

# Terms and Conditions of Purchase Order (“Terms and Conditions”)

## 1 DEFINITIONS

“**Contract**” means the contract between the Supplier and the Purchaser and includes this Purchase order, these terms and conditions, Specifications and/or Requirements, and each separate Purchase Order.

“**Delivery**” in the case of Goods, means delivery to the site(s) specified in the purchase order within 7 days of the date the Purchase Order and in the case of Services means the latest specified time in the Purchase Order as the Delivery or completion date, or in either case such other date as the parties may mutually agree issued by way of email, mail, hand delivery, facsimile, or in any other written form.

“**Goods**” means the goods and/or services specified in the Purchase Order and agreed to be supplied by the Supplier and purchased by the Purchaser.

“**Purchase Order**” means the purchase order attached to this document issued by way of email, mail, hand delivery, facsimile, or in any other written form.

“**Purchaser**” means the party specified on the Purchase order.

“**Related Bodies Corporate**” means in respect to any legal entity, a company which directly or, indirectly through one or more intermediate legal entities, controls, or is controlled by, or is under common control with that legal entity. For this purpose, “control” means the direct or indirect ownership of in aggregate fifty percent (50%) or more voting capital.

“**Requirements**” means the Purchaser’s requirements for the Goods and/or provision of Services as notified by the Purchaser.

“**Services**” means any services specified in the Purchase Order or installation of Goods or any services reasonably required by the Purchaser to use the Goods.

“**Specifications**” for Goods means the Supplier’s published technical specifications for those Goods.

“**Supplier**” means the party and/or parties (including its successors and permitted assigns) specified in the Purchase Order. All parties specified in the Purchase Order as Suppliers are to execute their obligations jointly and severally.

“**Warranties**” for Goods and Services means the warranties specified in this Purchase Order or any

other warranties provided by the Supplier to the Purchaser from time to time.

## 2 SUPPLY

**2.1** The Supplier must supply the Goods and/or Services in accordance with this Purchase Order and by the due date for Delivery. Such Purchase Order and where applicable shall contain an order number, Supplier’s quotation number, full description of the Goods to be purchased, the delivery date, delivery point and any other information required to give effect to the terms contained herein.

**2.2** A contract shall be formed by and upon the Supplier accepting from the Purchaser each Purchase Order.

**2.3** The Supplier must deliver and/or execute the Goods and/or Services to/at the site(s) specified in the Purchase Order in accordance with the Purchaser’s packaging, shopping and delivery procedures and reasonable instructions/directions notified to the Supplier, or as specified in the Purchase Order. Where none of the aforementioned procedures, instructions and/or directions are notified or specified, Delivery should be conducted in a manner that is competent, skilful and safe.

## 3 DELIVERY

**3.1** The Supplier shall be liable for the costs of putting the Goods in a deliverable state and has allowed for the same in its quote provided to the Purchaser.

**3.2** The Supplier must ensure that the Goods are safely and appropriately packaged, loaded, transported and imported and will comply with all relevant legislation, regulation, standards and codes.

**3.3** Where the Supplier enters into a contract with a carrier, it must use its best endeavours to ensure the Purchaser’s interest and failure to do so may entitle the Purchaser to:

**3.3.1** Decline the Delivery of the Goods; or

**3.3.2** Hold the Supplier liable for damages or compensation.

**3.4** The Supplier acknowledges that time is of the essence in effecting Delivery of the Goods.

**3.5** Without prejudice to any of the Purchaser’s rights, if any Goods are not, or are expected not to be delivered within the time specified in the Purchase Order (or as otherwise notified by the Purchaser), then the Supplier, must immediately notify the Purchaser and the Purchaser may with immediate effect and without incurring any liability:

**3.5.1** terminate the Contract;

**3.5.2** refuse to accept such Goods and terminate the Purchase Order;

**3.5.3** require the Supplier to deliver the Goods by the fastest means, with any additional delivery charges being at the expense of the Supplier; or

**3.5.4** agree to extend the time for Delivery of the Goods.

**3.6** Where in the course of transit, the Goods have been damaged, lost, stolen or delivered late, the Supplier indemnifies the Purchaser for all loss, costs, expenses and damage of any nature arising directly or indirectly as a result of such occurrence. In the event of inconsistency with any other terms found in any other agreement with Supplier attempting to exclude the Supplier's liability, this clause shall prevail and survive.

## 4 DOCUMENTATION

**4.1** On Delivery of the Goods, the Supplier must supply the Purchaser with, (in the English language):

**4.1.1** all documentation required by law containing sufficient information in a form usable by the purchaser to enable it to operate make full use of and maintain Goods, and

**4.1.2** any other documentation specified in the Purchase Order or usually supplied with the Goods by the Supplier and/or requested by the Purchaser including necessary certificates of conformance, certificates of analysis, test certificates, labels, markings and sheets.

