

# TERMS AND CONDITIONS OF PURCHASE

## Aqseptence Group Ltd. S.A. Chile (2016)



All goods and services procured by Aqseptence Group Ltd. S.A. (the "**Buyer**") from any seller, supplier, provider or contractor (the "**Seller**") shall be in accordance with the following terms and conditions (the "**Purchase Order**"), unless otherwise stated and duly authorized, in writing:

- ACCEPTANCE** - This Purchase Order is Buyer's offer to Seller and shall become a binding contract on the terms and conditions set forth herein upon the earlier of (i) Seller's execution of the Purchase Order; (ii) Seller otherwise acknowledging acceptance of this Purchase Order or (iii) by Seller's full or partial performance under this Agreement.
  - COMPLETE AGREEMENT** - This Purchase Order and the terms and conditions herein shall constitute the complete agreement between the parties and may not be altered or modified, except in writing duly executed by each party according to the terms of section 3 below. No terms and conditions stated in or attached to Seller's communications to Buyer, including but not limited to acknowledgements or invoices, are applicable to this Purchase Order in any way and are not to be considered Seller's exceptions to the provisions of this Purchase Order. Trade custom, trade usage and past performance are superseded by this Purchase Order and shall not be used to interpret this Purchase Order.
  - CHANGES** - Buyer at any time shall have the right to make changes to this Purchase Order including, without limitation, in the quantities, specifications or delivery schedule. If any such change has a significant impact on Seller's time or cost of performance, Seller shall so notify Buyer in writing enclosing adequate supporting documentation within [10] calendar days after receipt of said change instructions. Failure of Seller to make such notification shall be deemed as an irrevocable waiver of its right to any price adjustments and time extensions for such relevant change. No additional charge will be allowed unless authorized by Buyer's written consent. Information, such as technical direction or guidance provided to Seller by representatives of the Buyer in connection with the Seller's performance of this Agreement, shall not be construed either as a change within the meaning of this provision or as direction to proceed outside the scope of this Agreement. For the avoidance of doubt, Seller shall not commence the performance of any change under this section without a prior written order executed by both parties.
  - CANCELLATION** - Buyer reserves the right to cancel for its convenience and at any time this Purchase Order in whole or in part upon written notice to Seller. On the date of such cancellation stated in the notice, Seller shall discontinue all services pertaining to this Purchase Order and shall place no additional orders and shall preserve and protect materials on hand purchased for, or committed to, this Purchase Order. Buyer shall pay to Seller [the price for the portion of the services actually and satisfactorily performed to date of termination]. Seller shall not be entitled to claim other amounts or damages different from those expressly contemplated in this section including, without limitation, unrecovered expenses or loss of profits. Seller shall deliver or assign all goods with all applicable warranties or dispose of goods as directed by Buyer. Cancellation shall not have the effect of waiving damages the Buyer might otherwise be entitled to.
  - CANCELLATION FOR DEFAULT** - Should Seller be adjudged bankrupt, make a general assignment for the benefit of its creditors, participate in general agreements with its creditors or business reorganization procedures or if a receiver is appointed on account of Seller's insolvency or if Seller is otherwise insolvent as evidenced by its incapacity to timely pay its debts as they become due or, in the event that Seller is in default of any provision or requirement under this Purchase Order, Buyer may, by written notice to Seller and without prejudice to any other rights or remedies which Buyer may have, cancel further performance by Seller under this Purchase Order. In the event of such cancellation Seller shall be liable for any and all additional costs and expenses incurred by Buyer to complete the performance of this Purchase Order or otherwise derived from Seller's default. Seller shall deliver or assign to Buyer any work in progress as Buyer may request.
- Any amounts due to Seller for goods or services completed by Seller in strict compliance with the terms and conditions of this Purchase Order prior to such cancellation, shall be subject to set off with Buyer's additional costs for completing the Purchase Order and other damages incurred by Buyer as a result of Seller's default.
- NO PUBLICITY** - Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise, publish, or disclose the fact that Seller has contracted with Buyer to furnish the goods herein ordered nor any of the details connected with this Purchase Order to any third party, except as herein specified and except as may be required to perform this Purchase Order, even after the termination of this Purchase Order.
  - DELIVERY - TIME IS OF THE ESSENCE** for delivery to Buyer hereunder. Seller shall promptly provide written notification to Buyer of any possible or actual delay in performance hereunder and shall provide all relevant information concerning the cause for such delay. Buyer reserves the right to charge a penalty of 0.5% of the purchase price of the order for each calendar week by which the delivery period is delayed up to a maximum of 5% of the purchase price of the order and to deduct this amount from the agreed purchase price. In no event, however, shall such notice relieve Seller of its obligations under this Purchase Order. Deliveries shall be strictly in accordance with the schedule set out or referred to in the Purchase Order and in the exact quantities ordered. In no event shall Buyer be liable for any excess goods shipped by Seller. Buyer reserves the right at Seller's expense to return goods shipped not in accordance with Buyer's order set forth on the face hereof.
  - WARRANTY** - Seller warrants and guarantees that its goods and services (a) shall comply with all relevant specifications and will be of comparable quality as all samples delivered to Buyer, if any; (b) shall reference true weights, measures, sizes, legends or descriptions printed, stamped, attached or otherwise indicated and comply with all applicable laws, rules, regulations, ordinances, codes and or standards in accordance with applicable laws and regulations for a period of sixty-two (62) months from acceptance, and (c) shall be adequate for the purpose for which they are intended.
  - NONCONFORMANCE** - Goods not conforming to the requirements of this Purchase Order may be rejected, at Buyer's sole option. Buyer may, at its sole option, request Seller to repair or replace any nonconforming goods and all costs with respect to such repair or replacement

