

CALTEX CONDITIONS OF PURCHASE

1.0 INTERPRETATION

In these terms and conditions:

- a) "Caltex" means the Caltex company specified in an Order and (where the context permits) its Related Bodies Corporate.
- b) "Goods" means (as the context permits) the product(s) and/or the services specified in an Order.
- c) "Intellectual Property Rights" include copyright, trade mark, design, patent, semi-conductor and circuit layout rights, moral rights, rights to confidentiality, business and company names and other proprietary rights, and any rights to registration of such rights, whether created in Australia or elsewhere.
- d) "Laws" include the standards and requirements of any statute, rule, regulation, proclamation, award, ordinance or by-law, present or future, and whether state, federal or otherwise.
- e) "Order" means an order for the supply of Goods constituted by an official Caltex purchase order form, an electronic message or an EDI message, including all associated specifications, standards, drawings and related documentation.
- f) "Personnel" of a party means the officers, employees, agents and subcontractors of the party.
- g) "Related Body Corporate" has the meaning given to that term in the Corporations Act 2001.
- h) "Safety Regulations" mean all health, safety, security, operational and procedural requirements and instructions of Caltex in respect of its sites and facilities.
- i) "Seller" means the supplier of the Goods specified in an Order.
- j) "Force Majeure" means act of God, war (including terrorism), industrial dispute (strike) etc, which shall reasonably be held to be beyond the control of any parties to the agreement.
- k) "Pest" means any insect, animal, plant or other organism that is harmful, injurious, destructive, and capable of causing damage or offensive.

2.0 GENERAL

The acceptance of an Order by the Seller includes acceptance of these terms and conditions as the sole basis of the sale or supply of the Goods to the exclusion of any terms and conditions of sale or supply appearing on any other document of the Seller. Modification of these terms and conditions expressed in any document of the Seller shall not apply unless expressly accepted in writing by Caltex.

3.0 ALTERATIONS

No changes to an Order shall be made without written agreement of Caltex.

4.0 PRICE

An Order is placed on a fixed and firm price basis in accordance with the price(s) listed on the Order and includes:

- a) delivery of the Goods DDP to the destination stated on the Order;
- b) off-loading of the Goods by the Seller at the point of destination except when mechanical unloading equipment is required; and
- c) the performance of services as specified in the Order.

5.0 TIME

Time is of the essence in all Orders.

6.0 WARRANTIES

The Seller warrants and undertakes that all Goods shall be:

- a) in accordance with specification. If no specification exists, then the Goods shall be supplied in accordance with appropriate industry standard and best practice or performed with due care and skill, and in a professional, competent and diligent manner;
- b) in accordance with and conform to the Order and all applicable Laws;
- c) delivered by the delivery date specified in the Order;
- d) new (unless otherwise specified);
- e) fit for the purposes for which goods or services of the same kind are commonly supplied and any other purposes made known to the Seller;
- f) of merchantable quality and free from defects in material and workmanship;
- g) free of pests at the time of delivery. If so required by Caltex, the Seller will, at or before the time of delivery, provide Caltex with certification that the Goods to be supplied to Caltex have been inspected and are free of Pests; and
- h) if the Seller has a Quality System conforming to ISO9002, for example, then it shall be applied to the manufacture and/or supply of the Goods specified.

In addition the Seller undertakes that

- i. such Goods shall carry any applicable manufacturer's warranty which shall pass on to any purchaser from Caltex without liability to Caltex;
- ii. the Goods shall not infringe the Intellectual Property Rights of any third party

7.0 TITLE AND RISK

Title to, and risk in the Goods shall pass to Caltex upon acceptance of Goods by Caltex. The title shall be free of encumbrances and all other adverse interests. Where the Seller has agreed to hold Goods at their premises, title shall pass upon payment for the Goods and risk of loss, damage or depreciation in the Goods passes to Caltex upon delivery in accordance with Caltex's instructions.

