

**1. DEFINITIONS**

- 1.1 **Goods** means any materials, supplies, plant, equipment or other things now or in the future supplied by the Supplier to Oomiak, as specified in the Purchase Order and any Special Conditions.
- 1.2 **Key Personnel** means the Supplier's personnel who are specified as such in the Purchase Order.
- 1.3 **Oomiak means** Oomiak Pty Ltd ACN 633 619 226, Oomiak Projects Pty Ltd ACN 153 705 063, Oomiak Qld Pty Ltd ACN 146 681 003 or any Related Body Corporate thereof (as applicable).
- 1.4 **PPSA** means the *Personal Property Securities Act 2009* (Cth).
- 1.5 **Premises** means any premises specified in the Purchase Order or Special Conditions at which delivery of the Goods or Services by the Supplier is made.
- 1.6 **Purchase Order** means an order given by Oomiak to the Supplier for the supply of Goods or Services by the Supplier to Oomiak.
- 1.7 **Related Body Corporate** has the same meaning as given in the *Corporations Act 2001* (Cth).
- 1.8 **Security Interest** has the meaning given in the PPSA.
- 1.9 **Services** means the services (or any of them) specified in the Purchase Order and any Special Conditions.
- 1.10 **Special Conditions** means any additional terms attached to the Purchase Order by, or with the written consent of, Oomiak.
- 1.11 **Supplier** means the person or entity named in the Purchase Order who supplies Goods or Services to Oomiak, and includes any person or entity engaged by the Supplier, whether or not employed by the Supplier.
- 1.12 **Terms and Conditions** means these terms and conditions.

**2. AGREEMENT**

- 2.1 These Terms and Conditions apply when Oomiak places a Purchase Order with the Supplier as the Supplier of Goods or Services to Oomiak.
- 2.2 By accepting a signed Purchase Order from Oomiak, the Supplier accepts these Terms and Conditions. These Terms and Conditions are binding on the Supplier even if not signed.
- 2.3 No other terms will apply whether or not they are contained in any order, acknowledgement, invoice or other document, whether dated before or after the Purchase Order, unless those terms are expressly agreed to in writing by the duly authorised representative of Oomiak and the Supplier.
- 2.4 Where there is conflict between documents, the following apply in order of precedence:
  - (a) a Purchase Order;
  - (b) any Special Conditions; and
  - (c) these Terms and Conditions.
- 2.5 Time will be of the essence in relation to the supply of Goods or Services and the Supplier must comply strictly with the date indicated on the Purchase Order or Special Conditions for delivery of the Goods or Services.
- 2.6 Oomiak may obtain Goods or Services from other suppliers at any time. The Supplier is not required to supply exclusively to Oomiak, nor is Oomiak required to exclusively purchase from the Supplier. Oomiak is not required to purchase or continue to purchase any particular or minimum quantities of Goods or Services.

**3. PURCHASE ORDERS**

- 3.1 All orders will be in writing, using Oomiak's Purchase Order. The Purchase Order must be signed by Oomiak, unless impractical for electronic communications in which case the Oomiak originator must be able to be identified. Oomiak will send Purchase Orders to the Supplier by its preferred option, which could be by post, facsimile or email.
- 3.2 Oomiak is not bound by any order not using the Purchase Order form or without an allocated Purchase Order number, or where the Purchase Order is not signed or if electronic the Oomiak originator is unable to be identified. The Supplier must not accept any verbal orders. If the Supplier delivers Goods or Services without a Purchase Order, Oomiak may return the Goods or reject the Services and any invoice will not be paid.
- 3.3 The Supplier must provide Oomiak with a tax invoice or credit note for each Purchase Order, and the tax invoice or credit note must identify the price of each item sold under the Purchase Order.
- 3.4 The number of the Purchase Order must be clearly identified on any tax invoice or credit note and any other documents relating to the Goods or Services supplied under the Purchase Order, including, without limitation, on any packaging accompanying the Goods at time of delivery.
- 3.5 All tax invoices and credit notes must be sent to the address notified on the Purchase Order or Special Conditions.

