

## Purchase Order

The Supplier agrees to supply, and the Purchaser agrees to acquire the Goods or Services (or both) on the terms of this Purchase Order and the PO Terms.

### 1. Supply

- (a) The term "Supplier" means the supplier named in the purchase order and the term "Purchaser" means Entag Group Pty Ltd.
- (b) The Supplier and Purchaser agree that these Purchase Order Terms ("**PO Terms**") will apply to the supply of Goods and Services by the Supplier to the Purchaser under a purchase order ("**PO**"). Together, the PO and these PO Terms make up the "**Agreement**".
- (c) If the event of inconsistency or conflict between one or more of the documents contained in the Agreement, the Purchase Order will prevail over these PO Terms.

### 2. Purchase Order

- (a) The parties may, by mutual agreement, agree to any variations or revisions to the PO, whether requested by the Supplier or Purchaser.
- (b) Any Services and Goods, including but not limited to any services provided on a time and materials basis, provided to Purchaser that may not be included in the Services and Goods under a PO and may not have been included in the Fees ("**Additional Services**" or "**Additional Goods**", as the case may be) will be charged to Purchaser in accordance with the rates and fees agreed beforehand between the parties in writing. Having been informed of the detail of the Additional Services or Additional Goods (or both) and rates and fees, written approval must be provided by the Purchaser to the Supplier prior to any such supply.
- (c) The Supplier acknowledges that this Agreement does not create an exclusive supply arrangement between the Supplier and the Purchaser.
- (d) The Purchaser may cancel or vary a Purchase Order at any time prior to the date which is [10] days before the Delivery Date (in respect of Goods) or the commencement of the Purchase Order Duration as specified in the PO (in respect of Services).
- (e) The Purchaser may cancel a Purchase Order at any other time if there is an issue with Delivery of the Goods, the Supplier is in breach of this Agreement or the Supplier becomes subject to an Insolvency Event.
- (f) If any of the above circumstances listed in clause 2(e) or 2(f) occur, then: the Supplier remains responsible for all Delivery costs, including the cost of returning the Goods to the Supplier; and the Purchaser will not be required to pay or compensate the Supplier or any third party in respect of the cancelled Purchase Order.

### 3. Services

- (a) The Supplier must provide the Services (and any Additional Services) to Purchaser in accordance with the Agreement.
- (b) Purchaser and each of its related entities may on-supply the Services (and any Additional Services) to and amongst the Purchaser's related bodies corporate and its customers, as deemed appropriate in Purchaser's discretion.
- (c) The parties' relationship is one of principal and independent contractor, not employer and employee, agency or partnership.
- (d) The Supplier can only delegate the performance of any of the Services (or other obligations under the Agreement) to subcontractors agreed in writing by Purchaser. Those subcontractors must be contractually obliged to uphold obligations the same as or equivalent to those imposed on the Supplier with respect Intellectual Property Rights in the Agreement and act in confidence. The Supplier remains Liable for all acts and omissions of any subcontractors.

### 4. Goods

- (a) The Supplier must source and supply the Goods to Purchaser in accordance with this Agreement, including in respect of packaging, specifications and other agreed requirements, and within any timeframe specified by the Purchaser.
- (b) Purchaser and each of its related entities may on-supply the Goods (and any Additional Goods) to and amongst the Purchaser's related bodies corporate and customers, as deemed appropriate in Purchaser's discretion.
- (c) If, within a reasonable period after Delivery of particular Goods and, in any event no later than 30 days after Delivery, and notwithstanding payment for or acceptance of the Goods, Purchaser finds that the Goods do not meet the agreed specifications, standards or other requirements set out in the Agreement, Purchaser may notify the Supplier that it has rejected the Goods ("**Rejected Goods**") and will be entitled, at its option, to, return the Rejected Goods, require the Supplier to retrieve the Rejected Goods, destroy the Rejected Goods. The Supplier may be required to re-supply the Rejected Goods, if the Purchaser rejected the Rejected Goods in accordance with this clause 4(c).
- (d) Title to and risk in the Goods will pass from the Supplier to the Purchaser on Delivery. If the Purchaser requires the Supplier to retrieve the Goods in accordance with the Agreement, then title to and risk in those Goods will pass back to the Supplier at the time of collection of those Goods by the Supplier.
- (e) The parties acknowledge and agree that:
  - (1) under the Australian Consumer Law, the Goods come with certain guarantees that cannot be excluded; and
  - (2) nothing in the Agreement limits, replaces or otherwise affects the Supplier's obligations under the Australian Consumer Law.
- (f) Where Goods supplied by the Supplier to Purchaser are resold by Purchaser, and Purchaser is subsequently required to refund or replace those Goods under the Australian Consumer Law ("**Warranty Claim**"):
  - (1) Purchaser must notify the Supplier that a Warranty Claim has been made and provide written details of the Warranty Claim. Purchaser is not required to provide any further information or evidence in support of any Warranty Claim;
  - (2) the Supplier must refund or credit to Purchaser an amount equal to the value of the Goods the subject of the Warranty Claim ("**Defective Goods**") within two weeks of receipt of notice of the Warranty Claim; and
  - (3) Purchaser will be entitled, at its option, to: return the Defective Goods to the Supplier at the Supplier's cost; or require the Supplier to retrieve the Defective Goods from the Delivery Point as soon as practicable at the Supplier's cost; or destroy the Defective Goods and recover its reasonable costs of doing so from the Supplier, and in all instances require the Supplier to pay or credit to Purchaser its reasonable costs incurred in examining and storing the Defective Goods pending return or collection of the Defective Goods.
  - (4) The Supplier must comply (and ensure that all the Supplier's representatives, related entities and subcontractors comply) with any reasonable requests made by Purchaser for assistance, for the provision of information or documents as required by Purchaser to enable Purchaser's own compliance under or related to the Australian Consumer Law or in order to process any Warranty Claim.