8.0 INSPECTION AND RETURN

For the purposes of inspection the Seller shall allow Caltex or its nominated representative access to the Seller's premises and any other premises at which the Goods are being fabricated or located. Where required by Caltex, the Seller shall furnish schedules and progress reports as required by Caltex. Inspection or examination of Goods by Caltex at any time shall not be construed as evidence of acceptance of the Goods or otherwise derogate from or release the Seller from any of its obligations or responsibilities under these terms and conditions.

All Goods shall be accepted by Caltex subject to inspection after delivery (or before delivery at Caltex's discretion), irrespective of date of payment. Signed delivery dockets shall not mean acceptance by Caltex of any of the Goods delivered but only the number of packages, cartons or items delivered.

Caltex will promptly notify the Seller of any omissions or

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defects in the Goods of which it becomes aware ("defective goods"), and may direct the replacement, rectification, re-performance (on or off site) or return of the defective goods. Upon receipt of notification from Caltex under this clause, the Seller must, as Caltex instructs, promptly repair, replace or re-perform the defective goods at the Seller's expense, or otherwise refund any monies paid by Caltex in respect of the defective goods. Pending confirmation of Caltex's instructions by the Seller, Caltex shall hold the defective goods for a period not exceeding 21 days. If the Seller's confirmation is not received within that period, Caltex may return the defective goods to the Seller at the Seller's expense and any expense incurred by Caltex in such return will be payable forthwith by the Seller and may be offset by Caltex against any monies due to the Seller. Risk in the defective goods will pass to the Seller upon the Seller's receipt of Caltex's notification of the defect or on delivery by Caltex of the defective goods, whichever is the earlier.

At Caltex's discretion, if the Seller fails to properly rectify, replace or re-perform any defective goods, Caltex may have the rectification, replacement or re-performance carried out by a third party at the expense of the Seller, such expense to be a debt due and payable by the Seller to Caltex, which may be recovered by Caltex or offset by Caltex against any monies due to the Seller.

9.0 NO ROYALTIES

The Seller acknowledges that the Goods are for the use of or resale by Caltex and may be incorporated in any product or items of plant or equipment. In no event shall any claim for royalties or other additional compensation be made by the Seller by reason of such use, resale or incorporation.

10.0 INDEMNITIES

The Seller agrees to indemnify and hold harmless Caltex and its Personnel from and against any claim, demand, loss, damage, cost or expense ("claim") arising by reason of:

- a) any breach of these terms and conditions or of any warranty (express or implied) in respect of the Goods; or
- b) any act or omission (including but not limited to any negligent act or omission or wilful misconduct) of the Seller or any of its Personnel in the course of carrying out an Order, except to the extent that any Claim, was caused by Caltex's negligence.

If the Seller makes representation that Goods ordered are protected by one or more patents and any such patent is found to be invalid Caltex may forthwith cancel any Order or any contract arising there from and recover any money paid to the Seller.

11.0 CALTEX'S PROPERTY

Special dies, tools, personal protective equipment (including clothing), patterns and drawings used in the supply of the Goods, the cost of which is met by Caltex, shall be the absolute property of Caltex, shall be kept in good condition and when necessary replaced by the Seller without expense to Caltex and shall not be used in the production, manufacture or design of any other articles, nor of larger quantities than those required on an

Order, except with Caltex's prior written consent. Upon completion of the relevant Order, they shall be returned or disposed of as directed by Caltex.

12.0 DESIGNS AND SPECIFICATIONS TO BE RETAINED IN CONFIDENCE

Caltex's design or specifications developed for Caltex at its direction, or any designs or specifications supplied by Caltex or copies thereof, shall be held by the Seller on Caltex's behalf and at Caltex's disposal and shall not be disclosed or furnished to any other person, entity or government without Caltex's prior written consent and all reasonable precautions shall be taken by the Seller to protect such confidentiality.

