

F-F14 TERMS AND CONDITIONS OF PURCHASE OF GOODS

This Purchase Order is subject to the following conditions and/or such terms and conditions as may be listed, attached or included by reference as detailed in this Purchase Order (collectively referred to as the 'Terms'). No amendment or variation to the Terms shall be valid unless agreed to in writing by NDA Group Limited or any of its subsidiaries (hereinafter referred to as "the Buyer") in this or a subsequent Purchase Order. The Terms supersede all previously issued terms and conditions and prevail over and cannot be superseded, amended or varied by any terms and conditions contained or referred to in a document supplied by the Supplier or sought to be imposed by the Supplier whether or not such documents expressly provide that they override, amend or vary these Terms; unless such amendment, variation or supersede is agreed to in writing by the Buyer.

1. The Buyer will not be liable for any goods, or materials supplied ('Goods') unless ordered on the Buyer's Purchase Order.
2. The prices specified in this Purchase Order shall apply without variation or escalation unless such variation or escalation is authorised by the Buyer in writing.
3. No charge shall be made for delivery and transit costs or expenses, wrapping, packaging, cartons, boxing or preparing the Goods for shipment unless authority for such charge is expressly incorporated in this Purchase Order.
4. Confirmation of the Purchase Order must be provided by the Supplier within 2 business days of the date that the Purchase Order is made by the Buyer, or otherwise within the timeframe as requested by the Buyer.
5. **Delivery:**
 - a. Delivery shall be made to the place, and in the manner, and by the date agreed between the Buyer and the Supplier at the time of confirmation of the Purchase Order. The time or times for delivery or completion of this Purchase Order or for any item listed in the Purchase Order is a stipulation the performance of which is essential to the Buyer.
 - b. Delivery must be to the address specified in the Purchase Order, or such other address as notified by the Buyer to the Supplier.
 - c. The delivery shall include a packing slip and any other documentation as requested by the Buyer for the Purchase Order (this may include, but is not limited to, heat numbers, QA documents, and priced packing slips).
 - d. The Purchase Order number, and any other requested number or name on the Purchase Order must be noted on the packing slip, the invoice and on the package on delivery, if requested by the Buyer.
 - e. Subject to Clause 6, title to and risk in the Goods shall pass to the Buyer upon delivery.
6. The Supplier agrees that acknowledgement of delivery of any item on this Purchase Order is not to be taken as acceptance of either the quantity or quality of the Goods indicated on the delivery docket. The Buyer has no obligation to inspect the Goods supplied. However, if the Buyer does inspect or test the Goods, the Supplier's obligations under these Terms will not be affected nor will the Buyer's rights to claim under or in respect of any warranty or indemnity in these Terms be affected. If the Buyer becomes aware of a defect or non-delivery, the Buyer shall promptly notify the Supplier of such defects and/or non-delivery and, notwithstanding the Buyer's right to cancel the contract for the supply of the Goods and to such other or further relief as may be available to it at law or equity, the Buyer may:

- a. From the time of notification onwards hold any articles so claimed to be defective for the Supplier's instructions, and at the Supplier's risk for a reasonable period not exceeding 60 days; and/or
- b. Withhold any payment due to the Supplier for the Goods, which is a sum of money representing the reasonable costs of having the defect rectified by a third party at commercial rates, or a reasonable estimate thereof; and/or
- c. Permit the Supplier to rectify the defects notified to it within a reasonable time, in which case the Buyer will, upon the Goods being satisfactorily rectified, remit any monies retained in terms of clause 6(b) above to the Supplier less any costs, expenses or losses incurred due to the defect in the Goods.

Notwithstanding any agreement to the contrary (including any retention of title rights that the Supplier may have, the Supplier shall not be entitled to claim title to or take any steps in reliance upon any such retention of title right merely because the Buyer has exercised its right to withhold payment in terms of clause 6(b) above.