**4. PRICE**

- 4.1 Oomiak will pay the Supplier for the Goods or Services in accordance with the prices for those Goods or Services set out in the Purchase Order or the Special Conditions, and on the terms set out in these Terms and Conditions, the Purchase Order and the Special Conditions.
- 4.2 If no price is stated on the Purchase Order, the Goods or Services shall be billed at the price last quoted by the Supplier to Oomiak.
- 4.3 Unless stated otherwise, prices stated in the Purchase Order are in Australian dollars and are exclusive of GST but include all other costs incurred by the Supplier in relation to the Goods or Services – including, but not limited to, the cost of delivery, cartage and freight, testing, certification, packaging, handling, storage, insurance, taxes, tariffs, duty and excise.

**5. PAYMENT**

- 5.1 Subject to clauses 5.2 to 5.4 of these Terms and Conditions, the contract price of Goods or Services shall be paid without deduction within 45 days of the end of the month in which Oomiak receives a correct rendered tax invoice or on such terms as described in the Purchase Order or the Special Conditions.
- 5.2 Oomiak will promptly notify the Supplier of any dispute with an invoice for Goods or Services, and any money due pursuant to that invoice which is disputed shall not be due and payable until that dispute has been resolved.
- 5.3 Oomiak will make payment in such manner as described in the Purchase Order or Special Conditions.
- 5.4 Oomiak may deduct from such amount that may be due to the Supplier pursuant to the Purchase Order or Special Conditions, any amounts payable by the Supplier to Oomiak.

**6. DELIVERY AND RISK**

- 6.1 Subject to clause 6.5 of these Terms and Conditions, title to the Goods passes to Oomiak free from any encumbrance or Security Interest whatsoever, on the earlier of delivery of the Goods or payment of the price noted in the Purchase Order or the Special Conditions (whichever is applicable). Risk in the Goods or Services remains with the Supplier until delivery to the Premises.
- 6.2 All Goods or Services delivered will be accepted by Oomiak, subject to inspection by Oomiak within a reasonable time after delivery and to Oomiak being reasonably satisfied with the Goods or Services.
- 6.3 All Goods delivered must have the Purchase Order number marked on the outside packaging of the Goods or otherwise clearly displayed.
- 6.4 Any Goods delivered in excess of the quantity designated in the Purchaser Order or Special Conditions may be returned at the Supplier's expense.

