

Supply Terms (Goods & Services)

1. Purchase Orders

- 1.1. T-Ports Pty Ltd (ACN 620 129 544) (**we** or **us**) may request you to make a Supply to us by giving you a Purchase Order. You can accept a Purchase Order by giving us written notice (including by email) or commencing to make the Supply. We may revoke a Purchase Order if you do not promptly accept the same.
- 1.2. A Purchase Order Form and these Supply Terms together form the **Purchase Order** for the Supply. The Purchase Order Form will include a purchase order number which you must quote on all invoices and correspondence.
- 1.3. We do not grant you any exclusive right to provide the Supplies to us. If there is any inconsistency between the Purchase Order Form and these Supply Terms then these Supply Terms prevail unless the Purchase Order Form expressly provides otherwise.

2. Supply Obligations

- 2.1. You must make the Supply in accordance with the Purchase Order and you must ensure that the Supply complies with the Applicable Requirements. The express warranties contained in these Supply Terms are in addition to any implied by applicable Law.
- 2.2. You must perform the Supply by the Required Date including delivering the Goods to the Site by the Required Date. Any delivery of Goods to the Site or the performance of Services on the Site must be within the times we fix acting reasonably.
- 2.3. You must perform the Services (including and supply all parts, materials or goods necessary for the proper completion of the Services) in accordance with this Purchase Order. You must perform any incidental services that are directly connected with the supply of the Goods.
- 2.4. You must at your cost pack, store and transport the Goods to the Site in accordance with the Applicable Requirements. Goods must include a docket which references the Purchase Order number and includes a full and proper description of the Goods. You must comply with our Policies in making the Supply. While on the Site you must comply with our applicable Policies, any lawful directions we give you and with applicable Law.

3. Warranties - Services

- 3.1. You warrant that any Services will (a) meet our requirements as set out in the Purchase Order Form and be fit for purpose, (b) be provided by suitable skilled and experienced Staff, and (c) will be carried out and comply with Applicable Requirements, and (d) not infringe the IP rights of any person.
- 3.2. If the Services include the maintenance services or the affixing of parts to Our Plant, you warrant (as applicable) that (a) those parts will properly connect with Our Plant, will operate correctly with Our Plant and not damage Our Plant, and (b) neither the Services nor any parts will adversely impact on the performance of Our Plant.

4. Warranties - Goods

- 4.1. You warrant that any Goods will (a) comply with the Applicable Requirements, (b) be free from defects and be in the quantity set out in the Purchase Order Form, (c) be free of any Security Interest (other than as allowed under clause 9.1), and (d) be fit for the purpose specified in the Purchase Order or if not specified, their intended purpose and (e) be new, be of merchantable quality and conform with any sample you have provided to us.
- 4.2. Where Goods are intended to be affixed to Our Plant you warrant that the Goods will properly connect to Our Plant, will not damage Our Plant nor adversely impact on the performance of Our Plant.

5. Delays and Adjustments to Required Date

- 5.1. You must provide us with prompt notice as to any delay in providing the Supply by the Required Date and continue to update us in respect of the same. You giving us such notice does reduce or limit your obligations to deliver or perform the Supply by the Required Date.
- 5.2. If you are prevented from carrying out the Supply by the Required Date by an FM Event then (subject to you complying with this clause) you are entitled to a reasonable extension to the Required Date to reflect the extent that FM Event has caused such delay. You must give us prompt notice any FM Event caused delay, details of the affect of the same (you must also continue to provide us with updates) and you must take all reasonable steps to mitigate and overcome the effects of the FM Event. We may terminate the Purchase Order if the FM Event continues for more than 30 days. Where an FM Event effects us, we may by notice to you extend the Required Date without any liability.

6. Intellectual Property

- 6.1. You warrant that the Services and Goods (including our use of the same) will not infringe the IP rights of any third party. In respect of any Services (including reports) we will own all New IP comprised in the Services and you grant us a perpetual, irrevocable, assignable licence to use and exploit any Existing IP in the Services. We grant you a limited, non-transferable licence to use any material and IP we provide to you solely for you to make the Supply and you must return all of the same to us on the termination or completion of the Purchase Order.
- 6.2. You waive (if you are a natural person) or you must obtain a waiver (if you are a company or partnership) from any natural persons who have created any of the IP in the Services of all **moral rights** (as defined in the *Copyright Act 1968* (Cth)) in those Services.

7. WHS and Supplies Performed on the Site

- 7.1. You must comply with all work, health and safety Law in carrying out your obligations under the Purchaser Order. In carrying out a Supply at the Site you must not interfere with our activities or those of our other suppliers. You must in making a Supply at the Site ensure that your Staff perform the Supply in a safe manner and in accordance with Law. You must, before performing any Supplies

on the Site, provide us with written risk assessments and safe work procedures in accordance with applicable Law.

