



General purchasing conditions

Hexatronic New Zealand

1. DEFINITIONS

Section 19 contains a list of definitions used in these general purchasing conditions (the "GPC").

2. APPLICATION AND SCOPE

- 2.1 These GPC shall always apply to, and form part of, all Agreements on purchase of Products by Purchaser, unless the Parties agree otherwise in writing. The Products may in some Supplier / Purchaser relations be Purchaser's proprietary products. These GPC contain certain provisions which address such situations specifically.
- 2.2 No pre-printed general terms or other terms and conditions proposed or referred to by Supplier shall apply (even if Purchaser has not explicitly objected to their applicability) unless they have been expressly approved by Purchaser in writing.
- 2.3 Purchase Orders must be placed by Purchaser in writing. A Purchase Order shall be deemed to be accepted and binding upon both Parties when performance covered by the Purchase Order has been commenced by Supplier or when acceptance has been communicated by Supplier to Purchaser in writing, whichever comes first. Acceptance of a Purchase Order constitutes Supplier's unconditional acceptance of these GPC.
- 2.4 The scope of supply will be set forth in applicable Agreement and may be further detailed in Purchaser's written suborders.
- 2.5 These contractual documents form an integral part of the Agreement: (i) applicable Purchase Order and suborders (including appendices) (ii) the Supply Agreement and its appendices (if any) (iii) these GPC. In case of inconsistencies between the contractual documents, they shall prevail in said order.
- 2.6 Supplier shall be responsible for any acts or omissions of any subcontractor as if they were the acts or omissions of Supplier itself.

3. PRICES AND PAYMENT

- 3.1 The prices set forth in the Agreement are fixed (exclusive of any applicable GST) and include storage, packaging, handling, charges, duties and fees payable up to and including delivery. Unless otherwise has been agreed in writing, payment shall be made within ninety (90) days from date of complete and successful delivery of Products (including Documents to be provided by Supplier) and the receipt of correct invoice. In case of delayed payment, Supplier shall be entitled to claim penalty interest on arrears corresponding to the rate from time to time applied by the Westpac Banking Corporation in New Zealand on overdrafts in excess of NZD \$100,000 plus two (2) percentage points commencing on the due date and compounding daily until such time when payment is made, provided

that the total interest that Supplier is entitled to exceeds NZD \$200. Supplier shall not otherwise be entitled to charge any fees for delay or advice notes, or fees for transportation or suchlike.

- 3.2 Purchaser shall be entitled to offset any amount due to Supplier hereunder against any amount of any claim by Purchaser against Supplier without thereby in any way limiting or modifying any obligations imposed upon Supplier by law or the terms of the Purchase Order or Purchaser's rights or remedies available at law.

4. DELIVERY

- 4.1 Unless otherwise has been agreed in writing, the Products shall be delivered DAP to the Delivery Point according to INCOTERMS 2020.
- 4.2 Title to the Products shall pass upon delivery.
- 4.3 The Products shall be delivered on agreed date of delivery according to the Agreement. Partial deliveries are not allowed unless approved by Purchaser beforehand in writing.
- 4.4 Should Supplier become aware of reasons to believe that an agreed delivery date cannot be met, Supplier shall immediately notify Purchaser in writing, stating the cause of the delay and an estimated delivery date. Such notification shall not limit Supplier's liability for delay according to this Agreement or applicable law. If Supplier fails to give such notice in due time, Purchaser shall be entitled to compensation for all additional costs and expenses incurred as a result thereof which Purchaser could have avoided if the notice had been duly given.
- 4.5 If the Products are not delivered within the agreed time due to circumstances for which Supplier is liable, Purchaser shall, for each commenced week of delay, be entitled to liquidated damages amounting to one (1) percent of the relevant Purchase Order price. The liquidated damages shall however not exceed fifteen (15) percent of said price. If the delay is material, Purchaser shall be entitled to cancel the Purchase Order and to terminate the Agreement. If the Purchase Order and/or Agreement is cancelled, Purchaser shall be entitled to additional compensation, in case the actual damage exceeds the liquidated damages.

5. PACKING

- 5.1 The Products shall be packed as required to protect the Products under normal transport conditions to prevent damage to or deterioration of the Products while in transit. The Products shall be packed and marked in accordance with Purchaser's instructions and specifications. The Purchase Order number and product numbers (if any) shall be set out in the shipping documents.

