

# Standard Vendor Terms of Trade

## 1 Definitions

- 1.1 "Enztec" means Enztec Limited, a New Zealand corporation.
- 1.2 "Order" means the Enztec purchase order provided to Vendor, to which these terms of trade are incorporated and apply.
- 1.3 "Terms" means these Standard Vendor Terms of Trade.
- 1.4 "Vendor" means the seller named in the Order, where Vendor supplies goods and/or services pursuant to the Order.

## 2 Vendor's Acceptance

- 2.1 Vendor's acknowledgement of the Order, commencement of work or the supply of goods or services shall be deemed to be acceptance of the Order. Such acceptance is limited to the express terms and conditions described herein.
- 2.2 Any terms and conditions proposed by Vendor which are different or additional to those herein are hereby objected to and rejected by Enztec.

## 3 Changes

- 3.1 No changes shall be binding on Enztec unless in writing and agreed to by Enztec's authorised representative. Enztec reserves the right at any time to make changes to drawings, specifications, place of delivery and the like. If such changes result in an increase or decrease in Vendor's cost, then any adjustment shall be agreed to in writing by the parties.

## 4 Confidential Information

- 4.1 Vendor shall keep in confidence and shall not disclose to any other person or entity, any drawings, specifications, data and the like ("Confidential Information"), supplied by Enztec in connection with the Order.
- 4.2 Vendor shall not advertise, publish or communicate the fact that Enztec has contracted to purchase goods or services from Vendor, without the express written consent of Enztec.
- 4.3 Upon completion of the supply of goods or services under the Order or at any prior time if requested by Enztec, Vendor shall return to Enztec all Confidential Information and if requested by Enztec will undertake in writing that it has not retained any Confidential Information in any form.

## 5 Delivery

- 5.1 TIME IS OF THE ESSENCE. Any delays to delivery shall be reported to Enztec. Enztec is not obligated to accept any early, late, partial or excess deliveries.
- 5.2 Enztec reserves the right, without liability, in addition to other rights and remedies, to terminate the Order with respect to any goods not yet shipped or services not yet rendered by the delivery date and to purchase substitute goods or services elsewhere and charge Vendor for any loss.

## 6 Price and Payment

- 6.1 This Order may not be filled at a price higher than that on the Order. In the event of a higher price DO NOT SHIP – contact Enztec immediately to obtain written authorisation for an increase in price.
- 6.2 Enztec shall make payment to Vendor no later than the 30<sup>th</sup> of the month following invoice, subject always to the fulfilment of the Order in accordance with the specific terms of the Order and these Terms.

## 7 Vendor's Warranty

- 7.1 Vendor expressly warrants that all goods or services supplied under this Order shall:
- be in accordance with all drawings, specifications, samples or other descriptions upon which the Order is based;
  - conform to the purposes intended, if Vendor should reasonably know what such purposes are;
  - be free of any third-party claims;
  - be free of any defects in materials and workmanship and shall be of the required quality;
  - be performed properly, in a workmanlike manner and accordance with Enztec's drawings, specifications, instructions and the like; and
  - not infringe any third-party patent, trade name, trademark or the like. All tools, dies, jigs, fixtures, etc., drawings, patterns, specifications furnished to Vendor by Enztec in connection with this Order shall be and remain the property of Enztec and shall be held by Vendor, unless directed otherwise.
- 7.2 Vendor agrees to maintain and insure Enztec's property adequately and to indemnify Enztec for any damage or loss sustained to such property, as a consequence of Vendor's possession or control.

## 8 Enztec's Property

- 8.1 Vendor's warranty shall survive delivery and shall not be deemed waived by inspection, test or the like and shall remain in favour of Enztec.
- 8.2 Vendor agrees to promptly replace any non-conforming goods or services, without cost to Enztec. If Vendor fails to promptly replace the non-conforming goods or services, Enztec may, after reasonable notice to Vendor, repair or replace the non-conforming goods or services and charge Vendor for all costs incurred. Vendor may not negate, limit or otherwise modify this warranty.
- 8.3 All materials provided by Enztec to Vendor must be segregated by Vendor from other materials and held in a controlled environment. Vendor is accountable to Enztec for such materials used and all scrap must be returned to Enztec, upon request by Enztec.

## 9 Inspection and Testing

- 9.1 Enztec's payment for goods or services tendered by Vendor against the Order shall not constitute acceptance thereof. Enztec shall have the right to inspect and test all goods during and after the period of manufacture, at any place the goods may be located. If the goods are determined by Enztec to be non-conforming, Enztec may return the goods to Vendor for refund or replacement at Vendor's expense.
- 9.2 In addition to all other rights Enztec may have hereunder, Enztec may charge Vendor for all expenses incurred in unpacking, inspecting, testing, repacking and returning non-conforming goods.
- 9.3 In the event that the defect or non-conformity is not apparent on initial inspection, but results in later product deterioration, Enztec reserves the right to require Vendor to replace the goods as well as pay Enztec for all damages, including consequential damages, it has incurred.
- 9.4 Notwithstanding anything in these Terms to the contrary, Vendor shall be obligated to test and inspect the goods or services to ensure that quality standards are met and that Vendor's warranty to Enztec is fulfilled.