7. Goods supplied in excess of the quantities requested in the Purchase Order may, at the Buyer's option, be returned to the Supplier at the Supplier's expense, unless the Buyer otherwise notifies the Supplier in writing of its intention to retain the excess Goods.
8. **The Supplier warrants in relation to all Goods that:**
 - a. The Supplier has a right to sell the Goods; and
 - b. The Supplier has full legal and equitable title to the Goods free from any encumbrances and securities and the Goods are supplied to the Buyer on that basis; and
 - c. The Buyer has the right to undisturbed possession of the Goods; and
 - d. The Goods are of acceptable quality, fit for all the purposes for which the Goods are commonly supplied, acceptable in appearance and finish, free from defects, safe and durable; and
 - e. The Goods are reasonably fit for any particular purpose made known by the Buyer to the Supplier or for which the Supplier represents they will be fit; and
 - f. The Goods are reasonably fit for any particular purpose for which the Supplier represents that they are or will be fit; and
 - g. Where Goods are supplied by description to the Buyer, the Goods correspond with that description; and
 - h. Where Goods are supplied to the Buyer by reference to a sample or demonstration model, the Goods correspond with the sample or demonstration model in quality and the Buyer will have a reasonable opportunity to compare the Goods with the sample; and
 - i. The Buyer is not liable to pay to the Supplier more than a reasonable price for the Goods, in any case where the price for the goods is not determined by the Purchase Order or corresponding confirmation by the Supplier, or is left to be determined in a manner agreed to by the parties, or left to be determined by the course of dealing between the parties; and
 - j. The Supplier will take reasonable action to ensure that facilities for repair of Goods and supply of parts for Goods are reasonably available for a reasonable period after the Goods are supplied.

9. Intellectual Property:

- a. All Intellectual Property (together with, but subject to clause 9(b) in the case of the Supplier, all modifications, adaptations or developments to such Intellectual Property) which is owned by, or is proprietary to, a party at the date of the relevant Purchase Order shall remain owned by that party unless otherwise agreed in writing by the parties.
- b. Any new Intellectual Property (including, in the case of the Supplier, any modifications, adaptations, or developments to the Supplier's Intellectual Property as contemplated by clause 9(a)) which is created, modified, adapted or developed as a result of, or in connection with, the provision of Goods to the Buyer (including, without limitation, as they come into existence, all reports, results, outcomes, processes, data, notes, drawings, records, memoranda and other writings, computer programs, graphics or data in whatever form or format (including supporting data) related to the Goods) shall be owned by the Buyer, and shall not be used by the Supplier for any purposes other than to comply with the Supplier's obligations under a Purchase Order without the prior written consent of the Purchaser.
- c. Nothing in clause 9 confers on a party any right or interest in, or licence to use, or permit to be used, any of the other party's Intellectual Property, except that each party shall have a non-exclusive licence to use the other party's Intellectual Property to the extent required to meet that party's obligations under any Purchase Order. Any licence granted pursuant to this clause will expire immediately on delivery of the Goods pursuant to the Purchase Order.
- d. 'Intellectual Property' means, in respect of a party, all intellectual and industrial property rights and interests (including common law rights and interests) held by that party, or lawfully used by that party, including without limitation:
 - i. Patents, trademarks, trade secrets, copyright, registered designs, trade names, symbols and logos;
 - ii. Applications to register patents, trademarks, service marks and designs; and
 - iii. All formulae, methods, plans, data, drawings, specifications, characteristics, algorithms, source and object code, equipment, designs, inventions, discoveries, improvements, know-how, experience, software products, trade information, trade secrets, price lists, costings, brochures and their information.
- e. All technical specifications, drawings, designs, concepts or other property provided by the Buyer to the Supplier or created for and paid for by the Buyer as part of this Purchase Order remain the property of the Buyer and are to be treated as confidential. Such property must be sent immediately on demand and may not be copied without the Buyer's written consent. The provisions of this clause 9 and the requirement of confidentiality shall survive following the delivery of the Goods pursuant to the Purchase Order or the termination of this Purchase Order.

10. Where the Supplier provides Goods (including Intellectual Property) solely for the Buyer or based substantially or wholly on the Buyer's specifications, drawings, concepts or property then such Goods shall be the property of the Buyer and may not be offered for sale by the Supplier.