6. CHANGE NOTICE

- 6.1 Purchaser may issue a Change Notice to Supplier from time to time. Supplier shall within a reasonable time respond to the Change Notice in writing with a brief report, outlining the consequences of the Change on the price, the quantities and the delivery date specified in the relevant Purchase Order (the "Impact Report").
- 6.2 Supplier must not require any unreasonable conditions or charges in any Impact Report and may only refuse a Change Notice where it can demonstrate to the Purchaser's reasonable satisfaction that implementation of the Change Notice is not technically feasible. Purchaser must ensure that all pricing proposed in an Impact Report is consistent with any pricing set out in the relevant Agreement. Where a Change Order arises because of any event, circumstance or condition for which Supplier carries the risk or which is due to Supplier's non-compliance with, or breach of, the Purchase Order, Supplier shall not be entitled to any increase in price or delivery time and Purchaser's Change Notice, and any resulting Change, shall be without prejudice to Purchaser's rights in relation to any Supplier breach. If and to the extent a Change results in less Products being provided or any cost or time savings for Supplier, Purchaser shall be entitled to an appropriate reduction of the price.
- 6.3 Purchaser will consider the Impact Report and notify Supplier of its decision in respect of the Change Notice, including whether it accepts, withdraws, or wishes to negotiate, the Change Notice. Purchaser and Supplier shall use reasonable efforts to reach an agreement on any adjustment of the price and the agreed delivery time and/or other provisions of the Purchase Order affected by a Change in accordance with clause 6.2. If Purchaser confirms in writing a Change Notice after considering the Impact Report, that confirmation shall be deemed to amend the relevant Purchase Order based on the terms of the Change Notice, the Impact Report and any changes to them agreed in writing.

7. WARRANTY AND LIABILITY FOR DEFECTS

- 7.1 Supplier warrants that it has and will maintain sufficient rights and interests in and to the Products. Supplier warrants that the Products will perform and conform to the Specification and will be free from defects, deficiencies and non-conformities in design, materials and workmanship. Deviations from the previously mentioned shall constitute a defect for the purpose of these GPCs.
- 7.2 If Purchaser is the proprietary owner of the Intellectual Property Rights of the Products, and Supplier provides Products which are produced based on Purchaser's Documentation, Supplier's warranty is limited to defects due to manufacturing errors and defects in material sourced by Supplier.

- 7.3 The warranties above shall apply throughout the Warranty Period. The Products shall comply with Mandatory Requirements so long as provided for under applicable law.
- 7.4 Products delivered may be rejected by Purchaser and returned at Supplier's risk and expense if at any time found defective, deficient or non-conforming in the above-mentioned respects (below in this section referred to as "defect(s)") during the Warranty Period. In such cases Supplier shall be obliged at its own cost to, at the option of Purchaser, either repair the Products or replace them with new Products that are free from defects wholly or in part. Repair and replacement shall be carried out promptly upon demand. When a defect has been remedied, Supplier shall be liable for defects in the replaced or repaired Product under the same terms and conditions as those applicable to the original Product for an additional time period corresponding to the Warranty Period.
- 7.5 In the event that Supplier fails to fulfil its undertakings in accordance with Section 7.4, Purchaser shall be entitled to a price deduction which shall correspond to the reduced value of the Products for Purchaser, or, where the defect is material, to cancel the Purchase Order. Purchaser shall also be entitled to terminate the Agreement with immediate effect and undertake, or engage a third party to undertake, necessary remedial works at the risk and expense of Supplier.
- 7.6 In addition to the warranties above, Supplier shall be obligated to remedy any systematic defects in the Products. A systematic defect is a defect of the same or substantially the same type, that appears or is likely to appear during the reasonably expected lifetime of the concerned Products in more than one per cent (1%) of the such Products delivered during any relevant time period, such time period to be determined by Purchaser in its sole discretion, however not less than a time period of three (3) consecutive months. In case of a systematic defect in the Products, Supplier shall promptly: a) at no charge to Purchaser, replace all units of the respective Products delivered up to the time that the systematic defect has been remedied by Supplier; b) reimburse Purchaser for the actual costs for investigating and analysing the scope of and consequences resulting from the systematic defect, and the actual costs for the removal and replacement of such defective Products at the sites; and c) indemnify Purchaser for all other costs and damage incurred by Purchaser in connection with such defective Products. Supplier's obligations regarding systematic defects shall be applicable for the full expected lifetime of the relevant Products, which time, however, never shall be shorter than five (5) years from the delivery of the relevant Products.
- 7.7 Purchaser's rights under this section 7 are in addition to any other right or remedy that it may have against Supplier for defects or other nonconformities of the Products under the Agreement, these GPC or at law.

