



## STANDARD TERMS AND CONDITIONS OF PURCHASE

### 1. Agreement

- 1.1. This Agreement applies to: (a) any Goods or any quotations for or offers to supply Goods; and/or (b) any Services or any quotations for or offers to supply Services; and/or (c) any other services in connection with the Goods (including installation and maintenance services) (**Other Services**), provided to Acu-Tech.
- 1.2. By providing Goods, Services or Other Services, the Supplier indicates its acceptance of all the terms and conditions in this Agreement. This Agreement may also be accepted by Supplier or its representative proffering any counter-offer or terms and conditions of Supplier. For the avoidance of doubt, Supplier's counter offer or terms and conditions (if any) do not form part of the Agreement.

### 2. Definitions

In these terms and conditions, the following defined terms have the corresponding meanings, unless the context otherwise requires:

**Acu-Tech** means Acu-Tech Pty Ltd (ACN 626 756 223).

**Agreement** means the agreement constituted by these terms and conditions, any applicable Purchase Order and any other written terms and conditions relating to the supply relationship between the parties which are agreed by both parties, notwithstanding any provisions to the contrary which may appear on invoices or any other documentation issued by the Supplier.

**Confidential Information** means any trade secrets, know-how, technical, scientific, commercial, financial, product, market or pricing or other information of or about Acu-Tech or to which Supplier gains access in connection with this Agreement.

**Consequential Loss** means loss of product, loss of contract, loss of profit, loss of business reputation, loss of opportunities, loss of production, loss of revenue howsoever arising and whether in an action in contract, tort (including negligence), in equity, product liability, under statute or on any other basis.

**Goods** means goods of the type customarily supplied by the Supplier and ordered by Acu-Tech from the Supplier from time to time.

**Intellectual Property** means all intellectual property rights throughout the world, whether present or future, registered or unregistered, including the right to apply for registration of any such rights.

**Purchase Order** means an order given by Acu-Tech to the Supplier for the supply of Goods and/or Services.

**Services** means the services which the Supplier is to provide to Acu-Tech, ancillary to the supply of the Goods, and as otherwise requested by Acu-Tech from time to time.

### 3. Special Conditions

- 3.1. The Agreement includes any special conditions referred to in the purchase order (if any). To the extent that such special conditions are inconsistent with this Agreement (or any of it) then the special conditions will prevail to the extent of such inconsistency.

### 4. Agreement

- 4.1. The Agreement with the Supplier is non-exclusive and Acu-Tech may engage any other person to provide the Goods and/or Services or similar goods and services from time to time.
- 4.2. The Agreement does not oblige Acu-Tech to order any Goods from the Supplier.
- 4.3. The Agreement does not in any way constitute or imply a principal and agent or any similar relationship between Acu-Tech and the Supplier.
- 4.4. The Agreement is the entire agreement between Acu-Tech and Supplier in relation to its subject matter and supersedes all prior written or other agreements or arrangements between Acu-Tech and Supplier.

### 5. Orders

- 5.1. A binding contract for the supply of Goods only arises when the Supplier receives a Purchase Order. The Supplier is deemed to have accepted a

Purchase Order if the Supplier does not reject the order within 12 hours of receiving it.

- 5.2. No terms and conditions stated by the Supplier in any quotation, invoice or other document will be binding on Acu-Tech.

### 6. Delivery and acceptance of Goods

- 6.1. Delivery of the Goods must be made at the time, place and in the manner specified in the Purchase Order.
- 6.2. Supplier warrants that, at the time of delivery, it has the right to sell the Goods and the Goods are free from all liens, charges and encumbrances of any kind.
- 6.3. Acu-Tech will have accepted the Goods when:

(a) Acu-Tech has had a reasonable opportunity to examine the Goods after delivery and has not rejected the Goods; and

(b) Acu-Tech indicates to Supplier in writing that it has accepted the Goods or when Acu-Tech pays the total price for the Goods in accordance with clause 11.