including packing, packaging and freight charges, shall be at the Seller's expense. Failure of Seller to take prompt and effective action (within [3] days as of the submittal of the notice by Buyer) to correct the relevant failures shall entitle Buyer to make such corrections, by itself or through third parties, at Seller's sole expense.

- PROPRIETARY RIGHTS** - Seller agrees that Buyer's designs, specifications, formulas, and manufacturing information are Buyer's sole proprietary data and shall not be disclosed to others or utilized for purposes other than those intended hereunder. Seller shall return all proprietary data and copies thereof to Buyer upon completion of Seller's obligations hereunder or upon Buyer's request at any earlier time. All shop drawings, patterns, tools (if such tools are useful only to produce goods ordered), or other items made preparatory to production of any goods purchased hereunder are Buyer's property and upon demand shall be delivered to Buyer.
- RIGHT-OF-ACCESS** - Buyer reserves the right to verify purchased goods at Seller's premises. Further, Buyer shall have the right to inspect Seller's work hereunder during normal business hours to ensure that all relevant standards and specifications are met. Buyer's inspection shall in no way release the Seller from any obligations related to this Purchase Order, and shall not preclude subsequent rejection by Buyer.
- PACKING & SHIPPING** - No change shall be allowed for handling, packing, crating, drayage or storage without written permission of Buyer. Goods shall be packaged in a method to preserve and protect from damage and/or degradation. All goods are to be suitably prepared for shipment by Seller in accordance with acceptable commercial practices. Seller shall cause the goods to be labeled to conform to all requirements of applicable laws. Seller shall identify Buyer's purchase order number on Seller's invoice, packing list, bill of lading or on any packages. Seller shall attach an invoice to all shipments, in addition to forwarding a copy of such invoice to Buyer. Unless otherwise stated on the face hereof, all goods shall be delivered DDP Buyer's location (Incoterms® 2010).
- PRICING** - This Purchase Order shall not be filled at prices higher than last quoted by Seller without Buyer's written consent. Seller represents that the prices to be paid or otherwise charged to Buyer are not any higher than the lowest price for such goods or services offered by Seller to any other of its customers. Seller shall be responsible for and pay all federal, state, and local sales, use, income, excise, property, employment, and other taxes similar to, or differing from, any of the foregoing, incurred or levied on or in connection with the manufacture of goods, provision of services, or relating to Seller's own property. Buyer shall be responsible only for taxes arising from its ownership of the goods. Seller agrees to defend, indemnify and hold Buyer harmless against any loss, liability or expense resulting from Seller's failure to pay such taxes, fees, duties, assessments, charges or conditions.
- HAZARDOUS MATERIALS** - Seller shall notify Buyer in writing upon acceptance of this Purchase Order if goods furnished are subject to laws or regulations relating to hazardous or toxic substances, or when disposed of, to regulations governing hazardous wastes, or any other applicable environmental, health, or safety laws or regulations. Instruction for handling, warnings, and material safety data sheets shall be provided with each shipment. Seller shall submit to Buyer with each shipment, a copy of all relevant MSDS sheets.
- PAYMENT** - Buyer shall remit payment to Seller within sixty (60) days of Buyer's receipt of Seller's invoice. Payment by Buyer hereunder shall not be deemed an acceptance of the goods, or work performed hereunder by Seller.
- TITLE** - Seller warrants full and unrestricted title for all goods and/or related services furnished by Seller hereunder, free and clear of any and all liens, restrictions, reservations, security interests, and encumbrances. Title, care, custody and control of such goods remain with Seller until such time as Buyer takes physical possession or otherwise agrees in writing. Seller shall carry on its work and manufacture of goods at its own risk until the goods are fully completed and accepted by the Buyer. In the case of any accident, destruction or injury to the goods before the final completion and acceptance, Seller shall repair or replace such goods at its own expense and to the Buyer's satisfaction.
- PATENTS** - Seller warrants that the manufacture, use and/or sale of the goods provided does not infringe any claims of any patent, trademark, trade name, copyright or other property right of any third-party. Seller agrees to defend, indemnify and hold the Buyer (and its agents, representatives, employees, officers, directors, affiliates, successors and assigns, and customers) harmless from any and all claims, demands, actions, damages and liabilities (including attorney's fees) involving the infringement of any patent, trademark, copyright or other intellectual property right, or the misappropriation of any trade secret of any third party, by reason of the manufacture, use, or sale of said goods or services by Buyer. The Seller grants to the Buyer, as part of the price and with no additional cost, a perpetual, non-exclusive and irrevocable license, free from royalties, in order to use all the creations, plans, drawings, specifications, documents, procedures, methods, products, inventions and any other intellectual property right, whether prepared or drafted, developed or supplied for or in connection with the equipment and components of the purchased goods by its suppliers and manufacturers of such items, and regarding Seller's owned intellectual property, to the extent necessary for the use, completion, operation, repair, rebuilding, upgrade, alteration and expansion of the purchased goods and all components thereof. This section shall survive the termination of this Purchase Order.
- INDEMNITY & INSURANCE** - Seller agrees to defend, indemnify and hold the Buyer (and its agents, representatives, employees, officers, directors, affiliates, successors and assigns, and customers (the "**Indemnified Parties**") harmless from and against all claims, demands, actions, damages, and liabilities (including reasonable attorney's fees) arising out of any injury (including death) to any person or damage to any property resulting from or in any way connected with the goods or services provide to Buyer hereunder, or any act or omission of Seller, its agents, employees, or subcontractors, regardless of whether or not such loss, damage, liability, cost or expense is caused in part by any of the Indemnified Parties. This section shall survive the termination of this Purchase Order.