8. PRODUCT LIABILITY

- 8.1 Supplier shall hold Purchaser harmless from all claims by third parties arising from personal injury or property damage caused by the Products, provided that Supplier has been notified by Purchaser in writing of such a claim and is given the opportunity to settle the claim or intervene in the case. If a recall is necessary, Supplier shall be responsible for all costs due to such recall.
- 8.2 Supplier shall be liable for any cost, loss or other damage incurred to Purchaser, if such cost, loss or other damage is due to the Products failing to perform in accordance with the Agreement or due to the negligence of Supplier.

9. INSURANCE

- 9.1 Supplier shall during the term of the Agreement, and for a relevant time period thereafter, maintain adequate general liability and other appropriate insurances for all its obligations under the Agreement.
- 9.2 Supplier shall, upon Purchaser's request, provide satisfactory evidence demonstrating that the abovementioned insurances exist and will continue to apply for a relevant period of time.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 Neither Party may use Confidential Information or Intellectual Property Rights of the other Party for any other purposes than due performance of their undertakings towards each other under the Agreement. Purchaser shall however be entitled to use Intellectual Property Rights of Supplier to the extent necessary to sell, distribute, install, integrate, commission, operate, maintain and service the Products.
- 10.2 Documents which are created by Supplier within the scope of the Agreement shall be the exclusive property of Purchaser and constitute Purchaser's Intellectual Property Rights, including the right to freely modify, transfer and licence such rights. All material which bears or otherwise relates to Purchaser's Intellectual Property Rights including appurtenant information, whether stored in physical or digital form shall, upon Purchaser's request, be returned to Purchaser immediately after the Products have been provided or upon the termination of the Agreement, regardless of the reason therefor.
- 10.3 Supplier's warranty for non-infringement set forth in section 10.4 below shall not apply in the case where Purchaser is the proprietary owner of the Intellectual Property Rights of the Products, and Supplier has manufactured the Products in accordance with Purchaser's Documentation, and the infringement is due to Purchaser's Intellectual Property Rights.

- 10.4 Supplier warrants that the Products will not infringe any third party Intellectual Property Rights. Supplier shall indemnify and hold Purchaser harmless from and against any and all damages suffered and costs and expenses (including reasonable attorneys' fees) incurred as a result of any claim, suit or proceeding brought against Purchaser or any of its customers based on the allegation that the use, sale, distribution or other disposal of any Products or any technical information furnished by Supplier, constitutes an infringement of any Intellectual Property Rights or applications thereof or an unauthorized use of know-how, trade secrets or other proprietary rights.
- 10.5 In the event that the Products or any part thereof are in such claim, suit or proceeding held to constitute an infringement or their further use, sale, distribution or other disposal is enjoined, Supplier shall promptly, at its own cost and expense but at Purchaser's option, either; (a) procure for Purchaser and/or any concerned customer the right to continue the use, sale, distribution or other disposal of such Products; or (b) replace the same with non-infringing Products of equivalent function and performance; or (c) modify such Products so that they become non-infringing without detracting from function or performance. Supplier shall investigate, defend and otherwise handle any such claim. Supplier shall at Purchaser's request, assist Purchaser in disputes in which Purchaser could become involved due to such infringement and also replace Purchaser in such dispute.

11. CONFIDENTIALITY

- 11.1 Each Party shall during the period of the Agreement and three (3) years after expiry hereof treat any Confidential Information concerning the other Party, received in connection with or as a consequence of the Agreement, as strictly confidential and ensure that unauthorized personnel and third parties will not get access to such information. In case the Parties have signed a non-disclosure agreement which is more extensive than the provisions in this section, the provisions of such nondisclosure agreement shall take precedence.

12. COMPLIANCE

- 12.1 Supplier warrants that it will, and shall cause its subcontractors to, comply with all applicable laws and regulations in performing under the Agreement and of the country(ies) having jurisdiction over Supplier. In addition, the Products shall meet the regulatory requirements imposed by the laws and regulations of any governmental entity having jurisdiction over the production of the Products and the territory to which the Products are supplied by Supplier, including but not limited to the EU directive regarding requirements of banned and restricted substances, and shall, at its own expense, obtain and maintain all certifications, authorizations, licenses and permits necessary for it to perform under the

Agreement. Where applicable, Supplier shall follow the reporting requirements in relation to conflict minerals according to US Dodd-Frank Act Sec 1502.