### 7. Supply of Goods

- 7.1. Goods supplied pursuant to a Purchase Order must:

(a) comply strictly with the quality, volume and description as noted in the Purchase Order;

(b) comply strictly with any specifications noted in the Purchase Order;

(c) be fit for the purpose made known to the Supplier by Acu-Tech or, if none was made known to the Supplier, be fit for the purpose:

(i) for which goods of that kind are ordinarily used;

(ii) which should reasonably have been inferred by the Supplier having regard to the nature of the Goods, the Purchase Order and any communications with Acu-Tech;

(d) have a life expectancy commensurate with what would be expected of similar goods provided for similar purposes by a competent and reputable supplier or contractor;

(e) comply with all applicable Australian Standards or where there is no applicable Australian Standard then all applicable International Standards;

(f) be of merchantable quality;

(g) be delivered by the time specified in and in accordance with all instructions in the Purchase Order;

(h) comply with all applicable codes, standards, industry requirements, regulations, legislation, by-laws, ordinances, common law and other laws applying to the production, supply, use or installation of the Goods; and

(i) pass such inspections and tests as may be required by Acu-Tech.

### 8. Supply of Services

- 8.1. Services supplied pursuant to a Purchase Order must:

(a) comply strictly with the description as noted on the Purchase Order;

(b) comply strictly with any specifications as noted on the Purchase Order;

(c) be fit for the purpose required by Acu-Tech and any Goods supplied in connection with the Services must be fit for the purpose required by Acu-Tech;

(d) be to or of the standard of skill and care and the quality expected of a provider experienced in the provision of the type of services required;



