

POWINS PURCHASING TERMS AND CONDITIONS

1. PARTIES

- 1.1. The parties to this Contract are the POWINS Pty Ltd (we, us, our) and the person or organisation named as supplier in the Purchase Order (you, your).

2. INTERPRETATION

- 2.1. In this Contract unless the contrary intention appears:
- a. "Contract" includes the Purchase Order and these T&Cs and any Special T&Cs (which are T&Cs other than these T&Cs or an existing contract or standing offer arrangement that relates to the G&S), referred to in the Purchase Order. If any such Special T&Cs are inconsistent with these T&Cs, the former prevail to the extent of the inconsistency. Subject to this clause, the T&Cs of this Contract prevail in any conflict between them and any other T&Cs provided to you at anytime, unless we expressly approve, in writing, that the other T&Cs prevail.
 - b. "G&S" means goods or services or both, as the case maybe, as specified in the Purchase Order.
 - c. "General Interest Charge Rate" (GICR) means the interest charge determined under section 8AAD of the *Taxation Administration Act 1953* on the day that payment is due. Details of the GICR are available from the Australian Taxation Office website;
 - d. "manufacture" includes grow, extract, produce, process and assemble;
 - e. "small business" is an enterprise that employs less than the full time equivalent of 20 persons;
 - f. "T&Cs" means terms and conditions;
 - g. "you" includes your officers, employees, agents and subcontractors.
 - h. clause headings, words capitalised or in bold format are inserted for convenience only, and have no effect in limiting or extending the language of provisions, except for the purpose of rectifying any erroneous cross reference.
- 2.2. These T&Cs apply to any Contract entered into by us issuing a Purchase Order to you, whether as an offer or acceptance of an offer to provide the G&S specified in the Purchase Order.
- 2.3. The T&Cs in the Contract, including any Special T&Cs, apply to the maximum extent permitted by law, subject to paragraph 2.1(a) above.
- 2.4. If this Purchase Order is for G&S which are subject to an existing contract or standing offer between us, regardless of whether it is referred to in this Purchase Order, then the terms and conditions of that contract or standing offer will apply and these T&Cs (other than this clause 2.4) will have no effect.

3. SERVICES

- 3.1. This Clause 3 applies where the Contract includes the performance of Services.
- 3.2. You warrant that you will render the Services to a high standard and with due skill and care, and that any materials supplied in connection with the Services will be fit for purpose.
- 3.3. The services must be free from defects in performance, meet the purpose, and be complete according to specifications specified in the Purchase Order.
- 3.4. If the Services are incomplete, or in our opinion do not satisfy the specifications, we may, by notice, require that you remedy the defect, complete the Services, or redo the Services at no additional cost to us or we may terminate the contract.
- 3.5. Where you fail to remedy a defect in performance of the services, complete the services, or redo the services within 30 days after notification by us under clause 3.4 we may perform or have performed the necessary work and recover the cost from you.

4. GOODS

- 4.1. This Clause 4 applies where the Contract includes the supply of goods.
- 4.2. The goods must be packed so as to ensure their safe delivery.
- 4.3. The goods must be new (unless stated otherwise in the Purchase Order), fit for the purpose for which they are required, free from defect in materials and workmanship, at least of merchantable quality and meet the specifications (if any) specified in the Purchase Order.
- 4.4. Where applicable, goods that relate to new equipment and appliances must have minimum energy ratings and power management features that comply with the US Environment Protection Agency Energy Star standard.
- 4.5. If we require you to submit samples of goods, you must not start bulk manufacture until we have approved the samples.
- 4.6. We will, within 5 days after the goods are delivered or otherwise offered for acceptance, inspect the goods and either accept them or reject them, if they are found not to be in accordance with the Contract, by giving written notice to that effect to you.
- 4.7. After acceptance, we may reject goods for any non-conformity with the Contract, which would not have been discoverable by reasonable inspection before acceptance.
- 4.8. We will not be liable to pay for any rejected goods or for any damage attributable to, or costs arising from, inspection or rejection of the goods.
- 4.9. If we reject any goods, you must, without prejudice to our rights otherwise arising under the Contract or the general law, comply with our requirement to:
- a. replace the rejected goods with goods in accordance with the Contract in all respects, without cost to us;
 - b. refund any payment for the rejected goods; or
 - c. repair the goods, on site or otherwise, to our satisfaction; and
 - d. in the case of (a) or (b), remove the goods at your expense.
- 4.10. Subject to clause 4.6, ownership of, and risk of loss or damage to, the goods passes to us on acceptance of the goods by us.
- 4.11. You warrant that:
- a. you are the legal and beneficial owner of the goods, free of any third party interests; and
 - b. for the warranty period, the goods are free from defects in design, materials and workmanship.
- 4.12. The warranty period commences on the date of delivery or acceptance of the goods, whichever is the later, and shall be valid for 90 days, or the length of your or the manufacturer's standard warranty period, whichever is longer (Warranty Period).
- 4.13. If we, within a reasonable time after acceptance, give you notice of any defect or omission discovered in the goods during any warranty period, you must, during the Warranty Period, remedy defects in warranted goods by repair, replacement or modification. You must meet all costs incidental to the discharge of warranty obligations, including any packing, freight, disassembly and reassembly costs.
- 4.14. Where you fail to rectify a defect covered by warranty within 30 days after written notification by us, we may perform, or have performed, the necessary remedial work, and all costs and outgoings incurred will be reimbursed to us by you.