- 12.2 Supplier shall comply with Purchaser's Code of Conduct and shall uphold a code of conduct in accordance with Purchaser's Code of Conduct (the latest version thereof can be found at <https://www.hexatronic.com/en/for-suppliers> and undertakes to fulfil the requirements specified therein.
- 12.3 If applicable and upon Purchaser's request, Supplier shall provide product certificates, country of origin documentation, export classifications and information about the material content for the Products. Upon request, Supplier undertakes also to provide information about environmental aspects of the Products, production and transportation of goods.
- 12.4 Supplier is responsible for obtaining and maintaining any export license(s) required for delivery of the Products to Purchaser unless otherwise has been agreed in writing. Supplier shall issue all other documents reasonably requested by Purchaser, regarding export and import of the Products.
- 12.5 Supplier undertakes to comply with the applicable requirements in the ISO 9001 quality system standards and the ISO 14001 environmental system standards or equivalent system. Use of any other standards must be approved by Purchaser in advance. Supplier agrees to employ a systematic way of working with OHS (occupational health and safety) and agrees to use a management system for OHS preferably according to OHSAS 18001.
- 12.6 Each Party shall be responsible, as a data controller, for its processing of personal data carried out as a result of the Agreement. Each Party must ensure that such processing is carried out in accordance with applicable data protection legislation.
- 12.7 In connection with the supply of the Products, Supplier may from time-to-time process personal data on behalf of Purchaser. In such a case, Supplier will be the data processor and Purchaser will be the data controller in respect of such processing of personal data. The Parties undertake to conclude and enter into Purchaser's data processing agreement in the form set out here <https://www.hexatronic.com/en/privacy-policy>
- 12.8 In the event that Supplier or any of its subcontractors fails to meet the standards set forth in section 12.4-12.5 above, Purchaser shall be entitled to cancel the Purchase Order and terminate the Agreement.

13.INSPECTION

13.1 Purchaser shall be entitled to inspect the Products and the production thereof, including the relevant quality assurance system, at the premises of Supplier and its subcontractors, subject to adequate non-disclosure undertakings on Purchaser's end and subject to reasonable notice.

14.REMEDIES

14.1 In case Supplier acts in breach of the Agreement, including these GPC, Supplier shall hold Purchaser harmless from and against all reasonable loss, liability, cost and expense arising out of such breach. The remedies set forth herein are cumulative and in addition to rights and remedies at law.

15.FORCE MAJEURE

15.1 The performance of either Party, required by the Agreement, shall be extended by a reasonable period of time if such performance of the respective Party is impeded by an unforeseeable event beyond such Party's control, which could not be reasonably foreseen and prevented, which shall include but not be limited to industrial actions, riots, wars, embargo or requisition (acts of government), hereinafter referred to as "Force Majeure". If Force Majeure pertains to acquisition of material and services that can be acquired from another source at no essential extra cost, Force Majeure does not give Supplier the right to suspend performance of its obligations under the Agreement.

15.2 In case of Force Majeure, the relevant Party shall promptly notify and furnish the other Party in writing with all relevant information thereon. Should an event of Force Majeure continue for a consecutive period of more than three (3) months, Purchaser shall have the right to terminate the Agreement. In such a case, Purchaser shall pay to Supplier the price of Products delivered up to the date of termination.

16.MISCELLANEOUS

16.1 The failure by either Party to enforce any provisions of the Agreement or to exercise any right in respect thereto shall not be construed as constituting a waiver of its rights thereof.

16.2 Neither Party may assign its rights and obligations under the Agreement, fully or partially, to any third party without the other Party's written consent, which shall not be unreasonably withheld.

16.3 Changes and additions to the Agreement shall be in writing and duly executed by the Parties.

16.4 If any provision of the Agreement or the application of it shall be declared or deemed void, invalid or unenforceable in whole or in part for any reason, the remaining provisions of the Agreement shall continue in full force and effect.

17. TERMINATION

17.1 A Party shall be entitled to terminate the Agreement with immediate effect where:

- (a) the other Party fails to perform its commitments in accordance with the Agreement, where such failure is of material significance to the first Party and the failure has not been rectified within 30 business days of the date on which the first Party gave the other Party written notice thereof.
- (b) the other Party fails, repeatedly, to perform its commitments under the Agreement, regardless of whether the first Party gave the other Party written notice thereof in accordance with (a) above; or
- (c) the other Party suspends its payments, commences settlement negotiations with its creditors, becomes the subject of an application for bankruptcy, submits an application for company reorganisation or composition or suchlike, discontinues its operations, enters into liquidation or has a receiver appointed with respect to all or part of the Party's assets.