- 6.5 Unless otherwise agreed by Oomiak and the Supplier, the Supplier will not be entitled to register any form of Security Interest or encumbrance over the Goods or any personal property of Oomiak in accordance with the PPSA or any other State or Commonwealth legislation.
- 6.6 The Supplier agrees to, immediately after receiving a request from Oomiak to do so, deregister any Security Interest in the Goods or any personal property of Oomiak registered under the PPSA, and provide notice to Oomiak of such deregistration.
- 7. PACKAGING, STORAGE, AND HAZARDOUS GOODS**
- 7.1 The Goods must be packed in accordance with any relevant laws and any packaging requirements or specifications notified to the Supplier by Oomiak.
- 7.2 All Goods that are hazardous goods must be marked by the Supplier with the appropriate international danger symbol(s) and display the name of the material in English. Goods classified as "Dangerous Goods" in accordance with the Australian Dangerous Goods (ADG) Code must be packaged and marked in accordance with that Code and relevant approvals. Delivery and other documents must include disclosure of the hazard(s) and name of the material in English.
- 7.3 Goods that are hazardous must be accompanied by emergency material in English in the form of written instructions, labels or markings and Material Safety Data Sheets.
- 7.4 All information held by or reasonably available to the Supplier regarding any potential hazards or special requirements known or believed to exist in the transport, packaging, storage, handling or use of the Goods must be provided to Oomiak prior to delivery of the Goods at the Premises.
- 7.5 Where required by Oomiak or at law, the Supplier shall provide all necessary Certificates of Conformance, Certificates of Analysis and Test Certificates together with the Goods delivered pursuant to the Purchase Order.
- 8. SUBCONTRACTS**
- 8.1 The Supplier must not, without the prior written consent of Oomiak, assign or subcontract any portion of these Terms and Conditions except for the supply of raw materials and minor items.
- 8.2 The Supplier will be liable for the acts and omissions of its subcontractors as if they were the acts and omissions of the Supplier and will not by subcontracting the performance of any part of the Services, be relieved of its obligations or liabilities under these Terms and Conditions.
- 8.3 No subcontract may contain any terms which are inconsistent with these terms and conditions.
- 9. WARRANTIES**
- 9.1 The Supplier warrants that:
- the Goods and Services conform in all respects with the specifications set out in the Purchase Order and/or the Special Conditions;
  - the Services will be provided with due care and skill, in a proper and efficient manner and in compliance with all laws;
  - the Services will be personally performed by or supervised by the Key Personnel;
  - the Goods and Services will be free from all defects in material and workmanship and all defects due to design or performance;
  - the Goods are of merchantable quality and are fit for the purpose stated in the Purchase Order or the Special Conditions (or, if no purpose is stated, the purpose for which the Goods would ordinarily be used);
  - the Goods are free from all Security Interests, liens and encumbrances and the Supplier has good marketable title to deal in the Goods; and
  - the Goods and Services do not infringe any right of a third party, including intellectual property rights and the use by Oomiak of the Goods or the benefit of the Services will not infringe those rights.
- 9.2 If the Supplier is in breach of any of the warranties set out in this clause 9 then, without limitation to any other remedy which Oomiak may have as a result of those circumstances, the Supplier will perform, at no extra cost to Oomiak, any work required to rectify the breach.
- 9.3 Except as otherwise agreed by the parties and set out in the Purchase Order or the Special Conditions, the defects liability period will be 12 months.
- 9.4 If Oomiak considers that there are any defects or omissions in any Goods or Services, then as soon as reasonably practicable after being given written notice by Oomiak (acting reasonably), during the defects liability period, the Supplier must rectify those defects or omissions at its own cost. If the Supplier fails to make good the defective Goods or Services within the period stipulated by Oomiak, Oomiak may itself make good or engage a third party to make good the defective Goods or Services at the Supplier's cost.
- 9.5 Oomiak's inspection of or payment for the Goods or Services will not affect the rights of Oomiak under this clause 9 or otherwise relieve the Supplier of any of its obligations under these Terms and Conditions.
- 9.6 The warranties set out in clause 9.1 are in addition to any other warranties and guarantees contained in the Purchase Order or implied by law or provided by the Supplier or any third party.
- 10. OBSERVANCE OF LAWS**
- 10.1 The Supplier must comply with all applicable laws and with the requirements of any public authority or agency in relation to the supply of the Goods or Services. If the supply of the Goods or Services involves the Supplier coming on to the Premises, the Supplier must comply with any Oomiak rules or procedures for that Premises and any reasonable directions issued by Oomiak.
- 10.2 The Supplier warrants that it holds all necessary permits, licences or approvals in relation to the Goods or Services and must, if requested by Oomiak, provide copies of those permits, licences and approvals to Oomiak prior to supplying any Goods or Services or at such later time as requested by Oomiak.
- 10.3 If any Goods or Services to be supplied by the Supplier emit noise, dust, vibration, radiation or gas, have a high surface temperature or otherwise affect the environment or pose occupational health and safety risks (in the opinion of Oomiak), then the Supplier must, prior to supplying such Goods or Services, provide full details of such emissions, effects or risks, including material safety data sheets (if applicable).
- 11. INSURANCE**
- 11.1 The Supplier warrants that it has taken out with a reputable insurer, insurance coverage sufficient to cover any loss or costs that may be incurred and for which the Supplier may become liable to Oomiak in connection with the supply of the Goods or Service, including:
- product liability insurance relating to the Goods, including product recall cover, on an occurrence basis with an indemnity limit of not less than \$10 million per event;
  - public liability insurance on an occurrence basis with an indemnity limit of not less than \$10 million per event;
  - employers' liability and workers' compensation insurance (including common law liability and a principal's indemnity extension for acts and benefits at common law, where available) which complies with the laws for the time being in force in the State where the Goods or Services are supplied;