5. PROVISION & INSPECTION OF GOODS & SERVICES

- 5.1. The G&S must be provided and installed (if applicable) at the time and place specified in the Purchase Order, unless we specify, in writing, a later time for provision of the G&S.
- 5.2. Without any additional cost to us, you must, if required by us, provide access to your premises or any subcontractor's premises, and provide all other necessary assistance to our representatives to inspect the manufacturing of the goods.

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6. CONTRACT PRICE

- 6.1. The contract price for the G&S specified in the Purchase Order includes all taxes (excluding Goods and Services Tax (GST)), duties and other imposts for which you are liable, insurance costs and amounts payable for the use (whether in course of manufacture or usage of goods or of performance of the services or their enjoyment) of patents, copyright, registered designs trade marks and other intellectual property rights and charges for performance of the services or supply of the goods.
- 6.2. On payment of the contract price you agree that all intellectual property created under this Contract vests in us.

7. PAYMENT AND INVOICES

- 7.1. Subject to clauses 3.3 and 4.8 and acceptance by us of the goods or satisfactory completion of the services, we will pay for the G&S within 45 days from the date of receipt month end by us of a correctly rendered tax invoice, unless otherwise provided in the Purchase Order.
- 7.2. You will submit a valid tax invoice in accordance with *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) and GST Ruling 2000/3 after delivery of the goods to us, or performance of the services, or as otherwise provided in the Purchase Order. A tax invoice will be correctly rendered if:
 - a. the amount claimed is properly payable, correctly calculated, due for payment and in accordance with the Purchase Order;
 - b. it is complete, correctly addressed and includes the Purchase Order number; and
 - c. where necessary, is accompanied by documentation substantiating the amount claimed.
- 7.3. You will be notified by us of any amounts in dispute and where necessary we will request a replacement tax invoice and/or credit note or adjustment note, then process the tax invoice for payment once correctly rendered.

8. TERMINATION

- 8.1. Without prejudice to any rights and remedies we have under the Contract or otherwise, we may, by notice in writing to you, terminate the Contract if you:
 - a. fail to deliver the goods or perform the services, or any part thereof, in accordance with the Contract or are in breach of any other material term of the Contract;
 - b. being a corporation, come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001*, or have an order made against you for the purpose of placing you under external administration;
 - c. being an individual, become bankrupt or enter into a scheme of arrangement with creditors;
 - d. are convicted for a criminal offence at any time between the date this Contract takes effect and the acceptance of the goods or the performance of the services.
 - e. suffer an execution against your assets having an adverse effect on your ability to perform the Contract;
 - f. fail to:
 - i. commence performance of the Contract or to proceed at a rate of progress that ensures the due and proper completion of the Contract; or
 - ii. take action to remedy a breach of an obligation under the Contract and do not commence to remedy that breach within 7 days of being given notice by us requiring you to do so, or do not completely remedy the breach within 30 days of being given that notice; or
 - g. assign your rights otherwise than in accordance with clause 9.2.

8.2. If this Contract is terminated:

- a. the parties are relieved from future performance without prejudice to any right of action that exists at the date of termination;
- b. our rights to recover damages from you are not affected, and
- c. you indemnify us in respect of any loss we may incur in purchasing similar G&S from alternative suppliers.

9. SUBCONTRACTING & ASSIGNMENT

- 9.1. You must not, without our consent in writing, subcontract the whole or any part of the work in the provision of the G&S. You are liable to us, for the acts and omissions of any subcontractor as if they were your acts or omissions.
- 9.2. You must not, without our consent in writing, assign your rights or obligations under the Contract.

10. NEGATION OF RELATIONSHIPS

- 10.1. You are not by virtue of this Contract, must not represent yourself to be, and must ensure that none of your employees or agents represents themselves to be, our employee, partner or agent or otherwise able to bind or represent us.

11. ENTIRE AGREEMENT & VARIATIONS

- 11.1. This Contract constitutes the entire agreement between the parties in relation to its subject matter.
- 11.2. No agreement or understanding varying or extending this Contract, will be legally binding upon either party unless in writing and signed by both parties.

12. APPLICABLE LAW

- 12.1. This Contract is governed by and construed in accordance with the law in force in the Australian Capital Territory.
- 12.2. You agree, in carrying out this Contract, to comply with all applicable laws, and ensure that any subcontractor complies with all applicable laws.
- 12.3. You acknowledge that you are a 'contracted service provider' within the meaning of the *Privacy Act 1988* (Cth) and you agree to comply with your obligations under that Act.

13. INSURANCE & INDEMNITY

- 13.1. You must, for so long as any obligations remain in connection with this Contract, effect and maintain insurance appropriate to those obligations. Upon request, you must provide us with proof of insurance acceptable to us.
- 13.2. You must at all times indemnify and hold us, our officers, employees and agents harmless from and against all losses, damages and expenses (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by us arising from:
 - a. any negligent, wilful or unlawful act or omission by you in connection with this Contract;
 - b. any breach by you of this Contract;
 - c. any action or claim for alleged infringement of any patent, copyright, registered design, trademark or any other intellectual property rights, by reason of our purchase, possession or use of the goods or our receipt or enjoyment of the services.