17.2 Purchaser shall be entitled to terminate the Agreement with immediate effect where:

- (a) Supplier is in default under any other agreement with Purchaser or under an Agreement with an affiliate to Purchaser; or
- (b) in cases set forth in sections 4.5, 7.5, 12.8, and 15.2 above.

18. GOVERNING LAW & JURISDICTION

18.1 The Agreement (including these GPC) shall be governed by and construed in accordance with the laws of New Zealand, without regard to any rules on conflict of laws. The terms stated in the United Nations Convention for the International Sale of Goods (CISG) do not apply to the Agreement (including these GPC).

18.2 Any dispute, controversy or claim arising out of or in connection with the Agreement, or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered by the Arbitrators and Mediators Institute of New Zealand. The arbitration will be conducted by a sole arbitrator and in accordance with the NZ Arbitration Act 1996 (except clauses 4 and 5 of the Second Schedule to that Act). The place of arbitration shall be Wellington, New Zealand. The language used in the arbitral proceedings shall be English. The decision of the arbitrator will be final and binding. The costs of the arbitrator

shall (subject to any award of the arbitrator) be borne equally by the Parties. Notwithstanding the foregoing, each Party shall be entitled to seek equitable or injunctive relief in an applicable jurisdiction for a breach of confidentiality by the other Party, or for a violation of the Party's Intellectual Property Rights.

18.3 The Parties undertake and agree that all arbitral proceedings conducted with reference to this arbitration clause will be kept strictly confidential. This confidentiality undertaking shall cover all information disclosed in the course of such arbitral proceedings, as well as any decision or award that is made or declared during the proceedings. Information covered by this confidentiality undertaking may not, in any form, be disclosed to a third party without the prior consent by the other Party.

19. LIST OF DEFINITIONS

“Agreement” shall mean a binding agreement entered into between the Parties in the form of a frame agreement or a supply agreement or similar (“Supply Agreement”) or a binding Purchase Order in case the Parties have not entered into a Supply Agreement. These GPC form an integrated part of the Agreement, even if no reference is made to these GPC.

“Confidential Information” shall mean information of any kind, whether written or oral, including without limitation financial, commercial, and technical information, trade secrets, customer lists and other information, regarding the Parties and their affiliates, which is not known to the general public.

“Change” means any modification, addition or deletion or variation of the quantity to, in or from the Purchase Order.

“Change Notice” is a written notice issued by Purchaser to Supplier requesting a Change.

“Delivery Point” shall mean the point to which delivery shall be made according to the Agreement.

“Documentation” shall mean all such information, drawings and documentation necessary to allow Purchaser to (as the case may be) adequately install, integrate, commission, operate, maintain and service the Products.

“Intellectual Property Rights” shall mean all intellectual and industrial property rights (whether registerable or not) including but not limited to inventions, patents, trademarks, domain names, trade names, registered and unregistered design rights, copyrights (including copyrights in software), neighbouring rights and database rights, Confidential Information and proprietary information including know-how, and any other rights of a similar kind, whether registered or not, including renewals applications for the registration of such rights.

“Mandatory Requirements” shall mean all laws, ordinances, codes, rules and regulations that the Products shall comply with in relevant jurisdictions.

“Party/Parties” shall mean Purchaser and Supplier, individually or jointly as the case may be. **“Product(s)”** shall mean such products, equipment, components,



material, hardware, software and / or other objects (tangible or intangible) being the subject matter of the Agreement.

“Purchaser” shall mean the HEXATRONIC legal entity indicated as purchaser in the Supply Agreement or in the Purchase Order.

“Purchase Order” shall mean a purchase order placed by Purchaser and approved by Supplier in accordance with the Agreement.

“Specification” shall mean the criteria that the Products shall comply with, including but not limited to functionality, material and Mandatory Requirements. The term Specification shall also include what Purchaser reasonably can expect from a similar product, provided by a professional supplier, under similar conditions.

“Supplier” shall mean the legal entity indicated as supplier in the Supply Agreement or in the Purchase Order.

“Supply Agreement” shall mean a frame agreement or a supply agreement or similar agreement regarding Products (if any) entered into between the Parties (if any), including all its appendices such as these GPC.

“Warranty Period” shall mean the warranty period set forth in the Agreement or, if no such period has been stated, twenty-four (24) months from delivery or from acceptance, if an acceptance procedure has been agreed by the Parties, whichever comes latest.

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