

# Fortec Australia Pty Ltd - Terms and Conditions of Supply

## 1. General

1.1 These conditions apply to the order for Goods or Services placed by Fortec Australia with the Supplier as specified. These conditions are subject to any Master Supply Agreement between Fortec Australia and the Supplier. Provision of the Goods or Services in accordance with the Purchase Order constitutes unconditional acceptance of these conditions, despite any purported counter-offer or competing terms. If the Supplier does not accept these conditions, it must not provide the Goods or Services.

## 2. Delivery

2.1 The Supplier must supply the Goods or provide the Services at the delivery address by the delivery date and in the quantity or description specified in the Purchase Order. Time is of the essence.

2.2 Fortec Australia may cancel the Purchase Order without liability to the Supplier at any time prior to delivery of Goods or Services.

## 3. Price and Payment

3.1 Fortec Australia shall pay the Supplier the Price for the Goods or Services as set out in the Purchase Order. The Price includes all costs incurred by the Supplier for the supply of the Goods or performance of the Services (such as charges for packing, insurance and delivery of the Goods and cost of any items used or supplied in the performance of the Services) and all taxes and duties, including GST where applicable.

3.2 Fortec Australia shall pay the Supplier within 30 days of the end of the month in which it receives a tax invoice from the Supplier in respect of the Goods or Services, or such other period as agreed.

3.3 Fortec Australia is not obliged to make any payment unless it has received a tax invoice from the Supplier for Goods delivered or Services provided in accordance with the Purchase Order. The Supplier must ensure tax invoices, delivery slips and correspondence pertaining to the Goods are marked with the Purchase Order number, item descriptions, quantities, prices and such other information as Fortec Australia reasonably requires identifying the Goods or Services.

3.4 Fortec Australia may withhold from a payment to be made to the Supplier under this Agreement or a Contract any amount which, in its opinion, Fortec Australia is required to withhold in respect of the Supplier's potential taxation liabilities. The withholding and payment to the relevant lawful authority discharges Fortec Australia obligation to pay the withheld amount to the Supplier. If Fortec Australia pays an amount to the Supplier without withholding an amount, or a sufficient amount, in respect of the Supplier's potential taxation liabilities which the law requires Fortec Australia to withhold, then (except in the case of Fortec Product's willful default) the Supplier indemnifies Fortec Australia against any loss, damage, claim, action or expense (including legal expense) which Fortec Australia suffers as a result.

## 4. Quality

4.1 The Supplier must provide Goods or Services that conform with the Purchase Order, are fit for the purpose for which Goods or Services of the same kind are commonly supplied or bought and for any other purpose Fortec Australia specifies, are suitably packed to avoid damage in transit or in storage, are of merchantable quality, free from defects and comply with all standards and laws applicable to their design and manufacture and (in respect of Goods comprising potentially dangerous or hazardous materials) such information and material as specified by Fortec Australia required for compliance with Fortec Australia health, safety and environmental policies and requirements, including material safety data sheets.

4.2 The Supplier must, in supplying the Goods or performing the Services, not interfere with Fortec Australia's activities or the activities of any other person at the delivery address and ensure that the Supplier's employees and agents are aware of and comply with applicable laws, Fortec Australia standards and procedures, to the extent they are applicable to the supply of the Goods or the performance of the Services by the Supplier.

4.3 The Supplier must ensure that any warranty offered by a manufacturer of the Goods is enforceable by Fortec Australia or, at Fortec Australia request, must enforce the warranty for Fortec Australia benefit. Where the Supplier is the manufacturer of the Goods or supplier of Services, the Supplier grants to Fortec Australia the same warranty in respect of the Goods or Services as the Supplier offers in the normal course of its business to other purchasers of similar goods or services in similar quantities.

## 5. Title and Risk

5.1 Fortec Australia acquires title to the Goods upon its acceptance of them. The Supplier warrants that, upon delivery, the Goods are free of any registered or unregistered charge, lien, mortgage, encumbrance of other adverse interest. If Fortec Australia rejects Goods under clauses 6, title in the rejected Goods reverts in the Supplier upon rejection.

5.2 The Supplier bears the risk of loss of or damage to the Goods until acceptance of the Goods delivered to Fortec Australia. If Fortec Australia accepts delivery but later rejects the Goods pursuant to clause 6, risk reverts in the Supplier.

5.3 Unless the parties otherwise agree, all intellectual property arising from the Supplier providing Goods or undertaking Services vests upon creation in Fortec Australia.

## **6. Inspection of Goods and Services**

6.1 All Goods and Services are received subject to inspection within a reasonable time after delivery or before delivery at Fortec Australia discretion irrespective of date of payment. Signed delivery dockets do not mean acceptance by Fortec Australia of Goods delivered.

6.2 If Fortec Australia gives notice of any defect or omission discovered in the Goods or Services, the Supplier must, without prejudice to Fortec Australia' rights otherwise arising under this Purchase Order or the general law replace, without further cost to Fortec Australia, the rejected Goods or Services with Goods or Services in conformity with the Purchase Order, refund or credit to Fortec Australia all monies paid or payable by Fortec Australia to the Supplier on account of the rejected Goods or Services, or at the Supplier's expense repair the Goods on site or otherwise re-perform or remedy the Services to the satisfaction of Fortec Australia, as Fortec Australia directs and removes the rejected Goods or reperform or remedy of the Services at the Supplier's expense.

## **7. Indemnity and Insurance**

7.1 The Supplier indemnifies Fortec Australia and each of its officers, employees, contractors and agents against any loss, damage, claim, action or expense (including legal expense) which any of them suffers as a direct or indirect result of any failure to deliver the Goods or provide the Services in accordance with this Purchase Order (including, an act or omission of the Supplier's subcontractors).

7.2 The Supplier must obtain and maintain insurance with a reputable insurer in Australia sufficient to cover any loss and damage for which the Supplier is liable in connection with this Agreement.

## **8. Confidential Information**

8.1 Each party must keep confidential all Confidential Information in respect of Fortec Australia Purchase Order.

8.2 Paragraph 8.1 does not apply to information which the law or good corporate governance requires the party to disclose (to the extent of that requirement only) or to an officer, employee, contractor or agent of the party who needs to know the Confidential Information for the purposes of performing this Agreement or a Contract, provided the officer, employee, contractor or agent agrees to keep the information confidential as required by this Agreement.

## **9. Miscellaneous**

9.1 This Purchase Order is governed by the laws of Victoria and the parties submit to the jurisdiction in that State.

9.2 Except where there is a Master Supply Agreement between Fortec Australia and the Supplier in respect of the Goods or Services, this Purchase Order contains the entire agreement between the parties with respect to its subject matter as at the date of this Purchase Order.

9.3 Fortec Australia failure or delay to enforce a condition, or to exercise a right or remedy for breach, is not a waiver of any of its rights in respect of the breach.

9.4 Each party must do everything (including executing agreements and documents) necessary or reasonably required by any other party to give full effect to this Purchase Order and the transactions contemplated by it.

## **10. Definitions**

10.1 In these conditions:

**Confidential Information** means information that is not publicly available.

**Fortec Australia** means Fortec Australia Pty Ltd ABN 77 603 299 958

**Goods** means the products specified overleaf.

**Price** means the price as specified overleaf, which is inclusive of all other costs and charges including GST.

**Purchase Order** means the order for Goods or Services constituted by this document.

**Services** means the services as specified overleaf.

**Supplier** means the supplier specified overleaf.