

Totalseal Group Australia Terms & Conditions of Purchase

1. DEFINITIONS

1.1 Defined Terms: Unless otherwise provided, the following terms shall have their meaning as specified:

“Buyer” means **TOTALSEAL GROUP AUSTRALIA Pty Ltd** (ABN 88 105 345 051) or its related companies as indicated in the Purchase Order.

“Contract” means the contract for purchase of Goods formed upon the Seller’s acceptance of a Purchase Order which incorporates these Terms.

“Force Majeure Event” means circumstances beyond our reasonable control, which shall include, but not be limited to compliance with any laws, regulations, orders, acts, instructions or priority request of any government, or any department or agency, civil or military authority, acts of God, acts of the public enemy, your acts or omissions, fires, floods, strikes, lockouts, embargoes, wars, labour or material shortages, riots, insurrections, defaults of our suppliers or subcontractors, delays in transportation, loss or damage to Goods in transit.

“Free Into Store” means that the Seller’s price includes all costs up to the delivery of the Goods to the Buyer.

“Goods” means goods the Buyer purchases covered by the Purchase Order, including raw materials, processed materials or fabricated products.

“Intellectual Property Rights” means all forms of intellectual property rights (whether registered or unregistered) in copyright, designs, patents, trademarks, domain names, trade secrets, know-how, confidential information, and all other similar proprietary rights which currently exist and/or are recognised in the future.

“ISO” means the International Organization for Standardization whose head office is located at Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland.

“Material” means any material in which the Buyer has Intellectual Property Rights provided by the Buyer to the Seller for use by the Seller in the production, development and supply of the Goods to the Buyer.

“Purchase Order” means the Buyer's official purchase order to which these Terms apply, and includes printed purchase orders, whether delivered by hand, mail, email or facsimile or other means.

“Purchase Price” means the purchase price payable by the Buyer as specified in the Purchase Order.

“Safety Data Sheet” is a document which lists information relating to occupational safety and health for the use of hazardous chemicals (hazardous substances and/or dangerous goods) in workplaces in accordance with section 330 of the Work Health and Safety Regulation 2011 (QLD).

“Seller” means the person, firm, partnership, company or other legal entity to whom the Purchase Order is issued and includes its officers, employees, agents and sub-contractors.

“Terms” means these Terms and Conditions of Purchase.

2. ENTIRE AGREEMENT

2.1 **Entire Agreement:** These Terms and the Purchase Order represent the entire agreement between the parties. The Seller shall, by accepting the Purchase Order, be bound by these Terms.

2.2 **Seller's Waiver:** These Terms:

- (a) Shall apply to the exclusion of all other terms and conditions, whether contained in the Seller's invoice or conditions of sale or otherwise proposed by or purported to be applied by the Seller in connection with the Goods, which terms and conditions are waived by the Seller to the maximum extent permitted by law; and
- (b) Supersede all prior agreements, proposals, tenders, communications or representations in relation to the Goods or the Purchase Order and these Terms.

3. PURCHASE OF GOODS

3.1 **Purchase Orders:** The Buyer will not be responsible for any order unless it is issued on a Purchase Order and the Purchase Order reference number must be quoted on all invoices, delivery dockets and parcels.

3.2 **Variation:** No variation of a Purchase Order will be effective unless approved in writing by the Buyer.

4. WARRANTIES

4.1 **Goods:** The Seller warrants that the Goods:

- (a) Conform with the description provided by the Seller;
- (b) Conform with any applicable specifications agreed by the Buyer and the Seller;
- (c) Are fit for the Buyer's purposes (if made known to the Seller) and are otherwise fit for the purpose for which they are sold;
- (d) Are of merchantable quality;
- (e) Are and will remain free of defects in material, workmanship and design for the period of at least 12 months from the date of delivery;
- (f) Are new and unused (unless otherwise specified);
- (g) Are free and clear from all liens and encumbrances, charges or third party claims of any kind and the Seller has good marketable title thereto;
- (h) Do not infringe any third party intellectual property rights (including moral rights);
- (i) Unless a higher standard is required under the Purchase Order, comply with any applicable Australian Standards or, where there are no appropriate Australian Standards, are in accordance with the appropriate ISO Standard; and
- (j) Where the Goods include any services to be provided by the Seller, all such services are performed with due care and skill by competent and adequately trained persons.

