

General Terms and Conditions of Purchase of Milford Industries a Division of AutoPacific Australia Pty. Ltd. ABN 60 004 546 543

20 Fitzroy Avenue
Camden Park
South Australia 5038

1. Application of conditions

1.1 These conditions apply exclusively to the supply of goods to the Purchaser

These conditions apply to the supply of goods to the purchaser by the supplier. They may only be varied with the written approval of the purchaser. They override any inconsistent conditions in any document or other communication used by the supplier in relation to the supply of goods to the purchaser, and any industry practice and earlier course of dealing. This applies even if the supplier's acceptance of order or other document contains a similar condition to this one.

1.2 For the purposes of this document:

Goods means any goods supplied to the purchaser by the supplier;

Order means an order for the supply of goods to the supplier from the purchaser.

Purchaser means Milford Industries a Division of AutoPacific Australia Pty. Ltd. ABN 60 004 546 543

Supplier means the person, jointly or severally if more than one, selling goods or services to the Purchaser.

1.3 Supplier unable or unwilling to accept order

If the supplier is unable or is unwilling to accept an order from the purchaser, the supplier must immediately notify the purchaser in writing and return the order to the purchaser. In this event, these conditions will not apply.

2. Delivery and goods

2.1 Cost of packing, insurance and delivery of goods

The supplier must bear all the costs involved in packing, storage and delivery of the goods unless otherwise agreed in writing. The supplier must also bear the cost of insuring the goods under a goods in transit policy with a reputable insurer unless otherwise agreed in writing.

2.2 When and where goods are to be delivered

The supplier must deliver the goods to the delivery point in accordance with the instructions set out on the order and/or the quotation. The purchaser retains the right to alter the sequence in which goods are to be delivered and the times at which they will be accepted.

2.3 Delivery in excess of order or to wrong place or at wrong time

If the supplier delivers goods in excess of the amount specified in an order, the purchaser will hold them at the supplier's risk. The purchaser will pay for authorised delivered items as per the quantity on the purchase order. The purchaser will not be responsible for returning goods delivered in excess of the amount specified in an order. The purchaser accepts no responsibility for any goods delivered to a place or at a time not specified in the order.

2.4 Standards to be met

2.4.1 The goods must meet the purchaser's specifications in the order.

2.4.2 For goods manufactured according to the purchaser's design drawings, the supplier must check drawing revision status prior to manufacture.

2.5 General standards applying that may not be specified in the purchase order

2.5.1 All plating & coating shall comply with Milford Specification MS0010

2.5.2 All goods shall comply with Milford specification for Substances of Concern MS0013

2.5.3 All orders are placed by the purchaser with the condition that asbestos is not contained in any form or concentration in the ordered products or their packaging.

2.6 Warranty by supplier

The supplier warrants each of the following in relation to goods supplied under an order.

2.6.1 The supplier has the right to sell the goods at the time when title to those goods is to pass to the purchaser in accordance with these conditions.

2.6.2 On delivery, the goods will be free from any charge or encumbrance in favour of any third party that is not known by or declared to the purchaser before the contract is made.

2.6.3 The goods are of merchantable quality, made of good material and workmanship, and free from defect.

2.6.4 The goods are reasonably fit for the purpose for which goods of the same kind are commonly supplied and any other purpose made known to the supplier.

2.6.5 The goods have been manufactured in strict compliance with all relevant legislation applicable in the country where the seller is notified by the purchaser that goods are to be used or as otherwise notified by the purchaser.

2.6.6 The manufacture and sale of the goods does not infringe the rights of any other person, including rights in relation to patents, trademarks, designs and copyright.

2.6.7 The goods will be delivered to the purchaser in the correct quantity and at the required times.

2.7 Rejection of goods

2.7.1 The purchaser may reject goods if they are defective or are not in accordance with the purchaser's specifications.

2.7.2 The purchaser must inform the supplier of any rejection of goods as soon as reasonably practical after discovery of the defect or non-conformance.

2.7.3 Goods that are rejected are held by the purchaser or an agent of the purchaser at the supplier's risk.

2.8 Rectification of defects

2.8.1 If the purchaser rejects goods pursuant to clause 2.7.1, the supplier undertakes to use its best endeavours to replace the defective goods or rectify the defects promptly and notify the purchaser of the time required to do so. In any event the supplier undertakes to replace the defective goods or rectify the defects within 28 days from receipt of the notice, or such other time as is agreed by the parties.