Seller agrees to maintain Comprehensive General Liability and Product Liability insurance, including property damage coverage, in an amount and form satisfactory to Buyer. Upon

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request, Seller agrees to provide Buyer with certificates evidencing that such insurance is being maintained.

19. **LIMITATION OF LIABILITY** – In no event shall Buyer, under any legal theory or source of liability, be responsible or held liable to Seller for any indirect damages, including without limitation, moral damage, liability for loss of use, loss of profits, loss of the goods or business interruption, regardless of whether or not the same is caused due to fault or negligence of Buyer. Buyer's liability on any claim of any kind for any loss or damage arising out of or in connection with this Purchase Order or from the performance or breach thereof shall in no case exceed the price allocable to the goods or service ordered hereunder. Any action resulting from any alleged breach by Buyer shall be commenced within six months after the cause of action has accrued, or Seller shall be deemed to have irrevocably waived any such claims. This section shall survive the termination of this Purchase Order.
20. **INDEPENDENT CONTRACTOR** – Seller shall act as an independent contractor and not as an agent or employee of Buyer and shall not subcontract any portion of the work without written consent of Buyer.
21. **COMPLIANCE WITH LAWS AND CODE OF CONDUCT**– Seller, in its performance hereunder, shall comply with all applicable laws, regulations, codes, standards, ordinances and orders under Chilean legislation. This Purchase Order is subject to the laws of Chile. The Code of Conduct for Sub-suppliers of the Aqseptence Group shall apply to these Terms and Conditions. Seller shall indemnify Buyer and the Indemnified Parties from any and against all loss, damage, suit, award, fines, claims, etc. derived from any actual or assessed infringement of any statute, law, regulation or ordinances.
22. **ASSIGNMENT** – Seller acknowledges that the goods and/or services to be provided to Buyer hereunder are unique and personal. Accordingly, Seller shall not assign this Agreement or any rights hereunder without the prior written consent of Buyer. Any attempted assignment without such written consent shall entitle Buyer to terminate the Purchase Order.
23. **WAIVER** – No failure to exercise, and no delay in exercising, on the part of Buyer any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege hereunder preclude further exercise of the same right, power or privilege.
24. **VALIDITY OF PROVISIONS** – In the event any provision or any part or portion of any provision of this Purchase Order shall be held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portions of that provision, or any other provision hereof.
25. **JURISDICTION AND DISPUTES** – Any and all disputes arising under or in connection with this Agreement that cannot be resolved amicably within 20 days shall be settled finally and bindingly for all Parties by arbitration according to the following:

Any question, difficulty or discrepancy arising between the parties concerning or relating to this Purchase Order or its modifications, including without limitation any dispute relating to the interpretation, performance, validity, changes or additional work, execution or termination of same or any other cause relating to the Purchase Order or its obligations hereunder, shall be submitted to arbitration in accordance with the Procedural Arbitration Rules in force of the Center of Arbitration and Mediation of the Santiago Chamber of Commerce.

The parties hereby confer an irrevocable special power of attorney upon the Santiago Chamber of Commerce in order to, at the written request of any of them, appoint the arbitrator from among the members of the arbitration list of the Santiago Center of Arbitration and Mediation, who will be a mixed arbitrator (at-law with regard to the substance of the dispute and as ex aequo et bono with regard to the procedure). Prior to the designation by the Chamber, each party may veto 8 members from the arbitration list without expression of motive. All arbitrators shall be and remain free from conflicts of interest with the parties, their counsel and any technical experts either appointed by the Parties or the arbitration tribunal.

No appeal shall apply against the decisions of the arbitrator and the parties hereby expressly waive such appeals.

The arbitrator is specially empowered to decide every matter related to his competence and/or jurisdiction.

The arbitration shall be conducted in Chile and in the Spanish language.

The arbitrator shall resolve the dispute in accordance with the laws of Chile.

The commencement of the negotiation or arbitration will not suspend the performance of the services under the Purchase Order, nor the parties' compliance with each of their respective obligations.