4.2 **Approvals:** The Seller warrants that it has all approvals required by law to perform its obligations under the Contract.

4.3 **Other:** These warranties are in addition to any other warranties or guarantees contained in the Purchase Order or implied by law or provided by the Seller or any third party.

5. REJECTION OF GOODS AND REPAIR OR REPLACEMENT

- 5.1 **Rejection:** The Buyer may reject Goods not conforming for any reason whatsoever to the Purchase Order upon delivery of such Goods or within a reasonable time thereafter. Any acceptance of delivery or payment by the Buyer for such Goods shall not prejudice its right of rejection contained under these Terms or under applicable law.
- 5.2 **Non-compliance:** If, in the opinion of the Buyer (acting reasonably), the Goods (or any part of the Goods) do not comply with the Purchase Order and these Terms:
- (a) The Buyer may notify the Seller of such failure and, at the Buyer's discretion, return the unsatisfactory Goods to the Seller at the Seller's risk and expense; and
 - (b) The Seller shall pay the Buyer:
 - i. The amount stated in the Purchase Order (or any part of it as appropriate) for such non-compliant Goods; and
 - ii. Any costs incurred by the Buyer in connection with the delivery and return of the Goods as well as compensation for any other reasonably foreseeable loss or damage from a failure in the Goods.

OR

- (c) The Buyer may require the Seller to repair or replace such Goods, in which case the Seller shall:
 - i. Remove the Goods from the site of the Buyer at the Seller's risk and expense; and
 - ii. Repair or replace such Goods with Goods which are in accordance with the Purchase Order and these Terms within 30 days of notification of such defect or failure from the Buyer.
- 5.3 **No waiver:** The rights under this clause 5 shall not limit the Buyer's other rights under the Purchase Order and these Terms or otherwise at law.

6. LOSS OR DAMAGE IN TRANSIT

- 6.1 **Time limits:** The Buyer agrees to advise the Seller of any loss or damage to or defect in the Goods within the following time limits:
- (a) Partial loss, damage, defects or non-delivery of any separate part of a consignment of Goods within 60 days of the date of delivery of the consignment or part consignment; or
 - (b) Non-delivery of whole consignment of Goods within 60 days of the intended date of delivery as specified in the Purchase Order.
- 6.2 **Buyer's Notice:** The Seller shall make good free of charge to the Buyer any loss of or damage to or defect in the Goods where notice is given by the Buyer in compliance with this condition.

7. DELIVERY

- 7.1 **Purchase Order:** The Seller must deliver the Goods described in the Purchase Order:
- (a) By the due date;
 - (b) For the quantities of each item listed;
 - (c) To the place of delivery;
 - (d) On the delivery terms stated; and
 - (e) In accordance with these Terms unless otherwise agreed in writing between the Buyer and the Seller.
- 7.2 **Timing of delivery:** Time is of the essence insofar as it applies to the obligations of the Seller. If any Goods are not delivered within the time specified in the Purchase Order, the Buyer may either:
- (a) Refuse to accept such Goods and terminate the Purchase Order; or
 - (b) Cause the Seller to deliver the Goods by the most expeditious means, whereupon any additional delivery charges in excess of those which would apply for the usual means of delivery shall be borne by the Seller.

7.3 **Non-delivery:** If any Goods are not delivered to the place specified in the Purchase Order or otherwise agreed between the Buyer and the Seller, without limiting any other rights that the Buyer may have under these Terms, the Seller will be responsible for any additional expense incurred in delivering them to their correct destination.

8. TITLE AND RISK

8.1 **Risk passes to the Buyer upon delivery:** Risk in the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with clause 7 but without prejudice to any right of rejection or other rights which may accrue to the Buyer under these Terms. Risk in any Goods which have been notified by the Buyer as defective or non-compliant will pass to the Seller upon the Buyer returning or otherwise making such Goods available to the Seller until rectification of the defect or replacement of the Goods in accordance with these Terms.

