



GENERAL PURCHASE ORDER TERMS AND CONDITIONS

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GENERAL PURCHASE ORDER TERMS AND CONDITIONS

1. Primary Obligations

- 1.1. The Seller shall supply the Goods in accordance with these general conditions and any written or verbal directions given by the Purchaser from time to time. Any formal written contract signed by both the Purchaser and the Seller shall take precedence over these general conditions.
- 1.2. By supplying Goods to the Purchaser in response to a Purchaser Order, the Seller agrees to be bound by these general conditions.
- 1.3. The Purchaser shall pay the Seller the Purchase Order Price for Goods delivered by the Seller in accordance with these general conditions.

2. Risk and Title

- 2.1. The Seller bears the risk of any loss of, or damage to, the Goods until delivery of the Goods has been completed at the Location.
- 2.2. Title in the Goods (or any part) other than Goods which are consumables will pass to the Purchaser immediately upon the Purchaser paying the Purchase Order Price. Title in respect of unpaid consumable Goods will pass to the Purchaser upon the earlier of payment of the Purchase Order or their consumption.

3. Warranties

The Seller warrants that:

- 3.1. The Goods (and any workmanship and materials used in the Goods) will:
 - 3.1.1. Be in accordance with the Specification;
 - 3.1.2. Not infringe any Intellectual Property Right of any third party;
 - 3.1.3. Be of merchantable quality;
 - 3.1.4. Comply with all statutory requirements referred to in clause 7 and all relevant standards of Standards Australia;
 - 3.1.5. Be fit for their intended purpose;
 - 3.1.6. Be free of defects in materials, workmanship and design;
 - 3.1.7. Have a life expectancy commensurate with what would be expected of similar goods provided for similar purposes by a competent and reputable seller or contractor; and
 - 3.1.8. Be new unless specified otherwise by the Purchaser.
- 3.2. The Goods are, and will at the time when title in them is passed to the Purchaser be, free and clear of all charges, liens and encumbrances.
- 3.3. Nothing in these terms and conditions excludes or limits the liability of the Seller under any term, condition, warranty or remedy implied by any applicable legislation or otherwise at law.

4. Infringement

- 4.1. The Seller indemnifies the Purchaser against all Claims, costs, expenses (including legal expenses), liabilities, losses or damages incurred or suffered by the Purchaser arising from any infringement or alleged infringement of any Intellectual Property Right of any third party in respect of the Goods or any part thereof.
- 4.2. In case the Goods, or any part thereof, is held to constitute infringement and the use of Goods or part thereof is enjoined, the Seller shall, at its own expense, and at its option, either procure for the Purchaser the right to continue using the Goods or part thereof, or replace same with substantially

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equal but non-infringing Goods or modify them so they become non-infringing, or remove the Goods and refund the Purchase Order Price and the transportation and instalment costs thereof.

- 4.3. Clauses 4.1 and 4.2 shall not apply to Goods, or any part thereof, manufactured to the Purchaser's detailed design. As to such equipment or part, the Seller assumes no liability at all for patent infringement.

5. Payment

- 5.1. Subject to clause 5.3 and the receipt of a correct and undisputed tax invoice (including but not limited to showing quantities of Goods delivered, correctly calculated prices and accurate payee details), by the end of the month following the month of receipt of the Goods at the Location, provided always that the Purchaser has accepted the Goods, the Purchaser shall pay the Purchase Order Price to the Seller. Payment will be made in the currency shown on the Purchase Order.
- 5.2. The Purchase Order Price will be inclusive of all costs associated with the supply of the Goods to the Purchaser at the Location and will state the GST amount included.
- 5.3. The Purchaser may deduct from the Purchase Order Price any debt or other moneys due from the Seller to the Purchaser, or the amount of any claim (whether under the Purchase Order or otherwise at law or in equity) which the Purchaser may make against the Seller.
- 5.4. Unless the Purchase Order specifically provides otherwise the Purchase Order Price shall be fixed and not subject to any adjustment.

6. Statutory and Other Requirements

- 6.1. The Seller must comply with:
- 6.1.1. The requirements of all authorities, bodies or other regulatory organisations which have jurisdiction over the Goods;
- 6.1.2. All laws, statutes and subordinate legislation (and regulations and other requirements made under them) applicable to the Goods; and
- 6.1.3. The Purchaser's Planning Permit to the extent relevant requirements have been advised to Seller by Purchaser.
- 6.2. Without limiting clause 7.1, in supplying the Goods to the Purchaser, the Seller must comply with all legislation applicable to dangerous goods, Chain of Responsibility and fatigue management regulations.
- 6.3. The Seller must facilitate and encourage responsible product design, use, re-use, recycling and disposal of the Goods.