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- (e) comply with all applicable codes, standards, industry requirements, regulations, legislation, by-laws, ordinances, common law and other laws applying to the supply of the Services;
  - (f) pass such inspections and tests as may be required by Acu-Tech; and
  - (g) be rendered in a diligent manner and with due skill and care.
- 9. Insurance and indemnity**
- 9.1. The Supplier will, for so long as any obligations remain in connection with this Agreement:
- (a) effect and maintain appropriate insurance in relation to public liability and product liability with a reputable insurer for at least \$20,000,000;
  - (b) maintain appropriate insurance in relation to professional indemnity with a reputable insurer for at least \$5,000,000;
  - (c) maintain workers' compensation insurance in accordance with applicable legislation; and
  - (d) insure the Goods with a reputable insurer for the full replacement cost of such Goods.
- 9.2. The Supplier will, upon request by Acu-Tech, provide Acu-Tech with proof of insurance acceptable to Acu-Tech.
- 9.3. The Supplier indemnifies Acu-Tech, its related bodies corporate, their respective officers, employees and agents against all loss, damage, injury or expense they (or any of them) may sustain or incur as a result, whether directly or indirectly, of any breach of this Agreement including any action or claim for alleged infringement of any patent, copyright, registered design, trademark or other intellectual property rights, by reason of Acu-Tech's receipt or enjoyment of the Goods.
- 10. Title and risk**
- 10.1. Title and risk in the Goods will pass to Acu-Tech after the Goods have been physically delivered to and inspected by Acu-Tech as being in accordance with the Purchase Order (if any) and this Agreement.
- 10.2. In the event that the Goods are supplied with Services, title and risk in the Goods will not pass to Acu-Tech until both the Goods and the Services have been supplied by the Supplier and inspected and accepted by Acu-Tech as being in accordance with the Purchase Order (if any) and this Agreement.
- 11. Price and Payment**
- 11.1. Any price or other consideration specified in a Purchase Order for Goods includes:
- (a) all costs of testing, inspection, labelling, packing and delivery to and offloading at any delivery point as specified in the Purchase Order; and
  - (b) if applicable, GST.
- 11.2. Supplier's invoices will be paid within 30 days of the end of the month in which the Goods are received, or such other period agreed by the parties, provided that the invoice is correctly rendered, and complies with Acu-Tech's Purchase Order. In the event of any claim by Acu-Tech against the Supplier, payment may be withheld until such claim is resolved.
- 11.3. Acu-Tech may deduct from monies otherwise due to the Supplier any:
- (a) debt or other monies due from the Supplier; or
  - (b) claim to money which Acu-Tech may have against the Supplier, whether for damages or otherwise relating to the Goods.
- 11.4. If Acu-Tech does not deduct any amounts to which it is entitled to deduct pursuant to clause 11.1, the Supplier must pay those amounts to Acu-Tech on demand.
- 12. Cancellation**
- 12.1. Acu-Tech may, on providing notice at least 5 days prior to the time for supply of the Goods or the completion of the Services, cancel a Purchase Order for any Goods not supplied or incomplete Services and the Supplier will not supply those Goods or perform those Services in accordance with and to the extent specified in the notice.
- 12.2. If a Purchase Order is cancelled under clause 12.1, the Supplier will immediately do everything possible to mitigate any costs incurred by it arising from the Purchase Order and the cancellation.
- 12.3. Acu-Tech will pay for any Goods delivered or Services performed to the time of receipt of the notice referred to in clause 12.1 provided that Acu-Tech will have no other liability to the Supplier for any damages or losses (whether direct, indirect or Consequential Loss), costs or expenses in connection with the Purchase Order or its cancellation.
- 13. Termination**
- 13.1. It is an event of termination (Termination Event) if:
- (a) the Supplier fails to deliver Goods or Services to Acu-Tech when due;
  - (b) the Supplier breaches the Agreement;
  - (c) the Supplier suspends payment of its debts generally or it becomes unable to pay its debts when due;
  - (d) an application or order is made for the bankruptcy, winding up or dissolution of the Supplier, or a resolution is passed or any steps are taken to pass a resolution for the bankruptcy, winding up or dissolution of the Supplier; or
  - (e) a receiver, receiver and manager, administrator, trustee or similar official is appointed over any of the Supplier's assets or undertaking.
- 13.2. If a Termination Event occurs, Acu-Tech may in addition to any other rights or remedies it may have, terminate the Agreement and any Purchase Order immediately by notice to Supplier.
- 13.3. The Supplier must pay all costs and expenses incurred by Acu-Tech arising from any Termination Event and will indemnify Acu-Tech against any claim, liability or cost incurred by Acu-Tech as a result of any breach by the Supplier of its obligations pursuant to the Agreement.
- 14. Supplier warranties and liability**
- 14.1. The Supplier represents and warrants to Acu-Tech that:
- (a) in entering into and performing its obligations under this Agreement, it is not and will not be, in breach of any relevant laws or regulations or any obligation owed to another person;
  - (b) there is no current or pending threatened litigation, arbitration, investigation, inquiry or proceeding in which it is involved that will or may have an adverse effect on its ability to supply the Goods in accordance with this Agreement and any Purchase Order;
  - (c) it will supply the Goods and Services in accordance with all applicable laws, regulations, industry standards and codes of conduct in Australia and any other relevant jurisdiction relating to the nature, method of manufacture, acquisition, testing, packaging, labelling release for supply and delivery of the Goods and/or Services;
  - (d) it has the necessary skills, experience, qualifications, resources, technology and know-how to supply the Goods and Services in accordance with this Agreement and any Purchase Order; and
  - (e) the supply or use of the Goods and/or Services will not infringe the intellectual property rights of any person, and upon delivery, Acu-Tech will obtain absolute and unencumbered legal and beneficial title to the Goods.
- 14.2. The Supplier releases and indemnifies Acu-Tech, its related bodies corporate and their respective officers, employees, consultants and agents from and against all actions, claims, proceedings and demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly with Supplier, and whether at common law, in equity pursuant to statute or otherwise, in respect of any loss, death, injury, illness or damage (whether personal or property, and whether direct or consequential, including Consequential Loss) arising out of
- (a) a breach by Supplier of any of the warranties or obligations contained in this Agreement or any Purchase order; or
  - (b) any negligent or wrongful act or omission by or on behalf of Supplier,



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and from and against all damages, costs and expenses (including all legal costs on a solicitor own client basis) incurred in satisfying, defending or settling any such claim, proceeding or demand.