## 5 PAYMENT

**5.1** The Supplier will after actual Delivery to the Purchaser, issue a valid itemised tax invoice for payment of the Goods inclusive of sales tax, duties and any other government imposts.

**5.2** The Supplier must not include and the Purchaser will not be liable for any additional costs not included in the Purchase Order, except to those items explicitly agreed to in writing. For avoidance of doubt, the additional costs which the Purchaser will not pay include packing, crating, freight, cartage, duties, other taxes or imposts or any other costs incurred by the Supplier.

**5.3** The Purchaser will pay any undisputed amounts to the Supplier valid tax invoice by cheque, credit card, direct debit or other form agreed between the parties at 30 days end of month including from date of receipt of the tax invoice, unless otherwise agreed by the parties in writing.

**5.4** The Supplier agrees that all prices as stated in the Purchase Order are not subject to any adjustment, whether by reason of any of the following risks and contingencies or otherwise:

**5.4.1** rise and fall, due to changes in labour rates and conditions or cost of materials;

**5.4.2** fluctuations, devaluations or any other adjustments to the value of any currency or raw materials or otherwise;

**5.4.3** import and customs duty or sales tax or goods and services tax, whether in relation to imported goods or materials for the Goods or otherwise; or

**5.4.4** payments to employees, including payment of relevant funds for superannuation, redundancy, severance, workers' compensation, long service leave or any other similar payments or contributions in respect of employees and workers.

**5.5** Any reduction in price resulting from a reduction in any customs duty, sales tax, VAT or other tax or duty from those in force at the date of the Purchase Order and which are included in the agreed price is to be immediately allowed to the Purchaser in full as a reduction of the price of the Goods to be supplied.

**5.6** All payments will occur after title in the Goods passes to the Purchaser.

**5.7** The Purchaser may cancel or modify a Purchaser Order without Supplier's prior consent. The Supplier shall alter the Purchase Order at no additional cost to the Purchaser.

**5.8** The Purchaser will not indemnify the Supplier for any costs, loss, damage and expense incurred by the Supplier in relation to the cancellation or alteration, including the cost of return freight, return shipping to place of origin, items purchased from third parties.

**5.9** The Purchaser may set-off any amounts owed by it to the Supplier under the Contract against amounts owed by the Supplier to the Purchaser on any account whatsoever, upon a notice from the Purchaser to the Supplier in relation thereof and the set-off shall become effective when the notice reaches the Supplier

## 6 REJECTION OF GOODS

**6.1** If the Purchaser rejects Goods in accordance with these Terms and Conditions or terminates the Contract, the Supplier must:

**6.1.1** immediately credit or refund to the Purchaser the total of all amounts paid by the Purchaser for the affected Goods and accept return of any of those Goods that have already been delivered to the Purchaser, and/or

**6.1.2** Before commencing any work on any of the Purchaser's sites, the Supplier must produce certificates of currency evidencing the above-mentioned insurances. The Purchase may request that it be included as an 'interested party' in the Supplier's certificate of currency.

**6.1.3** immediately refund to the Purchaser that part of the Price prepaid (if any) for affected services.

**6.2** The Purchaser may reject any Goods that are wrongly supplied or oversupplied within a reasonable time and upon which the Supplier shall issue a credit for the returned Goods.

**6.3** The Purchaser is not liable to the Supplier for any loss arising out of the refusal or failure of the Purchaser to notify the Supplier of its acceptance.

**6.4** The Purchaser has the right to reject the Goods or any part of them at any time for the Supplier's failure to comply with the Contract, including the failure of the Goods to meet the Purchaser's specifications. Upon any such rejection:

**6.4.1** risk of damage and loss of the Goods shall be borne by the Supplier. The Purchaser shall notify the Supplier of the rejection in writing and the Supplier shall (at the Supplier's expense) retake possession of the Goods rejected by the Purchaser;

**6.4.2** the Purchaser is under no obligation to pay to the Supplier the price of the Goods rejected; **6.4.3** if requested by the Purchaser, the Supplier shall immediately replace the rejected Goods with those that comply with the Contract; and

**6.4.4** the Supplier shall indemnify the Purchaser for any cost, loss, damage or liability (including without limitation loss of production or profit) suffered or incurred by the Purchaser and as a result of such rejection.

**6.5** The making of payment for the Goods or the signing of a delivery docket or other acknowledgment of Delivery does not prejudice the Purchaser's right of rejection, and upon a written notice to the Supplier, the Purchaser may deduct the amount of any payment made for rejected Goods from any present or future sums payable to the Supplier.

