
  - (b) unless explicitly agreed, the Quote and Price are exclusive of any testing and certification;
  - (c) the Goods are supplied to the Customer on the condition that the Customer will take any further steps necessary to satisfy itself of the suitability, safety and conformity of the Goods prior to use or re-supply to any other party; and
  - (d) to the extent permitted by law, the Supplier makes no representation or warranty and bears no liability whatsoever for any defect or non-conformity inherent in the Goods.

### 5. Acknowledgements

- 5.1. The Customer understands, acknowledges, confirms, agrees, accepts and represents in all respects that:

- (a) it intends to use, and will use, the Goods for commercial and business purposes only;
  - (b) the Goods are not goods of a kind ordinarily acquired for, or intended or likely to be used for, or are wholly or predominately for, personal, domestic or household use or consumption;
  - (c) the Supplier has provided the Customer with a reasonable opportunity to obtain any relevant testing and certification of the Goods in accordance with these Terms; and
  - (d) upon the Customer taking possession and control of the Goods supplied by the Supplier, the Customer has satisfied itself:
    - (i) as to the safety, quality, merchantability, lack of defect and fault, and performance of such Goods and as to the suitability, condition and fitness of such Goods for the purpose which the Customer (or its customers) intends to use such Goods;
    - (ii) that such Goods have been received in a clean condition and good working order and condition;
    - (iii) that the Goods match any description, sample, specification and/or demonstration that may have been provided;
    - (iv) that such Goods were delivered completely and with adequate and due care and skill;
    - (v) that such Goods fit the purpose and gave the results that were agreed to;
    - (vi) that such Goods were delivered within a reasonable period of time; and
  - (e) the late fee specified in clause 1.4(a) is a genuine pre-estimate of the Supplier's costs arising from any failure by the Customer to pay strictly in accordance with these Terms.
- 5.2. The Customer understands, acknowledges, and represents to the Supplier that the Customer will:
- (a) be solely responsible for ensuring that all relevant information (including but not limited to the manufacturer's site information) has been provided and included in any registration documentation as may be required by any governmental regulatory authority from time to time (including but not limited to the Australian Pesticides and Veterinary Medicines Authority);
  - (b) not make any claim against the Supplier for loss or damage incurred, sustained or suffered (either directly or indirectly) by the Customer for the Customer's failure to comply with clause 5.2(a); and
  - (c) indemnify and keep indemnified at all times the Supplier against all damage, loss, costs, expenses incurred, suffered, sustained, paid or payable in respect of or in connection to (either directly or indirectly) the Customer's failure to comply with clause 5.2(a).
- 6. Retention of Title and PPSA**
- 6.1. Notwithstanding clause 2.3, title in the Goods will not pass to the Customer until the later of:
- (a) the Supplier receiving from the Customer by way of cleared funds all amounts owing and due for such Goods; and
  - (b) the Customer discharging all other obligations owing and due to the Supplier in respect of these Terms.
- 6.2. Until such time as title in the Goods transfers to the Customer pursuant to clause 6.1, the Customer agrees that:
- (a) the Goods must be held by the Customer as bailee for the Supplier;
  - (b) the Customer must store the Goods, including other goods into which the supplied Goods have been mixed, in such a manner as to show clearly that the supplied Goods are the property of the Supplier;
  - (c) the Customer must:
    - (i) use their best endeavours to ensure that the Goods are insured to the satisfaction of the Supplier for their full replacement value;
    - (ii) ensure that the Supplier is noted as an interested party on the insurance policy for the Goods; and
    - (iii) must provide a certificate of currency for the insurance policy or any other evidence requested by the Supplier in respect of the insurance policy;
  - (d) the Customer must immediately upon the Supplier's demand return such Goods to the Supplier in the same condition the Goods were in at the time of delivery, at the Customer's time and expense;
  - (e) the Supplier and its agents are entitled to enter the Customer's premises or any other place where such Goods are stored at any time without notice, to take such steps as are necessary to repossess and/or seize the Goods;
  - (f) the Customer may not transfer or grant rights in the Goods without the Supplier's express written permission; and
  - (g) subject to the PPSA, if the Customer re-sells the Goods, it may only do so by way of bona fide sale in the ordinary course of business and as the agent of the Supplier, but the Customer will hold the proceeds of sale on trust for the Supplier and the Customer must account to the Supplier for the proceeds of any sale of the Goods.
- 6.3. The Customer acknowledges that:
- (a) clause 6.2 of these Terms constitute a security agreement for the purposes of section 20 of the PPSA; and
  - (b) a security interest exists in the Goods (and their proceeds) supplied by the Supplier previously, now and/or into the future, and that the Supplier may register such security interest on the personal property securities register.
- 6.4. The Customer will execute documents and do such further acts and/or will provide such consents as and when required by the Supplier (and the Customer hereby irrevocably authorises the Supplier to execute such documents and/or do such further acts and/or will provide such consents on the Customer's behalf) to:
- (a) register the security interest granted to the Supplier under these Terms on the personal property securities register;
  - (b) ensure that the Supplier's security interest is enforceable, perfected and otherwise effective under the PPSA;