7. Testing and Defects

- 7.1. If, before the delivery of any Goods has been completed, or within 12 months after those Goods have been delivered, the Purchaser discovers (whether as the result of a test or otherwise) any aspect of those Goods which is not in conformance with the Purchase Order (including any aspect which is not in accordance with any samples previously provided to the Purchaser or these general conditions), or is otherwise defective, the Purchaser may:
- 7.1.1. Direct the Seller to rectify the non-conformance or defect - in which case the Seller must carry out such rectification immediately at its cost;
- 7.1.2. Reject the Goods - in which case clause 10 applies; or

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- 7.1.3. Accept the non-conformance or defect - in which case the cost of correcting the non-conformance or defect will be a debt due and payable on demand by the Seller to the Purchaser.
- 7.2. The Seller shall at its own expense repair or replace any Goods which are defective in design, materials or workmanship.

8. Delivery

- 9.1. Delivery terms shall be governed and construed in accordance with the provisions of "INCOTERMS" (latest edition) and any amendments thereto.
- 9.2 The Seller must:
 - 8.1.1. Deliver the Goods to the Location by the Delivery Date and in accordance with the instructions and requirements stated in the Purchase Order including any delivery and shipping instructions and documentation and packaging requirements.
 - 8.1.2. Provide suitable packaging of the Goods so that items will arrive at the Location in an undamaged condition. Without restricting the generality of the foregoing, the Seller shall pay particular attention to goods susceptible to damage from moisture and dust.
 - 8.1.3. Give the Purchaser reasonable notice as to any deviation from the Delivery Date. Time is of the essence for the Purchase Order. The time stipulated for delivery of Goods shall be strictly adhered to. Without prejudice to the Seller's obligation to deliver the Goods on time, the Seller shall give the Purchaser notice in writing immediately if any delay is foreseen.
 - 8.1.4. Render the Purchaser, at the Purchaser's request, risk and expense, every assistance in obtaining any documents which are issued in the country of delivery and or of origin which the Purchaser may require for the purpose of importation.

9. Right of Rejection

- 9.1. If the Purchaser rejects the Goods in accordance with clause 8.1.2, the Purchaser may:
 - 9.1.1. Return the Goods at the Seller's cost and risk; and/or
 - 9.1.2. Request the Seller to provide a new supply of Goods in accordance with the original Purchase Order.
- 9.2. The Seller will not be entitled to receive any payment from, or bring any claim (at law or in equity) against, the Purchaser arising out of or in connection with the defective or non-conforming Goods;
 - 9.2.1. The Purchaser is entitled to recover from the Seller any costs, losses and damages incurred by the Purchaser, arising out of or in connection with the defective or non-conforming Goods;
 - 9.2.2. Where the Purchaser does not require a new supply of Goods in accordance with clause 10.1.2, the Purchaser is entitled to recover payment for defective or non-conforming Goods as a debt due and owing; and
 - 9.2.3. Where the Purchaser requires a new supply of goods in accordance with clause 10.1.2, the Purchaser shall not be required to pay any amount for those Goods if it has already paid for the defective or non-conforming Goods.

10. Delay

- 10.1. If the Seller has been delayed in completing delivery of any Goods beyond the Delivery Date by an act or omission (including breach of contract) of the Purchaser, the Purchaser shall, on the request of the Seller, extend the Delivery Date by a reasonable period.

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- 10.2. The Purchaser may, in its absolute discretion and without being obliged to do so, to assist the Seller, for any reason and at any time, extend the Delivery Date.
- 10.3. The Seller acknowledges that the Purchaser is not required to exercise its discretion under clause 11.2 for the benefit of the Seller.
- 10.4. Except where clause 11.1 applies, if the Seller is unable to deliver the Goods by the Delivery Date and the Purchaser does not agree to extend the Delivery Date, the Purchaser will be entitled to cancel the relevant Purchase Order so far as it relates to delayed Goods and the Purchaser will not be liable to the Seller for any loss or Claim by any person arising out of the cancelled Purchase Order.