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## 10 Termination by Enztec

- 10.1 Enztec may give written notice to Vendor to terminate the Order, in whole or in part, at any time, either for Enztec's convenience or because of the failure of Vendor to fulfil its contractual obligations. On receiving written notice of termination, Vendor shall immediately cease all further work and make every reasonable effort to secure cancellation of all existing orders or contracts for materials or services in connection with performance of the Order.
- 10.2 If termination is for Enztec's convenience an equitable (pro-rata) adjustment shall be made where actual costs have been incurred, but no amount shall be payable for anticipated profits or unperformed services.
- 10.3 If termination is due to the failure of Vendor to perform its contractual obligations, then Enztec will not be liable to Vendor for any amount, but Vendor will be liable to Enztec for any and all damages incurred due to the breach which gave rise to the termination.

## 11 Vendor's Quality System

- 11.1 If Enztec requires evidence of Vendor's Quality System and conformance to Good Manufacturing Practices (GMP), Vendor will be asked to sign Supplier GMP Agreement which details the methods Enztec and Vendor will jointly employ to ensure required quality assurance levels of products, processes and services provided by Vendor to Enztec.

## 12 Traceability and Product Recall

- 12.1 Enztec has adopted Product traceability procedures conforming to relevant law. Vendor shall ensure that it procures accurate and complete records (for example material certificates, test certificates, and the like) of all goods and services incorporated into the goods and services furnished to Enztec in accordance with the Order and shall securely retain these records for a period not less than three (3) years from the date the goods were delivered (or the services provided) to Enztec.
- 12.2 In the event that Enztec initiates a product recall, Vendor shall provide reasonable and timely assistance to Enztec to enable Enztec to comply with its regulatory obligations with respect to the product recall.

## 13 Independent Contractor

- 13.1 The parties expressly understand and agree that Vendor is acting as an independent contractor, unrelated to Enztec. Nothing in this Order is intended to create a relationship between Enztec and Vendor. Vendor shall not incur any expenses or obligations nor make any representations or warranties to third parties, binding on or in the name of Enztec. Vendor shall indemnify, hold harmless and defend Enztec from any and all claims, damages, liabilities, fines and expenses, which may be incurred in relation to performance of the work covered by the Order. Vendor shall maintain all necessary insurance coverage, including public liability and material damage. Vendor agrees to provide appropriate insurance certificates to Enztec on request.

## 14 Patents, Patent Indemnification

- 14.1 Unless this Order is for goods manufactured to a specification provided by Enztec, Vendor agrees that on receipt of a notice from Enztec to defend promptly Enztec from any claim or infringement of any patent by reason of the manufacture, use or sale of the goods or services furnished under this Order. Vendor further agrees to pay any and all expenses, losses, damages and the like, incurred by or awarded against Enztec as a result of such claims or infringements.

## 15 Limitation of Enztec's Liability

- 15.1 Enztec's liability to Vendor shall not exceed the price agreed to by the parties for the goods or services that are the subject of the Order. Any actions relating to or arising from an alleged breach by Enztec as to the subject goods or services must commence within one (1) year after the cause of the action has occurred or be forever barred.

## 16 Other Clauses

- 16.1 Governing Law. New Zealand law shall govern these Terms. Vendor submits to the non-exclusive jurisdiction of New Zealand courts.
- 16.2 Invalidity. If any clause in these Terms is determined to be illegal or unenforceable for any reason, the parties shall modify such clause, but only to the extent necessary to make it legal and enforceable. If modification is not possible without materially altering the intent of the clause, the parties shall sever such clause from these Terms and, if possible, renegotiate in good faith such other means to reflect the intent of such severed clause. Notwithstanding such severance, the parties shall enforce the other clauses in these Terms as if such severed clause was never a part thereof.
- 16.3 Compliance with Law. The parties shall comply with all applicable laws.
- 16.4 Conflicts. The specific terms of the Order to which these Terms are attached, or incorporated by reference, shall prevail in the event of a conflict.
- 16.5 Non-waiver. No failure by Enztec to insist upon strict performance of any of these Terms and the specific terms of the Order, or delay in exercising any of its rights or remedies, shall constitute a waiver or variation of the terms or a waiver of any such right or remedy.
- 16.6 Entire Agreement. The Order, these Terms and any document referred to herein shall constitute the entire agreement between Enztec and Vendor.