13.0 INTELLECTUAL PROPERTY RIGHTS

Title to, and Intellectual Property Rights in, all work, product or material of any nature developed or produced at Caltex's direction shall become the absolute property of Caltex. The Seller hereby assigns, and shall ensure that its Personnel assign, to Caltex all of its and their rights to such Intellectual Property. The Seller shall ensure all things necessary to vest the full benefits of such Intellectual Property Rights in Caltex are completed.

14.0 COSTS AND STANDARD OF PACKAGING

No charge will be made by the Seller or its Personnel to Caltex for wrapping, packaging, packing, cartons or crating unless authority for such charge is expressly incorporated in the Order. All Goods shall be suitably packed or otherwise prepared for shipment so as to ensure no damage occurs to the goods in transit.

15.0 ADVERTISING

The Seller shall not, without Caltex's prior written consent, in any manner advertise or publish the fact that the Seller has contracted to supply any Goods to Caltex. The use of wording, brand name, colour, logo or other distinguishing mark referring to Caltex in any of the Seller's promotional material or otherwise shall require the written approval of Caltex of the material prior to publication.

16.0 DELIVERY DOCUMENTS

Packing lists and shipping documents together with any materials, certificates, certificates of conformance or other quality verification documentation specified on an Order must accompany the Goods. All such delivery documents shall be positively identified as being applicable to the Goods delivered. All delivery dockets and correspondence regarding an Order must quote the relevant purchase order and part numbers if applicable.

17.0 INVOICES

Invoices shall be dispatched by the Seller to Caltex at the address specified in the Order, in the agreed manner and format (eg by direct mail) no earlier than the day of shipment or upon completion of the relevant services, unless (in the case of services) Caltex agrees to make progress payments, in which case the Seller shall issue monthly statements to Caltex for services performed during the relevant month. All correspondence must show the relevant Caltex Purchase Order Number and other agreed information. All invoices must comply with the requirements set out under the heading "GST" below.

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Correctly rendered invoices will be paid by Caltex within 60 days of the invoice date. If Caltex disputes the validity of an invoice, it will notify the Seller of the dispute within 14 days of receipt of that invoice. Caltex will pay the undisputed portion of the invoice in accordance with this clause. Payment of an invoice is not to be deemed acceptance of the Goods to which the invoice relates.

18.0 CANCELLATIONS

Caltex reserves the right to cancel an Order in whole or in part for undelivered or unperformed Goods. Upon receipt of a notice of cancellation from Caltex, the Seller must immediately do everything reasonably possible to mitigate any loss, costs or expenses incurred or suffered by the Seller consequent upon such cancellation.

If Caltex cancels an Order in whole or in part and the Seller is in default of these terms and conditions (including but not limited to any failure to deliver the Goods on or before the delivery date specified on the Order), the Seller shall have no claim whatsoever against Caltex and shall, in addition to any other liability, pay the costs of removing the Goods from Caltex's premises.

If Caltex cancels an Order in whole or in part and the Seller is not in default of these terms and conditions, Caltex will pay to the Seller reasonable expenses incurred by the Seller consequent upon such cancellation, provided that such payment must never exceed the purchase price of the Goods as specified in the cancelled Order and were reasonably incurred prior to receipt of the cancellation notice.

19.0 RESPONSIBILITY

The Goods are at the Seller's risk until accepted by Caltex at the destination stated on the relevant Order.

20.0 SAFETY REGULATIONS

The Seller shall ensure that all its Personnel are aware of and comply with all Safety Regulations whilst on Caltex's premises. If so required by Caltex, the Seller shall ensure (at their own expense) that its Personnel complete induction training, to the satisfaction of Caltex, prior to their first entry on Caltex's premises.

21.0 INSURANCES

The Seller is required to effect and maintain, until the Order is completed, the following insurance policies with reputable insurer(s) on terms reasonably satisfactory to Caltex:

- a) public liability insurance with a minimum cover of \$10,000,000 in respect of any one occurrence;
- b) all insurances required by Law for the protection of all its Personnel engaged in the fulfilment of an Order (including workers compensation insurance); and
- c) motor vehicle third party property cover for a minimum of \$10,000,000.