11. Documents provided by the Seller

- 11.1. When requested by the Purchaser, the Seller must provide, without limitation, all Documents.
- 11.2. If the Purchaser, in its sole discretion, considers that the Documents require amendment, it may give notice to the Seller to that effect.
- 11.3. If the Seller receives such a notice it must, promptly and at its own expense, make any amendments required by the Purchaser.
- 11.4. The Seller must complete any amendments to the Documents within a reasonable time after receiving the Purchaser's notice under clause 12.2.
- 11.5. If the Seller does not complete the amendments within a reasonable time, the Purchaser may take whatever action it considers necessary to complete the amendments.
- 11.6. The Purchaser's action under clause 12.5 will be at the Seller's expense and will not in any way affect or negate the Seller's obligations, responsibilities or liabilities.
- 11.7. The Purchaser may review the Documents. When requested by the Purchaser, the Seller must, as soon as practicable, provide to the Purchaser all relevant information relating to the Documents to ensure that the review is expedited.
- 11.8. The Purchaser does not assume any duty to advise the Seller, to supervise or control the Seller's preparation of the Documents, to ensure the proper performance of any of the Seller's obligations or to exercise any discretion for the Seller's benefit.
- 11.9. The receipt of Documents by the Purchaser, its review of, approval of or comment on the Documents or any other documents prepared by or on behalf of or provided by the Seller, or its provision of information to the Seller, do not affect the Seller's obligations or absolve the Seller from its obligations and its responsibility to perform its obligations in accordance with these general conditions.

12. Inspection and Testing

- 12.1. The Seller must conduct, at its cost, all inspections and tests referred to in the Specification and such other inspections and tests as may be required by the Purchaser from time to time and promptly provide copies of all test data, reports and results to the Purchaser.
- 12.2. The Purchaser and/or its agents may carry out inspections of, and witness tests on, the Goods at all reasonable times whether at the premises of the Seller or its subcontractors and whether during or after manufacture.
- 12.3. Without limiting clause 13.2, the Seller, when requested by the Purchaser, shall advise the Purchaser, at least ten days in advance, when the Goods or any part thereof, whether in its own premises or the premises of its subcontractors, will be ready for the inspection and testing required

by clause 13.1 and the Purchaser shall give the Seller reasonable notice of its intention to attend such inspection and/or testing.

- 12.4. The Seller shall provide all labour, equipment and materials necessary for the proper carrying out of all tests and inspections.
- 12.5. Prior to the Purchaser's attendance the Seller shall conduct preliminary inspections and tests on the Goods. If the Goods are not ready for inspection and testing on the date notified by the Seller, or if the preliminary inspections and tests have not been conducted as aforesaid, the Seller shall reimburse the Purchaser for the costs of any abortive visits.
- 12.6. No such inspection and/or testing, and no failure by the Purchaser, shall relieve the Seller of its responsibility for the supply of the Goods in accordance with these general conditions or imply acceptance thereof by the Purchaser. The Purchaser shall be entitled to waive inspections and/or tests at any stage without prejudice to its rights to reject any Goods at a later stage.
- 12.7. The Seller shall provide and maintain for the Purchaser, free and safe access to the Goods and to the premises where they are being manufactured and all the means necessary for their inspection and testing as required.
- 12.8. The Purchaser shall be entitled at all reasonable times to audit the quality systems in use by the Seller and its subcontractors to determine whether or not it complies with the requirements of these general conditions.
- 12.9. The Purchaser may reject any Goods if all requested Documents have not been received by the Purchaser.

13. Taxation

- 13.1. Words or expressions used in this clause which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and related imposition Acts have the same meaning in this clause.
- 13.2. GST Exclusive Consideration
 - 13.2.1. Any consideration to be paid or provided for a supply made under or in connection with these general conditions, unless specifically described as "GST inclusive", does not include an amount on account of GST.
 - 13.2.2. Despite any other provision in these general conditions, if a party ("Supplier") makes a supply under or in connection with these general conditions on which GST is imposed to any extent (not being a supply the consideration for which is specifically described as "GST inclusive"):
 - (i) The consideration payable or to be provided for that supply is increased by, and the recipient of the supply ("Recipient") must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply;
 - (ii) The amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient at the same time as the GST exclusive consideration is payable or to be provided; and
 - (iii) Notwithstanding any other provision of these general conditions, the Recipient is not required to pay any amount unless it has received a valid tax invoice (or valid adjustment note) for that taxable supply.
- 13.3. If a payment to a party is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment must be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense. That party is assumed

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to be entitled to a full input tax credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

- 13.4. If, at any time, an adjustment event arises in respect of any supply made by a party, a corresponding adjustment must be made between the parties. Payments to give effect to the adjustment must be made between the parties and the Supplier must issue a valid adjustment note in relation to the adjustment event.

14. Insurance

- 14.1. The Seller must maintain the following insurances:

14.1.1. Workers Compensation and Employers Liability Insurance which complies with all statutory requirements and covers common law liability to a limit of not less than \$1,000,000 in relation to any one occurrence;

14.1.2. Public and Products Liability Insurance that provides cover for general liability (including liability arising out of any personal injury or death of any person or loss of or damage to property) to an amount of \$10,000,000 in respect of any one claim and for products liability to an amount of \$10,000,000 in respect of any one claim.