14.3. Without limiting any of the warranties in clause 14.1, Supplier warrants that, at the time of delivery and for a period of 12 months thereafter or such longer period as specified in any relevant Purchase Order, all Goods supplied by it to Acu-Tech under a Purchase Order will:

- (a) be of merchantable quality;
- (b) be of sound workmanship;
- (c) be free from defects and faulty materials;
- (d) comply with all specifications, and correspond with all samples (if any) provided by Supplier; and
- (e) be fit for the purpose for which they are intended.

14.4. If any Goods do not comply with any of the warranties set out in clause 14.3, without prejudice to any other right or remedy which Acu-Tech may have, upon Supplier receiving written notice from Acu-Tech that any Goods do not comply with Supplier's warranties, Supplier must, at Acu-Tech's option:

- (a) collect any such defective Goods, or make alternative transport arrangements for such defective Goods to be returned to Supplier, repair or replace the defective Goods and deliver the repaired or replacement Goods to Acu-Tech within 10 days of Supplier being notified of the defect; or
- (b) pay or reimburse to Acu-Tech all costs and expenses required for, or incurred by or on behalf of, Acu-Tech to repair or replace all or part of any such defective Goods.

**15. Compliance**

- 15.1. Supplier must act in good faith in its dealings with Acu-Tech.
- 15.2. Supplier must comply with all applicable laws, regulations, industry standards, codes of conduct and best practice in Australia including but not limited to the Privacy Act 1988 (Cth) as amended from time to time.
- 15.3. Supplier must provide to Acu-Tech free of charge, all documents required for using, assembling, installing, processing, storing, operating, servicing, inspecting, maintaining or repairing the relevant Goods and/or Services.
- 15.4. Supplier grants to Acu-Tech a non-exclusive, worldwide, royalty-free, perpetual, irrevocable, transferable licence (including the right to sublicense) of all intellectual property in or relating to the Goods to the extent necessary for the supply and use of the Goods for any purpose.

**16. Assignment**

Executed as an agreement

**Signed by Acu-Tech**

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Print name

Dated: \_\_\_\_\_

16.1. The Supplier must not assign or subcontract a Purchase Order or this Agreement, except with the prior written consent of Acu-Tech.

**17. Confidential Information and Intellectual Property**

17.1. Supplier must keep confidential all Confidential Information secret unless it comes into the public domain (other than because of breach of this Agreement or any law) and must not disclose Confidential Information except as necessary for the purpose of this Agreement. On termination or expiry of this Agreement, Supplier must promptly return all Confidential Information to Acu-Tech or destroy it as Acu-Tech requires.

17.2. Intellectual Property owned by either party at the commencement of this Agreement remains the property of that party. Any Intellectual Property developed or created during the performance of this Agreement vests in Acu-Tech immediately on its creation and Supplier assigns all right, title and interest in such Intellectual Property to Acu-Tech and will do any future acts or execute any document as required by Acu-Tech to effect such assignment.

**18. Anti-corruption**

18.1. Supplier must not directly or indirectly, in private business or public sector dealings, offer, give or agree to offer or give any payment, gift or other advantage with respect to any matter which is the subject of this Agreement which would violate any anti-corruption laws or regulations, is intended to or does, influence or reward any person for acting in breach of an expectation of good faith, impartiality or trust, or which a reasonable person would otherwise consider to be unethical, illegal or improper.

**19. Modern Slavery**

19.1. The Supplier represents and warrants to Acu-Tech that it has the necessary processes, procedures and compliance systems in place to comply with the requirements of the Modern Slavery Act 2018 (Cth).

**20. Jurisdiction**

- 20.1. The Supplier and Acu-Tech acknowledge and agree that this Agreement shall be governed by the laws of Western Australia, and the laws of the Commonwealth of Australia which are in force in Western Australia.
- 20.2. The parties to the Agreement submit to the non-exclusive jurisdiction of the courts of Western Australia and the relevant federal courts and courts competent to hear appeals from those courts.

**Signed by Supplier**

\_\_\_\_\_  
Signature of authorised representative\*

\_\_\_\_\_  
Print name and position

Dated: \_\_\_\_\_

\*The person who signs these terms represents and warrants to Acu-Tech that he/she is duly authorised by Supplier to sign these terms on behalf of Supplier.