8.2 **Title passes to the Buyer upon payment:** Title in the Goods shall pass to the Buyer upon payment in respect of the Goods.

9. INSPECTION IN PROGRESS AND PRIOR TO DESPATCH

9.1 **Buyer's rights of inspection:** The Seller agrees that the Buyer or its agents shall have the right of inspection of all work performed by the Seller and any of its subcontractors pursuant to the Purchase Order during any stage of engineering, manufacture or installation of the Goods prior to their despatch.

9.2 **Buyer's right to reject work performed or non-conforming Goods:** The Buyer or its agents shall have the power to reject any work performed or being performed or any Goods that do not conform to the Purchase Order, whereupon the work or Goods rejected shall be reformed at no additional cost to the Buyer. Any such inspection shall not relieve the Seller of any obligations contained in the Purchase Order or at law.

10. INTELLECTUAL PROPERTY

10.1 **Licence:** The Seller shall grant to the Buyer an irrevocable, royalty-free and perpetual licence to use (and allow others to use) the intellectual property in the Goods or any work to be performed by the Seller (including any copyright, patent, trademark and design) for any purpose in connection with the project for which the Goods are to be used by the Buyer.

10.2 **Indemnity:** The Seller shall indemnify the Buyer in respect of any loss, damage, expense, claim or liability suffered or incurred by the Buyer as a result of any claim by a third party alleging infringement of any intellectual property rights in relation to the Goods or any work to be performed pursuant to the Purchase Order.

11. PRICE

11.1 **Purchase Price Variation:** The Purchase Price may not be varied without the prior written agreement of the Buyer, which agreement may be given or withheld at the Buyer's absolute discretion.

11.2 **Free Into Store:** The Purchase Price of Goods shall be on a Free Into Store basis unless otherwise agreed.

12. TERMS OF PAYMENT

12.1 **Tax invoices:** The Seller must send a valid tax invoice (complying with the GST legislation) (if applicable) for payment for the Goods at the times for payment (and in any case not prior to delivery) provided in the Purchase Order.

12.2 **Timing of Payment:** Within 45 days from the end of the month following receipt of the Seller's valid tax invoice, the Buyer shall pay the amount that is payable to the Seller under the Contract.

12.3 **Set off:** The Buyer may set-off against any amount claimed by the Seller:

- (a) Any amount claimed by the Buyer from the Seller (whether in connection with the Contract or otherwise); and
- (b) Any amount the Buyer is required by law to withhold or deduct.

13. SUB-CONTRACTING AND ASSIGNMENT

- 13.1 **Consent:** The Seller shall not assign its rights or obligations hereunder or sub-contract any work to be performed pursuant to the Purchase Order without the prior written consent of the Buyer which must not be unreasonably withheld.
- 13.2 **Seller liable for work performed by sub-contractors:** The Buyer's consent to the Seller sub-contracting any work to be performed pursuant to the Purchase Order shall not relieve the Seller of its responsibility for the whole of the work to be performed pursuant to the Purchase Order or of any obligations contained in the Purchase Order or at law. The Seller will be liable for all acts or omissions of its sub-contractors.
- 13.3 **Sub-orders:** Where the Buyer has consented to the placing of sub-contracts by the Seller, copies of each sub-order shall be sent by the Seller to the Buyer immediately after they are issued.

14. PACKAGING, STORAGE AND HAZARDOUS GOODS

- 14.1 **Packaging requirements and specifications:** The Goods shall be properly packed to avoid being damaged during delivery of loading and unloading, and in accordance with any packaging requirements or specifications communicated by the Buyer to the Seller. All packages shall be clearly marked with the Purchase Order number and the location of delivery.
- 14.2 **Compliance:** The Seller shall comply with all applicable Australian and international laws, regulations and other relevant requirements relating to the transport, packaging, storage, handling and use of the Goods.
- 14.3 **Hazardous goods guidelines:** All Goods which are hazardous goods must be accompanied by emergency material in English in the form of written instructions, labels or markings and Safety Data Sheets.
- 14.4 **Potential hazards/special requirements:** All information held by or reasonably available to the Seller regarding any potential hazards or special requirements known or believed to exist in the transport, packaging, storage, handling or use of the Goods shall be immediately communicated to the Buyer.
- 14.5 **Certifications:** Where required by the Buyer or at law, the Seller shall provide all necessary certificates of compliance, certificates of analysis and test certificates together with the Goods delivered pursuant to the Purchase Order.