- 7.2. If you supply or use plant and equipment in making the Supply you agree you have the management and control of such plant and equipment and must ensure the same is licenced or registered as required by applicable Law and is in a safe and useable condition. You must ensure that no asbestos or asbestiform fibrous materials are used in the performance of the Supply. If a hazardous substance is delivered by you under this Purchase Order you must provide us with current safety data sheets.
 - 7.3. We may immediately stop you from performing the Supply on the Site if we consider on reasonable grounds there is any suspected or actual breach of by you of this clause 7.
- 8. Testing, Acceptance & Warranty Period**
- 8.1. If provided in the Purchase Order Form, our obligation to pay the Price is conditional on the Supply satisfying any acceptance tests. If after delivery we determine that any Goods fail to comply with the requirements of the Purchase Order we may by notice to you either reject those Goods or require you to rectify the defective Goods. If the Goods are rejected you must promptly collect the same and repay us the portion of the Price applicable to the rejected Goods plus all additional costs and expenses we incur in obtaining replacement goods. If we require the Goods to be repaired you must promptly collect, repair and return the Goods to us (including within any reasonable time we specify) unless we agree such repairs can be undertaken at the Site. Nothing in this clause limits our other rights in respect of defective Goods.
 - 8.2. Without limiting our rights under the express warranties in these Supply Terms or implied by the operation of Law, you warrant that the Goods will be free from defects for a period of 12 months from the date the Goods are actually delivered to the Site. You must promptly rectify any defect with the Goods we notify you of within that 12 month period (any Goods rectified in the above period will have their warranty extended for a further 12 months from the re-delivery or rectification date).
- 9. Ownership & Risk**
- 9.1. Ownership in the Supply passes to us on payment of the Price in respect of the same. You must promptly remove any Security Interest arising from the retention of title under this clause from the Personal Property Security Register on us paying the Price for the Supplies.
 - 9.2. Risk (including as to loss and damage) in the Goods remains with you until delivery has occurred. Delivery will be deemed to have occurred when the Goods have been unloaded at the Site. Risk in the Goods reverts to you if we return the Goods to you or you take possession of the Goods as allowed under the Purchaser Order.
- 10. Price & Payments**
- 10.1. We will pay you the Price for the Supply. We will pay you the Price as and when required under the Purchaser Order Form, or otherwise, no later than 30 days after the last day of the month in

which you issue us with a valid tax invoice (which complies with GST Law) for the Supply except where we dispute the invoice, in which case we may notify you and withhold payment of the disputed part of the invoice pending resolution of the dispute. You may invoice us monthly in arrears for Goods delivered or Services performed in that prior month or as otherwise allowed in the Purchase Order Form. We must pay any GST applicable to a Supply as and when we are required to pay a valid tax invoice. We may set off and deduct any amounts you owe us under the Purchase Order or any other purchase order (including any Losses) against the Price.

- 10.2. Unless otherwise specified on the Purchase Order, the Price is not subject to variation unless agreed by the parties in writing. The Price is inclusive of (a) all charges for packaging, packing, insurance, and delivery of the Goods, (b) your compliance with its obligations under this Purchase Order, and (c) Taxes and any change in Law. You are only entitled to be reimbursed for any specified costs and expenses if expressly included in the Purchase Order Form.
- 11. Relationship & Staff**
- 11.1. The relationship between us and you is that of a customer and an independent contractor. Nothing in the Purchase Order will constitute or deem you or any of your Staff to be employees, agents or partners of ours. You remain liable for each act and omission of your Staff as though it were your acts or omissions.
- 12. Indemnity & Insurance**
- 12.1. You must indemnify us against all Losses arising in connection with (a) any damage to the Site, Goods or any property (whether at the Site or otherwise) if the Losses arise in connection with you or your Staff's acts, errors or omissions, (b) death or injury to any person whether located at the Site or otherwise if the same arises from you or your Staff's acts, errors or omissions, (c) a breach by you or your Staff of any Law in connection with the performance of the Purchase Order, (d) any Losses which arise from the Gross Negligence and Wilful Misconduct of you or your Staff, (e) any Losses which arise from a breach by you of your warranties or obligations in respect of privacy, confidentiality and/ IP in the Purchase Order, and/or (f) arising from any Loss we suffer from you failing to hold any insurance policies required by the Purchase Order .
 - 12.2. Your liability to indemnify us under clause 15.1 will be reduced proportionally to the extent (as permitted by Law) that any such Losses was caused by our negligent act or omission.
 - 12.3. You must effect, maintain and, on request provide us with evidence of, the following insurances (a) if Goods are being supplied, transit insurance for the Goods, (b) a policy of public and products liability insurance for an amount not less than \$20 million, (c) if specified in the Purchase Order Form a policy of professional indemnity insurance for an amount not less than \$5 million, (d) a policy of motor vehicle third party property damage and bodily injury insurance for an amount not less than \$20 million for any one claim

and a policy of statutory motor vehicle bodily injury insurance, (e) a workers compensation policy of insurance covering your legal liability to your Staff under statute and where required by applicable Law, at common law, and (f) any other insurance which you are required to hold by Law or as is specified in the Purchase Order Form.