14.1.3. Insurance covering loss or damage to the Goods for a minimum of the Purchase Order Price until delivery of the Goods has been completed at the Location

15. Indemnity

- 15.1. The Seller indemnifies the Purchaser against all Claims, costs, expenses, liabilities, losses or damages incurred or suffered by the Purchaser arising out of or in connection with:

- (i) Any breach of these general conditions by the Seller;
- (ii) Any third party Claims (including in respect of any personal injury or death of any person or loss of or damage to property) arising out of, or caused by, the supply or non-supply of the Goods by the Seller;
- (iii) Any damage to the Purchaser's, or its agents' property arising out of, or caused by, the supply or non-supply of the Goods by the Seller; and
- (iv) Loss of or damage to the Goods prior to delivery.

16. Disputes

16.1. If a dispute or difference arises between the Seller and the Purchaser in respect of any fact, matter or thing arising out of, or in any way in connection with, the Goods or these general conditions the dispute or difference must be determined in accordance with the procedure in this clause.

16.2. Where a dispute or difference arises, either party may give a notice in writing to the other party specifying:

16.2.1. The dispute or difference;

16.2.2. Particulars of the party's reasons for being dissatisfied; and

16.2.3. The position that the party believes is correct.

16.3. If a notice of dispute is given under this clause, then the dispute or difference is to be referred to senior representatives of the parties, who must meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference within 28 days of the date of the notice of dispute.

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- 16.4. If the representatives cannot resolve or agree upon a procedure to resolve the dispute or difference within the time specified in clause 17.3, the dispute or difference will be referred to arbitration by written notice from either party to the other.
- 16.5. Arbitration pursuant to clause 17.4 will be conducted in accordance with the Rules of Arbitration of the Institute of Arbitrators and Mediators Australia (the "Rules") current at the time of the reference to arbitration and as otherwise set out in this clause. However, nothing in this clause is intended to modify or vary the rights of appeal contained in applicable commercial arbitration legislation.
- 16.6. One arbitrator shall be appointed by agreement between the parties or, if agreement is not reached within 14 days of the arbitration notice, in accordance with the Rules.
- 16.7. The seat of the arbitration shall be in Sydney, New South Wales and all hearings shall be heard in Sydney, New South Wales unless otherwise agreed by the Parties.
- 16.8. Despite the existence of a dispute or difference between the parties:
- 16.8.1. The Seller must continue to supply the Goods.
- 16.8.2. The parties must otherwise comply with their obligations under the Purchase Order.
- 16.9. Nothing in this clause will prejudice the right of a party to seek urgent injunctive, interlocutory or declaratory relief.

17. Termination for Insolvency Event or Default

- 17.1. If a party does not remedy a breach of these general conditions of purchase within 30 days from the date of receipt of a written notice requiring it to remedy the breach or a party suffers an Insolvency Event, the other party may, without prejudice to any other rights it may have, immediately terminate these general conditions by serving a further written notice.
- 17.2. The Purchaser may in its absolute discretion, at any time, in writing, terminate the Purchase Order for convenience.
- 17.3. Upon receipt by the Seller of a notice under clause 18.2, the Seller shall immediately comply with all reasonable directions given by the Purchaser regarding the cessation of work and shall not place any further order, nor make any further agreements in relation to supply of Goods under the Purchase Order, or part thereof, as the case may be. The parties shall agree a fair and reasonable amount to be paid to the Seller, provided that such payment will not include an amount in respect of any Goods that are the Seller's standard stock. In no event shall the Seller be entitled to any loss of profits, overheads or any damages resulting from such termination.
- 17.4. Notwithstanding the termination of the Purchase Order each party shall remain responsible for any obligations or liabilities owed at or arising out of circumstances and transactions occurring prior to the date of termination.
- 17.5. Termination of the Purchase Order by the Purchaser shall not affect any remedies or rights which the Purchaser may have against the Seller with respect to the performance or non performance of the Purchase Order up to the effective date of termination or arising from any breach of the Purchase Order by the Seller.
- 17.6. If any termination of the Purchase Order by the Purchaser is found to be wrongful, the Purchaser will not in any event be liable to the Seller for any indirect or consequential loss or loss of anticipated revenues or profits.

17.7. Any terms and conditions set out in the Purchase Order shall also apply to any changes, additions, deviations or additional Goods so ordered by the Purchaser.