## 7 TITLE AND RISK IN GOODS

**7.1** Title and risk in Goods passes to the Purchaser on Delivery to the Purchaser at the site(s) specified in the Purchase Order and where the Purchaser has inspected and examined the Goods and advised of its acceptance to the Supplier and conformance with the warranties contained herein. The rules contained the sales of goods legislation of any applicable state do not apply.

**7.2** In the event where title and risk in the Goods is passed to the Purchaser but the Purchaser does not have possession of the Goods, the risk of loss or damage remains with the Supplier until they are delivered and accepted by the Purchaser.

## 8 LIABILITY

**8.1** The Supplier fully indemnifies the Purchaser (including its officers, employees, Related Bodies Corporate and agents) with respect to all loss, costs, expenses and damage of any nature (including those incurred by the Purchaser as a result of a product recall) arising directly or indirectly from:

**8.1.1** the Supplier's negligent act or omission;

**8.1.2** a breach of the Contract by the Supplier, including the warranties contained in these Conditions; and

**8.1.3** any claims by third parties for compensation for personal injury or loss or damage to third party property as a result of any act or omission of the Supplier. This clause shall apply notwithstanding any clause in the Supplier's trading terms which might otherwise have the effect of excluding or limiting such liability

**8.2** When the Supplier has engaged any other third party to produce any of the Goods or Services, the Purchaser's prior written consent shall be obtained, and the Supplier shall remain liable for such third party's performance.

## 9 WARRANTIES

**9.1** In addition to consumer guarantees that may apply, the Supplier expressly represents and warrants to the Purchaser for a period of ("**Warranty Period**") that:

**9.1.1** upon delivery of the Goods the Supplier has good title to the Goods, which are free of all liens, encumbrances, and other forms of security interests or third-party rights to the Goods;

**9.1.2** all Goods will:

**9.1.2.1** meet the functional, technical and performance criteria as represented by the Supplier and/or specified by the Purchaser;

**9.1.2.2** be free from defects, deficiencies and/or faults in design, materials, workmanship and installation;

**9.1.2.3** be safe, of good and merchantable quality, fit for use and fit for the purpose for which they are bought by the Purchaser;

**9.1.2.4** when supplied to the Purchaser, be new and not used by any person (unless agreed in writing by the Purchaser) ; and

**9.1.2.5** correspond with the description found in this Purchase Order;

**9.1.2.6** Where a sample has been provided to the Purchaser, then the Goods must correspond both with the description found in the Purchase Order and sample, notwithstanding where the Purchaser inspected and accepted the Goods.

**9.1.3** Documentation will be in English, complete and accurate, and suitable and sufficient for use by the Purchaser and its personnel to operation, to make full use of and to maintain the Goods or Services.

**9.1.4** All services will be supplied in a good, workmanlike and timely manner and be carried out by a competent, qualified and trained personnel and, without limitation, in accordance with the Requirements.

**9.1.5** In providing the Services, it will not be in breach of any obligation owed to any person and that it holds all licenses and approvals necessary for or incidental to providing the Services.

**9.1.6** All Goods provided under the Contract must not infringe any intellectual property right under any Australian or applicable laws.

**9.2** If at any time during the Warranty Period for Goods the Supplier becomes aware of any failure of those Goods to comply with any of the warranties given under this clause the Supplier, it will notify the Purchaser, and will promptly correct that failure and remedy any defects, deficiencies and/or faults at the Supplier's cost.

**9.3** The Supplier warrants that the Goods will, whether used alone or in combination with any other software/equipment, correctly identify, process and represent all date changes.

**9.4** The Supplier shall provide the Purchaser with twelve (12) months (or such other period as agreed in writing by the Purchaser) warranty covering design, workmanship, material and satisfactory mechanical and electrical functioning of the Goods from the day they are accepted by the Purchaser.

**9.5** Where the Goods are replaced or repaired any part of the Goods fails during the warranty period, a fresh warranty for the same period commences in relation to the repaired or replaced item from the date when the Supplier receives the repaired or replaced item. The Supplier is liable to and indemnifies the Purchaser against any costs of removal, packing, transportation and reinstallation in relation to repaired or replaced Goods.

## 10 TERMINATION

**10.1** Upon or at any time when the Supplier:

**10.1.1** assigns or subcontracts any part of its obligations under the Contract without the Purchaser's prior written consent; or

**10.1.2** becomes insolvent, bankrupt, or sells all or majority of its assets; or

**10.1.3** fails or is unable to perform any of its obligations under the Contract;

**10.1.4** fails to cure a breach of the Contract within thirty (30) days after written notice of such breach is given by the Purchaser the Purchaser may terminate the Contract by notice in writing to the Supplier without being or becoming liable to make any, or any further, payment to the Supplier. Such termination shall have immediate effect after the expiry of seven (7) days from the date the notice was given by the Purchaser of its intention to terminate.