13. Suspension & Termination

13.1. We may at any time immediately by notice suspend performance of the Supplies. To the extent that the suspension is neither due to your default or circumstances beyond our reasonable control we will pay you the direct, verifiable and reasonable costs you incur as a consequence of the suspension (none of which can exceed in total the Price).

13.2. A party may immediately terminate the Purchase Order by notice in writing to the other party if the other party (a) breaches any material term under the Purchase Order and such breach is not able to be remedied or that party fails to remedy the same within 14 days of the other party requiring the same be remedied, or (b) becomes insolvent (including by becoming a *Chapter 5 body corporate* or an *insolvent under administration* both within the meaning of the *Corporation Act 2001* (Cth)) or ceases to trade. If the *Corporation Act 2001* (Cth) prevents or stays our right to terminate under this clause we may suspend the performance of Supplies without any liability unless and until we are satisfied that you will be able to fully perform your obligations under the Purchase Order.

13.3. We may terminate the Purchase Order for convenience by giving you 14 days notice in which case we will reimburse you for (a) Goods delivered or Services performed prior to the date of termination which we have not paid for, and (b) any Goods you have ordered and cannot cancel on reasonable commercial terms or on sell or supply the Goods to your other customers (in which case you must deliver those Goods to us and we will pay for the same). You must use all reasonable efforts to mitigate the amounts we must pay you under this clause and, to avoid doubt, you are not entitled to payment of any lost or anticipated profit and the total payments under this clause can exceed the Price.

14. Dispute Resolution

14.1. If there is a dispute between the parties arising in respect of the Purchase Order, then within ten days of a party notifying the other party of that dispute, senior representatives from each party must meet and use reasonable endeavours to resolve the dispute by negotiation.

14.2. If the parties fail to resolve the dispute by negotiation in accordance with clause 14.1, then either party may commence legal proceedings and nothing in this clause prevents a party from seeking urgent injunctive relief from a court. You must continue to perform your obligations under this Purchase Order despite the existence of a dispute.

15. Confidentiality & Privacy

15.1. You must only use or disclose the Confidential Information (a) to perform your obligations under the Purchase Order, (b) as required by the mandatory operation of law, (c) to your professional advisors (bankers, accountants, lawyers) for a proper purpose and on a confidential basis and in respect of the Purchase Order, or (d) with our prior consent. In this clause **Confidential Information** means any confidential or proprietary information (in any form including copies and notes) you obtain about us or our business from us (or our agents) in connection with a Purchase Order (including in negotiating a Purchase Order) but excludes (a) information which is or becomes a matter of public record other than by a breach of this clause, (b) information which we certify in writing as not being confidential information, and (c) information which you prove you lawfully possessed before obtaining it in connection with a Purchase Order.

15.2. The Supplier agrees to comply with all mandatory privacy laws which regulate the disclosure, use and collection of personal information and not do anything which would cause us to breach any of the same.

16. General

16.1. (**Assignment, Amendments & Subcontracting**): You must not assign its rights or obligations under a Purchase Order without our prior consent. A Purchase Order can only be amended by the written agreement of the parties. You may only subcontract the performance of the Supplies with our prior consent.

16.2. (**Notice**): Notice can only be in writing (**sender**). Notice can only be given to a party (**recipient**) (a) personally, (b) by registered post to the recipient's last known place of business or residence (notice by post is deemed to be received at the time at which the letter would be delivered in the ordinary course of post), and/or (c) by email to a recipient's last known email address (notice by email is deemed to be received immediately after it is sent unless a delivery failure or delay message is received by the sender within 48 hours).

16.3. (**Costs & Entire Agreement**): Unless the Purchase Order expressly provides otherwise a party must pay its own costs and expenses in carrying out its obligations under the Purchase Order. The Purchase Order is the whole agreement between the parties about its subject matter and supersedes any prior contract or obligation between the parties about its subject matter. No terms and conditions of yours will form part of the Purchase Order.