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## 5. Obligations

The Supplier must:

- (a) supply the Goods and Services (or either, as applicable) to the Supplier free from any encumbrances;
- (b) ensure the Goods are safe, lasting have no faults, look acceptable, new, free from defects, of merchantable quality and fit for their usual purpose;
- (c) ensure the Goods conform with all aspects with the description in the Purchase Order;
- (d) ensure the Goods are provided in a timely manner, and not later than the date specified in the relevant PO;
- (e) ensure the Services are provided in a proper, careful manner by reasonably experienced skilled and experienced individuals; and
- (f) ensure the supply of the Goods and Services (or either, as applicable) complies with all applicable laws, policies and instructions and its Personnel comply with all applicable laws.

## 6. Fees

- (a) Purchaser agrees to pay the Fees to the Supplier at such time and in the manner specified in the Purchase Order.
- (b) Fees may not be reviewed or amended for any current Purchase Order.
- (c) Other than in the case of a genuine dispute being raised in respect of a Tax Invoice (per this clause 6), the Purchaser will make payment of the Fees to the Supplier within 14 days of receiving a valid Tax Invoice from the Supplier.
- (d) Unless expressly stated to the contrary, all amounts under this contract are inclusive of Goods and Services Tax, payable in accordance with Australian *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

## 7. Intellectual Property Rights

- (a) No rights of ownership to a party's Background IP is transferred under this Agreement, unless expressly indicated otherwise.
- (b) On and from the date of this Agreement, the Supplier grants to the Purchaser (and its related entities or successor in title, as the case may be), a non-exclusive, non-transferable, irrevocable, royalty-free licence to the Supplier Background IP for the duration of this Agreement and in perpetuity thereafter to the extent necessary for the Purchaser, its related entities and customers to utilise any Good, Service or Deliverable.
- (c) Any Intellectual Property Rights created in the course of this Agreement are automatically assigned to the Purchaser on creation.

## 8. Warranties

Purchaser warrants to Supplier that it has the full right and title to enter into the Agreement and grant the rights it sets out to Supplier. Supplier warrants to Purchaser that:

- (a) it has the full right and title to enter into the Agreement and to grant the rights it sets out to Purchaser;
- (b) any representations made by Supplier are true and correct;
- (c) it and its Personnel have the required knowledge and skills to provide the Services;
- (d) the Services (and other obligations under the Agreement) are carried out to a high standard of skill, competence, diligence, judgment and care;
- (e) the Services, Deliverables, Goods and use of the same by the Purchaser, its related entities and customers will not infringe Intellectual Property Rights of any third party; and
- (f) it will comply with all directions from Purchaser with regard to delivery of the Services and Deliverables.

## 9. Liability

- (a) To the extent permitted by law, in no event will a party be Liable to the other party for Consequential Loss, even if

that party has been made aware of the possibility of such Consequential Loss prior to entering into the Agreement.

- (b) To the full extent permitted by law, any term which would otherwise be implied into the Agreement is excluded. If any law implies or imposes terms into the Agreement which cannot be lawfully excluded, such terms will apply, save that the Liability of Purchaser for breach of any such term will be limited in accordance with clause 9(c).
- (c) If Purchaser is Liable in connection with the Agreement (whether in contract, tort or statute), then irrespective of anything else in the Agreement, Purchaser's cumulative Liability in the aggregate (to the fullest extent permitted by law) shall in no event exceed [AUD\$1,000].

