



# **Addendum to Dayco Global Terms and Conditions of Purchase in Australia**

**(Date: March 15, 2020)**

## **TABLE OF CONTENTS**

|    |  |   |
|----|--|---|
| A. | Application .....  | 2 |
| B. | Business Day .....   | 2 |
| C. | Price – GST.....   | 2 |
| D. | Title and Risk of Loss .....   | 3 |
| E. | Warranty by Seller.....  | 3 |
| F. | Liability, Limitation of Liability, and Insurance.....   | 4 |
| G. | Quality, Compliance with Specifications, Inspection, and Defective and<br>Nonconforming Items..... | 4 |
| H. | Intellectual Property, Confidential Information, and Advertising.....                              | 4 |
| I. | Ownership of Tooling, Bailed Property .....  | 4 |
| J. | Labor Contracts.....   | 5 |
| K. | Assignment and subcontracting .....  | 6 |
| L. | Termination.....   | 6 |
| M. | General Provisions .....   | 7 |

## **A. Application**

1. For all Orders issued by Dayco affiliates, subsidiaries or divisions domiciled in Australia including Dayco Australia Pty Limited, the Dayco Global Terms and Conditions of Purchase ("Global Terms") are amended as set out in this document.

## **B. Business Day**

1. Under Section A of the Global Terms, immediately following A.5, A.6 shall be inserted stating:
  6. In these Global Terms, a reference to a business day is a reference to a day that is not a Saturday, Sunday or public holiday in Melbourne, Australia.

## **C. Price – GST**

1. Under section E of the Global Terms, immediately following E.3, EA shall be inserted stating:

### **EA. GST and Other Taxes**

1. In this section EA, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.
2. Any consideration to be paid or provided for a supply made under or in connection with the Global Terms, unless specifically described in the Global Terms as 'GST exclusive', includes an amount on account of GST.
3. Despite any other provision in these Global Terms, if the Seller makes a supply under or in connection with the Global Terms on which GST is imposed (not being a supply the consideration for which is GST inclusive), the consideration payable or to be provided for that supply under the Global Terms but for the application of this clause ("GST exclusive consideration") is increased by, and the Purchaser must also pay to the Seller, an amount equal to the GST payable by the Seller on that supply.

4. If a payment to a party under these Global Terms is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

5. Subject to EA.3 and EA.4, all taxes imposed or levied in connection with these Global Terms or any transaction contemplated by these Global Terms will be borne by the Seller.

#### **D. Title and Risk of Loss**

1. Under section H of the Global Terms, immediately following H.2, H.3 shall be inserted stating:

3. The Seller acknowledges and agrees that these Global Terms do not create a security interest (including a security interest as defined in the *Personal Property Securities Act 2009* (Cth) ("PPSA") in favour of the Seller or any third party over the Purchaser or any of its assets. The Seller agrees that it will not register (or procure any other person to register) a financing statement (as defined in the PPSA) in relation to the Purchaser or its assets. If, in breach of this provision, the Seller registers (or procures any other person to register) a financing statement (as defined in the PPSA) then the Seller must discharge the registration immediately upon request by the Purchaser.

#### **E. Warranty by Seller**

1. Immediately after the last sentence of section K.1 of the Global Terms, the following shall be added to K.1:

To avoid doubt, nothing in these Global Terms operates to exclude, restrict or modify the application of any implied condition or warranty, provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) (as amended or replaced from time to time) or any other statute where to do so would contravene that statute or cause any of these terms to be void.

## **F. Liability, Limitation of Liability, and Insurance**

1. Under section L.9 of the Global Terms, the phrase “general liability insurance” shall be replaced with “public and product liability insurance.”

## **G. Quality, Compliance with Specifications, Inspection, and Defective and Nonconforming Items**

1. Immediately preceding the first sentence of section M.1 of the Global Terms, the following sentence shall be inserted:

The Seller must use properly skilled personnel to manufacture the Items and otherwise perform its obligations under these Global Terms.

## **H. Intellectual Property, Confidential Information, and Advertising**

1. In section Q.5, the second sentence shall be replaced with the following:

Seller must not disclose, nor make accessible, Confidential Information to anyone other than personnel having a need to know or use Confidential Information for any purpose other than as contemplated by the Order without, in each case, Purchaser's prior written consent. Confidential Information should be kept confidential for as long as it is confidential at law.