16.4. (**Waiver & Governing Law**): A party waives a right under the Purchase Order only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given. The Purchase Order is governed by the laws South Australia and the parties submit to the exclusive jurisdiction of the courts of South Australia and the Federal Court of Australia (Adelaide Registry).

17. Meanings

Applicable Requirements means (a) Law, (b) any Australian Standard relevant to the Supplies, (c) the Specifications, and (d) Good Industry

Practice, and if there is any inconsistency between paragraph (b) and (d) then the higher requirement or standard.

Existing IP means any of your IP which is in existence as at the date of the Purchase Order or which is created other than in performing the Supply and which you include in the Supply.

FM Event means any circumstance beyond the direct and reasonable control of a party but in respect of you does not include any breach by any of your sub-contractors or sub-supplier under any supply agreement you have with the same which related to the performance of the Supply.

Good Industry Practice means that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a diligent, skilled, well resourced and experienced provider of goods and/or services of the type supplied under this Purchase Order.

Goods means the goods, if any, required to be provided by the Supplier as set out in the Purchase Order Form (including any parts of the goods specified) and including goods or parts supplied as part of the supply of any Service.

Gross Negligence and Wilful Misconduct means (a) any fraud, fraudulent concealment or dishonesty, (b) any criminal conduct, and/or (c) any breach, act or omission done or omitted to be done deliberately or with reckless disregard (whether consciously or not), for the consequences of the act or omission.

GST has the meaning given in *the A New Tax System (Goods and Services Tax) Act 1999* (Cth).

IP means all intellectual property, including copyright, trademarks, patents, designs, circuit layout rights, the right to protect confidential information and any application or right to apply for registration of any of those rights.

Law means all legislation, including regulations, by-laws, orders, awards, codes of practice and proclamations with which a party is legally required to comply.

Losses means losses, claims, liabilities, costs and expenses of any kind and included penalties, fines and interest including any of the same which are prospective or contingent and those amounts for the time being which are not ascertained or ascertainable.

New IP means any IP you create in performing the Supply.

Our Plant means any of our plant or equipment.

Policies means all of our standards, policies, and procedures that we provide you from time to time including all Site health and safety rules, procedures or requirements.

Price means the price specified in, or as calculated under (including on a rates basis) the Purchase Order Form.

Purchaser Order means the Purchase Order Form and these Supply Terms which are attached to or referenced in the Purchaser Order Form.

Purchase Order Form means the purchase order form (including any Specification and attachments to the same) we issue to you which details the Supplies to be made by you, the Price and other matters and which attaches or incorporates by reference these Supply Terms.

Required Date means the date that the Purchase Order From states is the date by which the Supply must be provided or performed, or if no such date is stated, then as soon as is reasonably practical as determined by us acting reasonably.

Security Interest has the meaning given in the *Personal Property Securities Act 2009* (Cth) and also includes any lien or encumbrance.

Services means the services, if any, in the Purchase Order From to be provided by the Supplier (including any ancillary services).

Site means the place for the delivery of the Goods or performance of the Services as specified as such in the Purchase Order Form.

Specifications means the detailed requirements and specifications for the Goods and/or Services, and/or performance, as referenced or set out in the Purchase Order Form.

Staff means directors, employees, agents, officers, secondees, contractors or subcontractors.

you or **your** means the party or parties named as such in the Purchase Order (and if more than one jointly and severally) who will make the Supply and a reference to the same includes your Staff where applicable including when they are performing the Supply.

Supply or **Supplies** means the Goods and/or Services you are required to perform or supply under the Purchase Order as detailed in the Purchase Order Form.

Supply Terms means these Supply Terms which are attached to or incorporated by referenced in a Purchaser Order Form.

Tax includes all present or future taxes, fees, levies, duties, imposts, assessment, royalties, tariffs, fees and charges imposed or assessed in respect of the Purchase Order by all authorities including income tax, payroll tax, superannuation contributions and workers compensation payments and contributions, customs duty, excise, and stamp duty, as well as interest, penalties but does not include GST.

18. Interpretation

In this Purchase Order (a) a reference to "\$" or "dollars" is to Australian dollars, (b) singular includes plural and vice versa, (c) reference to a person includes a corporation and partnership and vice versa, (d) headings do not affect interpretation, (e) no rule of construction applies to the disadvantage of a party because that party put forward the Supply Terms or any portion of it, and if any part of a Purchase Order would be unenforceable, the provision must be read down to the extent necessary to avoid that result, and if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of the Purchase Order. Consent, agreement or approval under a provision in the Purchase Order is only effective if given in writing. If you enter into a Purchase Order as the trustee of a trust you must disclose the same to us and you warrant as trustee and in your own capacity that the trust has sufficient assets, resources and Staff to fully discharge all of your obligations under the Purchase Order.

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