**10.2** Either party may terminate the Contract if any event of force majeure event happens and extends for over thirty (30) days.

**10.3** The Purchaser may terminate the Contract at any time for convenience and without cause by providing the 14 days' notice to the Supplier of its intention to terminate.

## 11 INSURANCE

**11.1** Supplier must effect and maintain for the duration of the Contract statutory workers compensation and public liability, professional indemnity, product liability and any other insurance required by the Purchaser for an amount not less than AUD\$20 million per occurrence (unless otherwise agreed in writing by Purchaser) for to cover any and all costs and expenses of whatsoever kind or nature which the Purchaser may suffer or incur as a result of or in connection with any claim, demand, action or proceeding brought by any party including any officer, agent, employee or sub-contractor of the Supplier.

## 16 GOVERNING LAW AND JURISDICTION

**16.1** The Supplier warrants to the Purchaser that the Supplier, its Related Bodies Corporate, the Supplier's employees, contractors, subcontractors and agents (collectively "**Agents**") will abide by and comply with the Purchaser's policies & procedures (as amended from time to time) as well as all relevant legislation, Codes and regulations both federally and state-wide, in connection with performance under the Contract.

## 12 INTELLECTUAL PROPERTY RIGHTS

**12.1** The Purchaser will own all material created by the Supplier in performing the Goods and Services. The Supplier:

**12.1.1** assigns to the Purchaser all future intellectual property rights in all such material (whether the material is created alone or jointly with the Supplier) ;

**12.1.2** acknowledges that no additional documentation is necessary to complete the assignment and by virtue of this clause all such future intellectual property rights will vest in the purchaser; **12.1.3** will do all things reasonably required by the Purchaser to ensure that such intellectual property rights are assigned or retained by the Purchaser; or

**12.2** to the extent that Goods or Services contain existing intellectual property rights, the Supplier hereby grants to the Purchaser an irrevocable, perpetual license to use same.

## 13 CONTINUING OBLIGATIONS

**13.1** Clause 9 (Warranties), clause 10 (Insurance) and clause 11 (Intellectual Property Rights) continue after termination or completion of the Contract.

## 14 SEVERABILITY

**14.1** The whole or any part of any clause of the Contract that is illegal or unforeseeable will be severed and will not affect the continued operation of the remaining provisions of the Contract.

**14.2** Where a supply agreement exists between the parties and:

**14.2.1** the Supply Agreement has been provided by Bingo, then the terms contained herein may be varied and the Supply Agreement shall take precedence over the Contract; or

**14.2.2** the Supply Agreement has been supplied by the Supplier, then the terms contained herein will prevail in the event of inconsistency.

## 15 WAIVER

**15.1** The failure of any party to insist on performance of any obligation under the Contract by another party is not a waiver of its right:

**15.1.1** to insist on performance of that obligation or to claim damages unless that party acknowledges in writing that the failure is a waiver; and

**15.1.2** at any other time to insist on performance of that or any other obligation.

**16.2** If any disputes arising out of or in connection with the contract cannot be settled by negotiations between the parties within thirty (30) days since the occurrence of the dispute, either party may refer the matter to litigation. **16.3** The laws of New South Wales ("NSW") govern this Contract and any dispute arising out of it. Each party hereby submits to the non-exclusive jurisdiction of the Courts of NSW and the federal courts of Australia.

## 17 ENTIRE AGREEMENT

**17.1** This Contract constitutes the entire agreement between the parties and in relation to its subject matter supersedes all previous agreements, arrangements and representations between the parties. No modification is binding in relation to the Contract unless agreed to in writing by both parties.

**17.2** No confirmation, shipment or delivery docket, invoice or other such document issues by or on behalf of the Supplier in relation to the Goods or Services will vary this Contract. To the extent that these Terms and Conditions conflict with any other document, the Supplier agrees that these Terms and Conditions will prevail and override any terms contained in the other document. For avoidance of doubt, no order is binding on the Purchaser.

## 18 MISCELLANEOUS

**18.1** Nothing in the Contract is intended to exclude, restrict or modify rights which the Purchaser may have under common law, legislation (including the Australian Consumer Law) or otherwise which may not be excluded, restricted or modified by agreement.

**18.2** Both the Purchaser and the Supplier may only use confidential information of the other (including but not limited to, details of the Purchaser's volumes, prices and specifications) for the purposes of the Contract and both parties agree to keep confidential any confidential information of the other except to the extent the information is public knowledge or disclosure is required by law.

**18.3** The Purchaser may (without any requirement for Supplier consent) assign to any of its Related Bodies Corporate, or any other third party, any of its rights and/or obligations under the Contract.