11. By accepting this Purchase Order the Supplier agrees to indemnify, protect and save harmless the Buyer, its successors, assigns, customers and the users of its Goods and the Buyer's officers, employees, agents, contractors and subcontractors ('Representatives') against all suits, at law or equity and from all damage claims, and demands, for actual or alleged infringement of any intellectual property rights of any person. If a finding in any such action is made against the Supplier in a court of competent jurisdiction then the Purchase Order may forthwith be cancelled by the Buyer. The Buyer holds this indemnity on trust for its successors, assigns, customers and Representatives.

12. All warranties and indemnities provided in these Terms survive the delivery of the Goods pursuant to the Purchase Order or the termination of this Purchase Order.
13. The Supplier shall not be responsible for delays or defaults in deliveries, nor the Buyer for failure to receive if occasioned by war, strike, fire, pestilence, act of god or event of terrorism, riot or civil commotion.
14. In the event that either party is placed in voluntary or involuntary bankruptcy liquidation or insolvency or has a receiver appointed over its assets or makes or endeavors to make any composition assignment or other arrangement for the benefit of creditors or breaches any essential term hereof including the warranties given by the Supplier the other party shall be entitled to terminate this contract forthwith. Upon termination, the Supplier's sole and exclusive right in respect of the termination is limited to the payment of the price for any Goods which have been supplied in accordance with these Terms and delivered to the Buyer up to the date of termination (or after termination if the Buyer requests delivery of all completed Goods).
15. The Supplier shall not, without first obtaining the written consent of the Buyer, in any manner advertise or publish the fact that the Supplier has contracted to furnish the Buyer the Goods herein mentioned. The Buyer shall also be entitled to approve the form and content of any such advertisement prior to its publication.
16. The Supplier will comply with all applicable tax, duty and levy legislation pertaining to the supply of Goods pursuant to this Purchase Order, including any goods and services tax or other value added tax legislation, in whatever jurisdiction may apply.
17. The remedies herein reserved shall be cumulative and additional to any other or further remedies provided in law or equity. No waiver of a breach of provision of the contract shall constitute a waiver of any other breach or of such provision.
18. The delivery of Goods pursuant to this Purchase Order shall be deemed to have taken place in the country or region where the party receiving Goods on behalf of the Buyer is located. These Terms are governed by the laws of that country or region and the courts of that country or region shall have exclusive competence and jurisdiction to hear any application in respect of this Purchase Order.
19. Service of any Court or other documents may be effected on either party, unless agreement is reached to the contrary regarding service, by sending the same by ordinary or registered mail, fax or delivery to the address (whether in New Zealand or overseas) recorded on delivery or other documentation provided by either party at the time of providing the Goods in terms of this Purchase Order, or in the absence thereof to the party's last known address whether in New Zealand or overseas, and shall be deemed to have been received five New Zealand working days after being sent, faxed or dispatched for delivery as the case may be.
20. Subject to clause 21 below, any dispute arising out of or in connection with this Purchase Order including any question regarding its existence, validity or termination shall be referred to a single arbitrator, to be appointed by the parties. If the parties cannot agree on the identity of the arbitrator, either party may apply to the President or holder of such similar office for the time being of the relevant national or regional Law Society or other national or regional association of lawyers of the country or region where the party receiving Goods on behalf of the Buyer is located (irrespective of where the Purchase Order was sent from) to appoint an arbitrator. The place for arbitration shall be the nearest capital city to where the party receiving Goods on behalf of the Buyer is located and the arbitration shall be conducted according to the Rules of Arbitration of the International Chamber of Commerce in force at the time of the application for arbitration. In all cases the language of such arbitration shall be English.

21. If the Supplier is located in China, any dispute arising out of or in connection with this Purchase Order including any question regarding its existence, validity or termination shall be submitted to arbitration in Shanghai, China before the China International Economic and Trade Arbitration Commission ("CIETAC") in accordance with CIETAC Arbitration Rules in force at the time of the application for arbitration. The arbitration tribunal shall consist of three arbitrators, one appointed by each party, provided that if either of the parties fails to appoint an arbitrator within the time specified in the CIETAC Arbitration Rules, the Chairman of CIETAC shall make such appointment. A third arbitrator ("Presiding Arbitrator") shall be appointed by agreement between the Parties, provided that if the Parties fail to jointly appoint the Presiding Arbitrator within the time specified in the Arbitration Rules, the Chairman of CIETAC shall make such appointment.