- (c) enable the Supplier to gain first priority (or any other priority agreed by the Supplier in writing) for its security interest; and
  - (d) enable the Supplier to exercise its rights in connect with the Supplier's security interest.
- 6.5. The Customer agrees to waive its rights as a grantor under the following sections of the PPSA:
- (a) sections 95 (to the extent it requires a secured party to give notices to the grantor), 96, 118 (to the extent it allows a secured party to give notices to the grantor), 121(4), 130, 132(3)(d), 132(4), 135, 142 and 143; and
  - (b) to the extent section 115(7) may apply, sections 127, 129(2), 129(3), 130(1), 132, 134(2), 135, 136(3), 136(4), 136(5) and 137.
- 7. Confidentiality**
- 7.1. Each party acknowledges and agrees any information (that is marked confidential or which is proprietary and treated as confidential by that party) is proprietary and confidential to that other party.
- 7.2. Neither party may disclose any such information to any person or entity (other than professional advisors) without the prior written consent of the other party or by operation of the law.
- 8. Indemnity**
- 8.1. To the extent permitted by law, the Customer must indemnify and keep indemnified the Supplier against any and all loss, claims, costs or expenses whether direct, indirect or consequential, arising out of or in connection with:
- (a) any breach by the Customer of these Terms;
  - (b) the supply or use of the Goods under these Terms, including but not limited to any loss or damage to the Goods or any other property or any persons;
  - (c) any action taken by the Supplier or its agents to recover outstanding amounts payable under these Terms; and
  - (d) any action taken by the Supplier or its agents in exercising its rights under clause 6.
- 9. Limitation of liability**
- 9.1. To the extent permitted by law, the Customer agrees that the Supplier will not be liable under contract, tort, statute or otherwise for any loss, claims, costs or expenses which any person incurs or may incur as a result of or in connection with:
- (a) the Goods;
  - (b) the supply of the Goods under these Terms;
  - (c) any breach or failure to perform any duty or obligation by the Supplier; and
  - (d) any other matter or thing whatsoever.
- 9.2. To the extent that the Supplier's liability has not been effectively excluded under these Terms, then to the fullest extent permitted by law, the Supplier's liability will be limited to such of the following as the Supplier may determine:
- (a) the repair of the Goods;
  - (b) the replacement of the Goods, or the supply of equivalent goods;
  - (c) the payment of the cost of repairing the Goods; and/or
  - (d) the payment of the cost of replacing the Goods or of acquiring equivalent goods.
- 9.3. Nothing in these Terms will be read to exclude, restrict or modify any terms, conditions, warranties, promises or rights implied by law (including under the Australian Consumer Law) which cannot be excluded, restricted or modified.
- 10. GST**
- 10.1. Unless otherwise specified, all amounts payable under these Terms are exclusive of GST.
- 10.2. If a supply made under the Contract is a taxable supply, the recipient of that taxable supply (**Recipient**) must, in addition to any other consideration, pay to the party making the taxable supply (**Taxable Supplier**) the amount of GST in respect of the supply. The Recipient will only be required to pay an amount of GST to the Taxable Supplier if and when the Taxable Supplier provides a valid tax invoice to the Recipient in respect of the taxable supply.
- 10.3. If there is an adjustment to a taxable supply made under the Contract then the Taxable Supplier must provide an adjustment note to the Recipient.
- 11. Price Review**
- 11.1. All Prices set out in Quotes provided by the Supplier are subject to an adjustment under this clause 11.
- 11.2. The Supplier may notify the Customer of its intention to amend any Price set out in a Quote where:
- (a) a Costs Increase Event has occurred following receipt of that Quote by the Customer; and
  - (b) such Goods, or any part thereof, have not already been delivered to the Customer.
- 11.3. Within fourteen (14) days of receiving the notification under clause 11.2, the Customer must advise the Supplier in writing that it:
- (a) agrees to the proposed Price adjustment; or
  - (b) rejects the proposed Price adjustment.
- 11.4. Any failure to provide a response in accordance with clause 11.3 will be deemed to be an acceptance of that Price adjustment.
- 11.5. If the Customer rejects the proposed Price adjustment:
- (a) either party may terminate these Terms by written notice to the other party with immediate effect; and
  - (b) the Supplier will be under no obligation to deliver the Goods the subject of the proposed adjustment.
- 12. Termination**
- 12.1. Either party may terminate these Terms by fourteen (14) days' notice given to the other party in writing.
- 12.2. Upon termination for any reason, the Customer must pay the Supplier:
- (a) that part of the Price, as applicable, for any Goods delivered up to the date of termination; and
  - (b) the cost of any Goods which were reasonably expected by the Supplier to be required to be delivered and supplied, as applicable, and which on payment by the Customer will become the property of the Customer.