## **I. Ownership of Tooling, Bailed Property**

1. Immediately after section S.7 of the Global Terms, the following sections S.8-11 shall be inserted:

8. To the extent that any agreement formed on these terms creates, gives rise to or provides for a security interest in favour of the Purchaser, the Seller acknowledges that these terms constitute a security agreement in favour of Purchaser for the purposes of the PPSA. The Seller acknowledges and agrees that, to the extent that the Purchaser's interest in the Purchaser's Property secures payment or performance of an obligation by the Seller, the Purchaser has a security interest in all present and future Purchaser's Property.

9. Seller must ensure that no security interest (including any security interest as defined in the PPSA) is created, exists or subsists over the Purchaser's Property other than a security interest arising under these terms. Seller must immediately notify Purchaser if any other person enforces or attempts to enforce a security interest in the Purchaser's Property.

10. Seller agrees that Purchaser may register a financing statement or financing change statement (each as defined in the PPSA) in respect of a security interest granted by Seller in favour of Purchaser. Seller must pay all costs incurred by Purchaser in connection with the registration of a financing statement or financing change statement (each as defined in the PPSA) in respect of a security interest granted by Seller in favour of Purchaser. Seller must assist Purchaser to complete the registration of any financing statement and must do all things and provide all information necessary to enable Purchaser to perfect its security interest.

11. To the extent that the Purchaser's interest in the Purchaser's Property secures payment or performance of an obligation by the Seller (and to the extent permitted by law), Seller and Purchaser contract out of sections 125, 132(3)(d), 142, 143 and, for the purposes of section 115(7) of the PPSA, Part 4.3 of the PPSA, other than sections 123(1), 126, 128, 129(1), 133, 134(1), 136(1) and 136(2). Seller irrevocably waives any rights under sections 95, 121(4), 130, 132(4) and 135 of the PPSA. Seller agrees that it irrevocably waives any rights it may have to receive a verification statement (as defined in the PPSA). Seller and Purchaser agree that neither of them will disclose, or authorise the disclosure, to any person of any information of the kind described in section 275(1) of the PPSA, except to the extent (if any) required by law.

## **J. Labor Contracts**

1. Section U of the Global Terms shall be replaced with the following:

1. Seller will at least six months before the nominal expiry date of any applicable enterprise agreement, notify Purchaser of that expiry date, unless the enterprise agreement has been replaced by another enterprise agreement. Purchaser may thereafter direct Seller in writing to manufacture up to 30 days of additional inventory of Items required and any packaging and storage requirements. Seller will use

commercially reasonable efforts to comply with Purchaser's written directions prior to the nominal expiry date of the applicable enterprise agreement, and after that date and until the enterprise agreement has been replaced by another enterprise agreement. By authorizing the additional inventory, Purchaser commits to buy the entire quantity of conforming Items requested and produced. Seller is responsible for carrying costs and any additional costs of manufacture.

## **K. Assignment and subcontracting**

1. Section V.1-3 of the Global Terms shall be replaced with the following:

1. Seller may not assign any agreement formed between the Purchaser and Seller on these terms and conditions, or any right under such an agreement, without the prior written consent of Purchaser. Purchaser may assign or novate any or all its rights and obligations under any agreement formed between the Purchaser and Seller on these terms and conditions to its related bodies corporate, or to any corporation into which it has been or is to be merged, consolidated, or by which all or substantially all of its assets have been or are to be acquired. Seller must do anything reasonably requested by Purchaser to give effect to any such assignment or novation.

## **L. Termination**

1. In section AA.5 of the Global Terms, the second sentence shall be replaced with the following:

A "Seller Insolvency" includes: (a) Seller disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business; (b) Seller ceases to carry on business; (c) Seller ceases to be able to pay its debts as they become due; (d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of Seller's assets, operations or business; (e) any step is taken to enter into any arrangement between Seller and its creditors; or (f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person over the whole or any part of Seller's assets or business.

## **M. General Provisions**

1. Immediately following section CC.11 of the Global Terms, the following shall be inserted:

Any electronic notices given under these terms must be sent by email to the recipient's contact address specified in Order, as varied by any notice given by the recipient to the sender. An email notice will take effect when it is received, and will be taken to be received when the sender's email system generates a report indicating the sender's date, time and transmission to the recipient's email address, provided that if the report is generated on a day that is not a business day or is after 5.00pm on a business day, the notice is taken to be received at 9.00am on the next business day.