- (d) where the Supplier brings any motor vehicle owned operated or controlled by the Supplier onto any Premises, comprehensive and third party property damage and injury to persons liability insurance; and
- (e) any other insurance, which is required by law for the time being in force in the State(s) where the Goods or Services are to be supplied, and the Supplier must maintain such insurance for at least 2 years after the date of delivery.
- 11.2 On request, the Supplier must provide Oomiak with evidence of the currency of any insurance it is required to obtain under this clause.
- 12. INDEMNITY**
- 12.1 The Supplier must indemnify and keep indemnified Oomiak against any loss, damage, claim, action, cost or expense (including, without limitation, legal expense on a full indemnity basis) which Oomiak suffers in connection with:
- (a) any negligent act or failure to act by the Supplier or any of the Supplier's employees, agents, officers or contractors;
- (b) a breach of these Terms and Conditions or any Purchase Order by the Supplier;
- (c) any warranty given by the Supplier under these Terms and Conditions being incorrect or misleading in any way; and
- (d) any product liability claim or product recall relating to the Goods,
- except to the extent that an act or omission, breach of these Terms and Conditions, or negligence of Oomiak or its employees or agents, contractors or subcontractors contributed to the loss, damage, claim, action, cost or expense.
- 13. GST**
- 13.1 Words and expressions used which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning when used in these Terms and Conditions.
- 13.2 All prices referred to in the Purchase Order are exclusive of GST unless it is specifically noted otherwise. If the prices referred to in the Purchase Order are exclusive of GST, an amount equal to the GST payable on the taxable supply will be paid by Oomiak. Oomiak will not be obliged to make a payment on account of GST until the Supplier has issued a tax invoice to Oomiak for the supply to which the payment relates.
- 13.3 If payment made by one party to the other is a reimbursement or indemnification of a cost, expense, loss or liability incurred by that party then the payment will be reduced by an amount for which that party is entitled to a tax input credit.
- 14. TERMINATION OF SUPPLY**
- 14.1 Either party may terminate these Terms and Conditions, the Purchase Order and the Special Conditions (together, the "Agreement"), without prejudice to any other rights, immediately by notice in writing to the other party if that other party:
- (a) is in breach of a material term of the Agreement;
- (b) is in breach of a non-material term of the Agreement and fails to remedy that breach within seven (7) days of receiving written notice from the other party identifying the breach and requiring its remedy;
- (c) commits an act of bankruptcy or insolvency or makes or endeavours to make any scheme of arrangement with its creditors, or if any other order appointing a receiver, a receiver and manager or administrator or for the winding up of the other party (whether voluntary or otherwise) is made in any court of competent jurisdiction.
- 15. VARIATION**
- 15.1 Oomiak may at any time vary these Terms and Conditions and may notify the Supplier of these changes or provide any other notice under or in connection with these Terms and Conditions by email, facsimile, post or, in the case of a variation of these Terms and Conditions, by publishing the revised Terms and Conditions or notice on Oomiak's website.
- 15.2 The Supplier agrees to regularly check Oomiak's website for any notices of changes to these Terms and Conditions.
- 15.3 Any variations to these Terms and Conditions will apply to all Purchase Orders placed after the updated Terms and Conditions have been posted on our website or otherwise notified to the Supplier in accordance with this clause 15.
- 16. MISCELLANEOUS**
- 16.1 The Supplier will be an independent contractor.
- 16.2 The whole or any part of a clause of these Terms and Conditions shall be capable of severance without affecting the rest of these Terms and Conditions.
- 16.3 Oomiak and the Supplier must keep all information obtained as a result of or incidental to entering into these Terms and Conditions (including, without limitation, any information detailed in the Purchase Order and Special Conditions) confidential, and must not disclose that information to any person unless required to do so by law.
- 16.4 These Terms and Conditions shall be governed by the laws of the State of South Australia and Oomiak and the Supplier submit to the non-exclusive jurisdiction of the courts of or exercising jurisdiction of that State and Oomiak and the Supplier waive, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.
- 16.5 If Oomiak or the Supplier elects not to exercise any of their rights arising as a result of a breach of these Terms and Conditions, that will not constitute a waiver of any rights of that party relating to any subsequent or other breach.
- 16.6 Oomiak will not be in breach of any contract with the Supplier where it results from any act, matter or thing beyond the reasonable control of Oomiak.