### 13. Inconsistency

- 13.1. Where there is any inconsistency between the provisions of these Terms and any Purchase Order, the provisions of these Terms will prevail to the extent of that inconsistency.
- 13.2. For the avoidance of doubt, no inconsistent provisions of a Purchase Order will be taken to vary these Terms without an express agreement to the contrary.

### 14. General

- 14.1. The Supplier will have the absolute right to suspend delivery of the whole or any part of the Goods where any amount is owing to the Supplier by the Customer for a period exceeding fourteen (14) days.
- 14.2. Notices or other communications to be given under these Terms will be deemed to have been given if they are in writing and served upon the relevant Address for Service.
- 14.3. The Customer may not assign, transfer, or in any way deal with its rights or obligations under these Terms without the written consent of the Supplier.
- 14.4. For the avoidance of doubt, no rights or interests in intellectual property are transferred from the Supplier to the Customer under these Terms.
- 14.5. No delay or omission by the Supplier to exercise any right, remedy and/or power available to the Supplier under or in connection with the supply of the Goods will be construed as a waiver of the Supplier's rights to take action or make a claim under or in connection with the supply of those Goods.
- 14.6. If any provision in these Terms is found to be invalid or unenforceable for any reason, that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.
- 14.7. This agreement is governed by the laws in force in the state of Victoria, Australia. Each party submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

### 15. Definitions

- 15.1. For the purpose of this document:

- (a) "**Address for Service**" means, in respect of a party:
- (i) the address for service nominated for that party in that agreement if that party has executed a Standing Agreement with the other party or otherwise, the party's ordinary place of business; or
  - (ii) an email address which has been previously used by that party as part of the discussions or negotiations in connection with these arrangements,
- or any substitute address or email address that has been notified to the other party in writing.
- (b) "**Australian Consumer Law**" means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
- (c) "**Business Day**" means a day which is not a Saturday, Sunday or public holiday in Melbourne, Victoria;
- (d) "**Costs Increase Event**" means any increase in the costs of the Supplier (including but not limited to fees, levies and taxes) that is greater than or equal to 105% of the Supplier's costs at the time of issuing the relevant Quote;
- (e) "**Customer**" means:

- (i) any party to a supply agreement other than the Supplier;
  - (ii) any recipient of a Quote from the Supplier; and
  - (iii) the successors in title, legal representatives, assigns, employees, servants and agents of any person referred to in (i) or (ii) of this definition;
- (f) "**Goods**" mean goods to be supplied by the Supplier pursuant to a relevant Quote and/or Purchase Order;
- (g) "**GST**" has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (h) "**PPSA**" means the *Personal Property Securities Act 2009* (Cth);
- (i) "**Price**" means the amounts payable by the Customer as set out in the Quote;
- (j) "**Purchase Order**" means an order for Goods issued by the Customer and containing the information set out in clause 1.2;
- (k) "**Quote**" includes all written and unwritten offers, quotations and tenders issued by the Supplier to the Customer for goods;
- (l) "**Standing Agreement**" means an agreement pursuant to which these Terms are incorporated into any supply of goods from the Supplier to the Customer for a pre-determined period;
- (m) "**Supplier**" means Stotras Pty Ltd A.C.N. 164 590 167;
- (n) "**Tax Invoice**" has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- (o) "**Terms**" means these terms and conditions of supply.