15. INSURANCE AND INDEMNITY

- 15.1 **Insurance/Currency of Insurance:** The Seller shall effect and maintain adequate insurance including, without limitation, public liability, worker's compensation (including common law liability), automotive and other means of transportation/freight liability insurance and products liability insurance upon such terms and for such amounts acceptable to the Buyer as are reasonable in the circumstances of the Purchase Order. All payment of moneys by the Buyer in connection with the supply of the Goods will be conditional upon the Seller providing the Buyer with evidence of the currency of such insurance if reasonably requested by the Buyer.
- 15.2 **Seller's Indemnity:** The Seller indemnifies the Buyer, its agents and employees against all claims, costs, expenses, damages, loss or other amounts arising from or contributed to by third party property loss or damage or personal injury or death arising out of or in connection with the supply of Goods (and services, where applicable) by the Seller, except to the extent directly caused by the breach or negligence of the Buyer.

16. FORCE MAJEURE

- 16.1 **Delay or failure to perform obligations:** Neither party shall be liable to the other or be deemed to be in breach of these Terms by reasons of any delay in performing, or any failure to perform, any of their obligations in relation to the Goods, and in the absence of fault or negligence, if the delay or failure was a direct result of a Force Majeure Event, provided that the party affected by such occurrence gives written notice thereof to the other party within 7 days of the commencement of that occurrence and uses all reasonable efforts to end or overcome that occurrence as soon as possible.
- 16.2 **Termination:** If a Force Majeure Event prevents the Seller from carrying out its obligations under these Terms or the Purchase Order for a continuous period of more than five business days, the Buyer may terminate the Purchase Order immediately by giving written notice to the Seller.

17. BUYER'S INTELLECTUAL PROPERTY RIGHTS

- 17.1 **Buyer's Intellectual Property:** Any Material supplied by the Buyer to the Seller in connection with a Purchase Order or under these Terms:
- (a) Shall remain the property of the Buyer, and any information derived therefrom or otherwise communicated to the Seller in connection with the Purchase Order shall be kept confidential and shall not, without the written consent of the Buyer be published or disclosed to any third party, or made use of by the Seller except for the purpose of implementing the Purchase Order or as required by law; and
 - (b) Must be returned to the Buyer on request by the Buyer.
- 17.2 **Inventions and/or improvements:** Any invention and/or improvement made by the Seller attributable in whole or in part to specifications, plans, drawings, process information, patterns, designs of the Buyer or other Material shall be the property of the Buyer.
- 17.3 **Third party Intellectual Property Rights:** If the Buyer provides the Seller with Material to be used in the supply of Goods, the Seller:
- (a) Warrants and represents to the Buyer that the Seller's use of any Materials will not infringe the Intellectual Property Rights of any third party; and
 - (b) Indemnifies and will keep indemnified the Buyer from and against any and all claims, liabilities, obligations, expenses or damages which the Buyer may incur if clause 17.3(a) is untrue or breached.

18. WORK ON BUYER'S SITE

- 18.1 **Reasonable and lawful access:** If, in providing the Goods, the Seller requires access to, or must carry out work on, a site of the Buyer, the Seller shall only reasonably access and use the Buyer's site subject to, in addition to the conditions of the Purchase Order and any conditions imposed by law, the lawful requirements and on-site safety policies, rules and directions of the Buyer.