2.8.2 If the supplier fails to replace or rectify the defective goods pursuant to clause 2.8.1, it shall be deemed to have relinquished any rights it may have had to replace or rectify and the purchaser may arrange for the goods to be replaced or rectified at the supplier's expense.

2.9 Title and risk

Title to goods, and the risk in relation to those goods, passes to the purchaser on delivery of the goods in accordance with clause 2.2 provided however that risk will revert to the supplier if goods are rejected by the purchaser as set out in clause 2.7.

3. Payment of the price by the purchaser

3.1 Pricing

In determining the price that will be charged to the purchaser, the supplier undertakes to take into consideration global benchmark prices for the supply of similar goods that it supplies to the purchaser, at the time of supply, to ensure that the price charged to the purchaser is fair and reasonable and is decreased when global benchmarks decrease.

3.2 Price

3.2.1 The price is the price set out on the order plus GST. The price does not include any customs duties in the country of landing. The supplier is responsible for any increase in a tax, duty or charge and for any new tax, duty or charge that is imposed before the goods are delivered.

3.2.2 The supplier must provide at least 60 days prior written notice of any increases in price unless otherwise agreed in writing by the parties.

3.2.3 The supplier must notify the purchaser of price variations on receipt of the Purchase Order.

3.3 Payment

The purchaser must pay the price stated on the order after receiving an invoice from the supplier on the terms and conditions set out in the invoice or in accordance with other terms as agreed between the parties.

4. Indemnity

4.1 Indemnity

The supplier must continually indemnify the purchaser against any claim or proceeding that is made or commenced, and against any liability, loss (including consequential loss), damage or expense (including legal costs on a full indemnity basis) that is incurred or suffered as a direct or indirect result of either of the following:

4.1.1 a breach of a purchase order or of a warranty given by the supplier in relation to the goods;

4.1.2 replacement or rectification of goods required under clause 2.8;

4.1.3 a breach of clause 5.1.

4.2 Rights of the purchaser

This document is in addition to and does not derogate from any other rights of the purchaser in relation to the supply of goods to it by the supplier, including, without limitation, any warranty implied by law.

5. Intellectual Property

5.1 All intellectual property and other materials that the purchaser provides to the supplier (including drawings, specifications, dies, patterns, templates, artwork, blocks and plates) remain the property of the purchaser (or its related corporations). 'Intellectual property' includes inventions, know-how, patent applications, registered and unregistered trade marks, designs, copyright, confidential information, trade secrets, and trade or business names. The supplier must not use or disclose such intellectual property or materials to any third party except to the extent and in the way required by the order. The supplier undertakes to take all necessary practical procedures and precautions to ensure that its employees and subcontractors who are provided with the purchaser's intellectual property are made aware that they must not divulge the purchaser's intellectual property to any unauthorised third party, and must not do or fail to do anything that, if done or not done by the employee or subcontractor, would result in a breach of the supplier's obligations in this document.

5.2 The supplier must promptly return the purchaser's intellectual property and other materials (including any copies of any documentation) to the purchaser when the supplier's obligations in relation to this document end.

5.3 The supplier must also do so at any other time, on request by the purchaser.

5.4 The supplier shall at all times maintain a proper and up-to-date inventory of all manufacturing items, including without limitation dies, provided to the supplier by the purchaser. Such inventory shall be taken at the times and in the manner specified by the purchaser in writing. The purchaser reserves the right on giving the supplier reasonable notice thereof, to inspect the supplier's inventory records during normal business hours.

6. Recovery of GST on supplies and adjustments under this document

6.1 All consideration provided under this document is exclusive of GST, unless it is expressed to be GST-inclusive.

6.2 Where a party (**Supplier**) makes a taxable supply to another party (**Recipient**) under or in connection with this document, the Recipient must pay to the Supplier an additional amount equal to the GST payable on the supply (unless the consideration for that taxable supply is expressed to include GST). The additional amount must be paid by the Recipient at the later of the following:

6.2.1 The date when any consideration for the taxable supply is first paid or provided.

6.2.2 The date when the Supplier issues a tax invoice to the Recipient.

6.3 If, under or in connection with this document, the Supplier has an adjustment for a supply under the GST law which varies the amount of GST payable by the Supplier, the Supplier will adjust the amount payable by the Recipient to take account of the varied GST amount. The Supplier must issue an adjustment note to the Recipient within 28 days of becoming aware of the adjustment.