Upon request, the Seller shall make available to Caltex certificates of currency of the insurances required to be effected under this clause.

22.0 GST

Unless otherwise stated in an Order, if any supply by a party ("Supplier") to another party ("Acquirer") is subject to GST, the payment for that supply will be increased by

an amount equal to the GST payable, provided that no amount will be payable on account of GST until the Supplier has issued a tax invoice in respect of that supply to the Acquirer. Words or expressions used in this section have the same meaning as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

23.0 FORCE MAJEURE

In the event of an interruption to the supply of Goods that the Seller attributes to Force Majeure, the Seller must advise Caltex immediately of the circumstances, likely duration and impact. The Seller shall take all reasonable steps to mitigate the impact upon performance of the Order to Caltex. The parties shall then agree an appropriate action.

24.0 TERMINATION

Caltex may, by giving three days notice in writing to the Seller, cancel any Order or terminate any contract arising there from upon the occurrence of any of the following:

- a) where the Seller breaches any of these terms and conditions, and fails to remedy such breach within 7 days after receiving a notice from Caltex requiring such breach to be remedied;
- b) where a Force Majeure situation has existed for a period greater than twenty-one days.
- c) where the Seller breaches a material provision of these terms and conditions which is not capable of remedy;
- d) where the Seller disposes of the whole or any substantial part of its assets, operations or business;
- e) where the Seller ceases to carry on its business;
- f) where the Seller ceases to be able to pay its debts as and when they fall due;
- g) where any step is taken to enter into any arrangement between the Seller and its creditors or to appoint a receiver, receiver and manager, trustee in bankruptcy, liquidator, administrator or similar person, or the Seller (being an individual) commits an act of bankruptcy; or
- h) where the Seller or any of its Personnel engaged in carrying out an Order is guilty of serious misconduct or wilful neglect.

25.0 SUBCONTRACTING AND ASSIGNMENT

The Seller may not assign or subcontract any of its obligations under these terms and conditions without Caltex's prior written consent, which shall not be unreasonably withheld. The Seller remains responsible for the performance of any assigned or subcontracted obligations, and the Seller will be liable to Caltex for the acts, defaults and neglect of the Seller's assignee or subcontractor as fully as if they were the acts, defaults and neglect of the Seller or the Seller's Personnel.

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26.0 NOTICES

All notices given pursuant to these terms and conditions must be in writing and will be properly served if delivered personally, posted or sent by facsimile to the other party at the address or facsimile number as notified in writing by the other party from time to time. A notice sent by post shall be deemed to have been given on the 3rd working day after posting. A notice sent by facsimile transmission shall be deemed to have been given upon confirmation by the sending machine of successful transmission of the total number of pages of the notice, if sent after 17.00hrs will be deemed received at 09.00 on the following working day. Notice sent by E-mail shall be deemed to have been given on confirmation that a message has been received.

27.0 DISPUTES AND MEDIATION

In the event of a dispute between the parties, the disagreement shall, in the first instance, be referred to appropriate managerial personnel within each parties business. If the parties are unable to resolve the dispute, each party agrees that the dispute must be referred for mediation, at the request of either party, to a mediator agreed on by the parties, or if the parties are unable to agree on a mediator, a mediator will be nominated by the Australian Commercial Disputes Centre Ltd.

Each party must bear its own costs of complying with this clause and the parties must bear equally the costs of any mediator engaged.

28.0 GOVERNING LAW

These terms and conditions and any contract arising from the acceptance of any Order issued by Caltex (with the exception of orders originating from Caltex Refineries (QLD) Pty Ltd) pursuant hereto shall be governed by the laws in force in the State of New South Wales, Australia, and the parties agree to submit to the non-exclusive jurisdiction of the Courts of that State.

These terms and conditions and any contract arising from the acceptance of any Order issued by Caltex Refineries (QLD) Pty Ltd pursuant hereto shall be governed by the laws in force in the State of Queensland, Australia, and the parties agree to submit to the non-exclusive jurisdiction of the Courts of that State.