18. Force Majeure

18.1. Where either party's ability to carry out its obligations under the Purchase Order (not including financial causes) is prevented, impeded, restricted or delayed by any cause outside its reasonable control, which shall be deemed to include, but shall not be limited to fire, explosion, flood, storm, earthquake, tidal wave, war, military operation, national emergency, civil commotion, or other event of the type of the foregoing; any strike, lock out or industrial dispute; any governmental law, (other than laws regarding taxation) regulation, decree, order, or similar act, actions of any governmental agency; or similar events affecting a supplier to the Seller, then the party whose ability is so impeded, restricted or affected shall have the right, by giving written notice to the other party, to suspend performance of its obligations until such time that the party giving the notice is able to continue the performance of its obligations under the Purchase Order.

18.2. Where notice is given pursuant to 19.1 and the effect of the force majeure continues for a period of 90 days either Party may give notice to the other terminating the Purchase Order.

19. Confidentiality

19.1. The Seller shall keep secret and confidential and shall not disclose to any third party without the prior consent of the Purchaser any information, data, specifications, drawings, reports, accounts or other documents and things supplied by the Purchaser or made available by the Purchaser or brought into existence by the Seller in supplying the Goods and shall take or cause to be taken, such reasonable precautions as necessary to maintain secrecy and confidentiality and prevent disclosure.

20. No Assignment

20.1. The Seller shall not assign the Purchase Order, in whole or in part, without the prior written consent of the Purchaser.

21. Non Waiver

21.1. Failure by the Purchaser to insist upon strict performance of any term or condition hereof shall not be deemed to be a waiver of any of the Purchaser's rights or remedies hereunder nor of any rights arising out of any subsequent breach by or default of the Seller.

21.2. The Purchaser may waive its rights under the Purchase Order only by expressly doing so in writing.

22. Governing Law

22.1. The Purchase Order is subject to and to be construed in accordance with the laws for the time being in force in the State of New South Wales.

23. Definitions and Interpretation

23.1. In the Purchase Order:

(a) The **Purchaser** is Manuka Resources Limited, ABN: 80 611 963 225.

(b) The **Seller** is the organisation or person providing the Goods;

(c) "**Claim**" means any claim, action, suit, demand, proceeding, notice, litigation, investigation or judgement whether based in contract, tort, under statute or otherwise;

(d) "**Delivery Date**" means the date for delivery of Goods specified in a Purchase Order.

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- (e) **"Documents"** means mechanical and electrical drawings, installation manuals, parts manuals, operations and maintenance manuals for the Goods, and any other documents which the Purchaser reasonably requires;
- (f) **"Goods"** means those Goods and/or Services identified in the Purchase Order, quantities of which shall be supplied by the Seller and/or scope of works to be performed by the Seller to the Purchaser in accordance with these general conditions;
- (g) **"including"** (and any variation) is to be read as if followed by "(without limitation)";
- (h) **"Income Tax"** means any tax of general application imposed on net income
- (i) **"Insolvency Event"** means, in relation to any party, that any of the following events or circumstances have occurred:
 - (i) the affected party becomes insolvent or commits an act of bankruptcy or is declared insolvent; or
 - (ii) proceedings are commenced to appoint a liquidator or provisional liquidator to the affected party (not being for the purposes of amalgamation or reconstruction of the affected party); or
 - (iii) the affected party is placed under official management or administration; or
 - (iv) any trustee, receiver or receiver and manager is appointed in respect of any material part of the affected party's assets;
- (j) **"Intellectual Property Right"** means any intellectual and industrial property rights, including trade marks, copyright (including future copyright), inventions, patents, designs, circuits and other eligible layouts, database rights, and other intellectual property rights, including any application or right to apply for registration of any of these rights;
- (k) **"Location"** is the location specified in the Purchase Order;
- (l) **"Purchase Order"** means the purchase order marked with a unique reference number issued by the Purchaser for the supply of a specific quantity of Goods at the Location for the Purchase Order Price;
- (m) **"Purchase Order Price"** means the price specified in the Purchase Order;
- (n) **"Purchaser's Planning Permit"** means planning permit of the Purchaser.
- (o) **"Specification"** means any specification provided by or approved by the Purchaser (including any modifications or variations, provided they are approved by the Purchaser);
- (p) **"Supply"** includes the manufacture, packaging and delivery of the Goods to the Location;
- (q) **"Tax"** means any tax, levy, royalty, rate, duty, fee, impost, customs or other charge imposed by any governmental, semi-governmental, or other body authorised by law whether in the Supplier's country of origin, Australia, or elsewhere to impose such Tax. Without limiting the generality of the foregoing, Tax includes any withholding tax, goods and services tax, value added tax, a petroleum resource rent tax or any tax respecting environmental effects including a carbon tax.