## 10. Indemnity

Supplier indemnifies, and will keep indemnified, Purchaser, its related entities, customers, directors, officers and Personnel (**Indemnified Persons**) against Claims or Loss against or by any Indemnified Person arising from or in connection with:

- (a) any fraud, negligence, reckless or wilful act or omission by Supplier (and any of its Personnel);
- (b) infringement of the Intellectual Property Rights of Purchaser or a third party; and
- (c) breach by Supplier or its Personnel of clause **Error! Reference source not found.**

## 11. Termination

Either party may terminate the Agreement immediately by written notice upon the occurrence of one of the following events:

- (a) if the other party is in breach of the Agreement and that other party has failed to remedy that breach within 30 days of a written notice to it from the first-mentioned party, specifying the breach and requiring it to be remedied;
- (b) an Insolvency Event occurs in respect of the other party;
- (c) the other party is in breach of the Agreement and that breach is not capable of remedy; or
- (d) an event of exceptional circumstances continues for 120 days from the date on which it commenced.

Purchaser may terminate the Agreement for any reason upon giving Supplier 30 days prior written notice.

Termination shall not prejudice or affect any right or action which shall have accrued or shall thereafter accrue to either party.

The following clauses shall survive termination of the Agreement: clauses 7(b) (Intellectual Property Rights), 9 (Liability), 10 (Indemnity), 11 (re Consequences of termination) and this clause. Upon termination or expiration of this Agreement delivery of the Services or Goods under the PO which is comprised in this Agreement shall cease.

## 12. Miscellaneous

- (a) These terms will be governed by and construed in accordance with the laws of Queensland, Australia and the parties submit to the non-exclusive jurisdiction of the Courts of Queensland, Australia.
- (b) Purchaser can assign its obligations in this Agreement by providing Supplier with 30 days' prior written notice of such assignment.
- (c) Supplier must not assign, transfer or novate all or any part of its rights or obligations under or relating to this Agreement or grant, declare, create or dispose of any right or interest in it, without the prior written consent of Purchaser. Purchaser may withhold its consent in its sole discretion.
- (d) If a provision of the Agreement is illegal, invalid, unenforceable or void in a jurisdiction it is severed for that jurisdiction and the remainder of the Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.
- (e) An amendment or variation to the Agreement is not effective unless it is in writing and signed by the parties.
- (f) A party's waiver of a right under or relating to the Agreement, whether prospectively or retrospectively, is

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not effective unless it is in writing and signed by that party. No other act, omission or delay by a party will constitute a waiver of a right.

- (g) This Agreement is the entire agreement and understanding between the parties relating to the subject matter of the Agreement and supersedes any prior agreement, representation (written or oral) or understanding on anything connected with that subject matter.

## 13. Definitions

### 13.1 Definitions

In this Agreement:

**Background IP** means all Intellectual Property Rights generated prior to or independently of the Agreement.

**Claim** means, in relation to a person, any action, allegation, claim, demand, judgment, liability, proceeding, remedy, right of action or right of set-off made against the person concerned however it arises whether: it is present, unascertained, immediate, future or contingent; it is based in contract, tort, statute or otherwise; or it involves a third party or a party to this Agreement.

**Consequential Loss** means any of the following: loss of revenue; loss of profits; loss of opportunity to make profits; loss of business; loss of business opportunity; loss of use or amenity, or loss of anticipated savings; special, exemplary or punitive damages; and any loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such loss, whether or not such loss was in the contemplation of the parties at the time of entry into this Agreement, including any of the above types of loss arising from an interruption to a business or activity.

**Delivery** means delivery of the Goods to the Delivery Address.

**Delivery Address** means the address specified in the Purchase Order.

**Deliverables** means the specific materials created in the course of or in connection with the Agreement or Services to be supplied by the Supplier to the Purchaser.

**Fee** means the fee payable by the Purchaser for the Services or Goods or both, as set out in the PO.

**Goods** means the goods to be sourced and provided by the Supplier to the Purchaser under the Agreement and as specified in the PO from time to time.

**Insolvency Event** means an event of bankruptcy or insolvency, an assignment for the benefit of creditors, the appointment of a receiver, receiver and manager, provisional liquidator, liquidator and official manager or any similar person to any assets of a person, a failure to comply with a statutory demand, or anything else which occurs which is analogous or has a substantially similar effect, under the laws of any jurisdiction, or the person is otherwise insolvent or unable to pay its debts as and when they fall due.

**Intellectual Property Rights** means all current and future registered and unregistered rights in respect of copyright, circuit layouts, designs, trade marks, know-how, confidential information, patents, inventions, plant breeder's rights and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

**Liability** means any liability, debt or obligation, whether actual, contingent or prospective, present or future, qualified or unqualified or incurred jointly or severally with any other person.

**Loss** means any loss (including Consequential Loss), claims, actions, liabilities, damages, expenses, diminution in value or deficiency of any kind whether direct, indirect, consequential or otherwise.

**Personnel** means in relation to a party, any related body corporate, related entity, employee, officer, agent, contractor, professional adviser of that party.

**Services** means the services to be provided by the Supplier to the Purchaser under the Agreement and as specified in the PO from time to time.

**Tax Invoice** means a document that complies with the requirements of the GST Law for a tax invoice.

**Warranty Claim** has the meaning given in clause 4(f).