19. APPLICABLE LAW

- 19.1 **Governing law/Jurisdiction:** The Purchase Order shall be governed by, subject to and construed in accordance with the laws of Queensland and the parties accept the jurisdiction of the courts of Queensland.
- 19.2 **Seller's obligations:** The Seller must comply with all applicable laws and regulations (including the United States Foreign Corrupt Practices Act 1977 and the Australian Criminal Code Act 1995 (Cth)) and the Buyer's Anti-Bribery & Improper Payments Policy in the performance of the Seller's obligations under or otherwise in connection with the Contract.
- 19.3 **Conflict Resolution:** In the event of any dispute arising under or in connection with the Contract, the parties agree to make every effort to resolve such dispute by discussion between the parties. If after a period of 2 months there is a failure to reach agreement then the dispute shall be referred to arbitration by a single arbitrator appointed by agreement. If one party fails to communicate and cooperate with the other party in relation to nominating an arbitrator within the set time limit, then the other party may apply to the president of the Law Society of Queensland or his appointed nominee who shall duly nominate an arbitrator. The finding of the arbitrator will be final and binding. The costs of the arbitrator will be shared equally between the parties unless otherwise directed by the arbitrator.

20. TRANSACTION TAX

- 20.1 **Reduction or abolition of any transaction taxes:** If, in conjunction with any change in the GST law, there is a reduction in or abolition of any existing transaction taxes, the consideration (excluding any GST) (if applicable) payable by the Buyer for Goods will be reduced by the same proportion as the actual total supply costs of the Seller are reduced as a consequence of that reduction or abolition of those transaction taxes. The Seller will issue to the Buyer a tax invoice on delivery in the form prescribed by any relevant law or regulator.

21. TERMINATION

21.1 Termination with cause: If a party ("defaulter"):

- (a) Fails to comply with any of its obligations under the Contract (and, where the failure is capable of rectification, does not rectify this failure within 14 days of written notification from the other party ("non-defaulter")); or
- (b) Is insolvent, becomes bankrupt or becomes subject to any official management, receivership, liquidation, voluntary administration, winding up or external administration, the non-defaulter may terminate the Contract by notice in writing and such termination will be without prejudice to the non-defaulter's rights under the Contract or otherwise at law, including the right to be reimbursed by the defaulter for any additional costs incurred in obtaining the Goods from another source of supply.

21.2 **Immediate termination:** Without limiting any other rights of the Buyer at law or under the Contract, if the Buyer determines that the Seller has breached its obligations under clauses 19.2, 22.1 or 22.2 the Buyer may immediately terminate the Contract by notice to the Seller.

21.3 **Termination without cause:** The Buyer may at any time for any reason terminate the Contract by giving two (2) days prior notice in writing to the Seller in which case:

- (a) The Seller shall cease performing its obligations under this Contract to the extent set out in the Buyer's notice and mitigate any costs incurred by the Seller consequent upon the termination;
- (b) The Buyer shall pay the Seller for the value of the Goods provided to the Buyer (to the Buyer's satisfaction) up to the date of termination in accordance with the Contract;
- (c) The Seller shall have no claim of any kind whatsoever for any loss (including loss of profit), damages or other amounts; and
- (d) Any rights of the Buyer arising from prior breaches by the Seller shall not be affected.

22. GENERAL

22.1 **Legitimate payments:** The Seller must not pay, offer, promise to pay or authorise the payment directly or indirectly of any monies or anything of value to the Buyer, any employee, representative, agent or contractor of the Buyer in connection with the Contract where such payment is not legitimately due or expressly authorised under the Contract;

22.2 **Compliance:** The Seller must establish and maintain procedures and policies to ensure compliance its obligations under clauses 19.2 and 22.1 and must keep complete and accurate records of all expenses related to the performance of its obligations under the Contract.

22.3 **Survival:** Conditions 10, 15 and 16 of these Terms are continuing obligations and survive termination of the Contract for any reason.

22.4 **Assignment:** The Buyer may, by providing written notice to the Seller, assign or transfer its rights and/or obligations (in whole or in part) under these Terms.

22.5 **Waiver:** The failure or omission of a party at any time to enforce the strict compliance with any of these Terms is not a waiver of the rights of a party. Any waivers granted by a party must be in writing.

22.6 **Severability:** If any part of these Terms is or becomes illegal, invalid or unenforceable in any relevant jurisdiction then they will be read as if that part had been deleted in that jurisdiction only and the remainder shall remain in full force and effect and the intent carried out in full by each party.