6.4 Terms used in this clause that are not otherwise defined in this document have the meanings given to them in the GST Act.

7. Miscellaneous

7.1 Assignment

The supplier may only assign any of its rights under this document with the purchaser's written consent.

7.2 Cancellation at any time

The purchaser may cancel an order or any part of it at any time by giving written notice to the supplier if any of the following happens.

7.2.1 The supplier does not make deliveries strictly in accordance with the delivery schedule;

7.2.2 The supplier commits any other breach of the terms of order;

7.2.3 Anything happens that reasonably indicates that there is a significant risk that that supplier is or will become unable to pay debts as they fall due;

7.2.4 A step is taken to have a receiver, receiver and manager, liquidator or provisional liquidator appointed to the supplier or any of its assets;

7.2.5 The supplier ceases, or indicates that it is about to cease, carrying on business;

In that case, the purchaser is not liable to pay anything in respect of any goods that have not been delivered at the time of cancellation. Cancellation does not affect any rights the purchaser may have in relation to anything done or not done by the supplier.

7.3 Cancellation before commencement of production

The purchaser may cancel an order by giving written notice to the supplier at any time before actual commencement of production of the goods ordered. In that case, the purchaser's liability is limited to the reasonable expenditure incurred by the supplier in relation to the order up to the time of cancellation.

7.4 Governing law and jurisdiction

This document is governed by the law of South Australia. The parties submit to the exclusive jurisdiction of its courts. The parties will not object to the exercise of jurisdiction by those courts, either for forum non conveniens or on any other basis. The parties will not take or continue legal proceedings anywhere else.

7.5 Severability

If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of it is not affected.

7.6 Time of essence

Time is of the essence in relation to all the supplier's obligations under the order.

7.7 Waiver

The fact that the purchaser fails to do, or delays in doing, something the purchaser is entitled to do under this document, does not amount to a waiver of any obligation of, or breach of obligation by, the supplier. A waiver by the purchaser is only effective if it is in writing.

A written waiver by the purchaser is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach; or as an implied waiver of that obligation or breach in relation to any other occasion.

7.8 No Agency

This document does not create a partnership, agency, fiduciary or any other relationship except the relationship of contracting parties, between the parties. No party is liable for an act or omission of another party, except to the extent set out in this document.

8. Confidential Information

8.1 Confidentiality

Each party must keep confidential the Confidential Information, and must not disclose or permit the disclosure of such Confidential Information to any other person. If a party becomes aware of the breach of this obligation, that party will immediately notify the other party.

8.2 Further permitted use and disclosure

This document does not prohibit the disclosure of Confidential Information by a party in the following circumstances:

8.2.1 the other party has consented to the disclosure of the relevant Confidential Information;

8.2.2 the disclosure of Confidential Information is to an employee, sub-contractor, agent or representative who needs it for the purposes of this document and the party disclosing the Confidential Information ensures that the relevant employee, sub-contractor, agent or representative complies with the terms of this clause;

8.2.3 the disclosure is to a professional advisor in order for it to provide advice in relation to matters arising under and in connection with this document;

8.2.4 the disclosure is required by a Court or governmental or administrative authority;

8.2.5 the disclosure is required by applicable law or regulation.

8.3 Definition

8.3.1 In this document, **Confidential Information** means information, including any of the following information (whenever it was obtained) in relation to a party's business, operations or strategies:

- the terms of this document;
- information designated as confidential by a party;
- information acquired by the other party solely by virtue of provisions of this document;
- intellectual property or other property;
- actual or prospective customers, clients or competitors.

8.3.2 Information is not confidential in any of the following circumstances:

- it is in the public domain, unless it came into the public domain by a breach of confidentiality or an obligation of confidence owed to the disclosing party;
- the receiving party can prove has independently acquired or developed by it without breaching this document.