

## **GENERAL CONDITIONS FOR SUPPLY OF GOODS AND SERVICES TO OPTICOMM LIMITED AND ITS RELATED BODIES CORPORATE**

### **1 Agreement**

- 1.1 Vendor will deliver the Goods to, and/or provide the Services at, the Delivery Location for the Price in accordance with these Terms.
- 1.2 These Terms apply to the exclusion of any terms and conditions appearing on or forming part of the Vendor's dockets, invoices or other documentation.

### **2 Purchase Order and Price**

- 2.1 The Price of Goods and Services in a Purchase Order must comply with any then-current price list or quote issued by the Vendor.
- 2.2 Vendor will be deemed to have accepted a Purchase Order unless it rejects that Purchase Order within 2 Business Days of its receipt.
- 2.3 On acceptance of a Purchase Order (either expressly in writing or deemed under clause 2.2) these Terms are binding on the Vendor. Each Purchase Order comprises a separate agreement between the parties (unless the parties have executed a separate supply agreement, in which case multiple purchase orders may be issued under that single agreement).
- 2.4 The Price is fixed and will not be subject to adjustment for rise and fall, exchange rate variations or any other reason, except as provided in these Terms or as otherwise agreed in writing by an authorised representative of OptiComm (as identified by OptiComm by written notice to the Vendor from time to time).
- 2.5 The Price includes:
  - (a) all taxes, levies and fees (excluding GST) which are payable in relation to the supply of the Goods or provision of Services. For the avoidance of doubt, the Vendor must pay all such taxes, levies and fees; and
  - (b) all costs associated with delivery, including the transport, loading and unloading of the Goods (and, if applicable, the Services).
- 2.6 OptiComm may pay the Price in any manner agreed in writing by the parties. All payments by OptiComm will be on account only and will not be an admission that the Goods or Services comply with these Terms.

### **3 Delivery**

- 3.1 Vendor must deliver the Goods to, and/or provide the Services at, the Delivery Location by the Delivery Date. OptiComm is not obliged to accept early delivery of the Goods or provision of the Services.
- 3.2 Vendor must notify OptiComm immediately upon the Vendor becoming aware or having reasonable grounds to believe that it will not be able to deliver the Goods to, or provide the Services at, the Delivery Location by the Delivery Date.
- 3.3 If all the Goods are not delivered to, or all of the Services are not provided at, the Delivery Location by the Delivery Date, OptiComm will be entitled to recover general law damages from the Vendor for any loss, cost, damage or expense suffered or incurred by OptiComm by reason of the Vendor's delay, unless the failure to deliver the Goods or provide the Services was either (a) caused by a Force Majeure Event, in which case the Vendor will not be liable, or (b) directly caused or contributed to by any negligent act or omission of OptiComm, in which case the Vendor will not be liable to the extent such negligent act or omission of OptiComm contributed to the Vendor's delay.
- 3.4 Where a Purchase Order provides a delivery time for the Goods and/or Services, time is of the essence with respect to that delivery.
- 3.5 OptiComm may deduct from any amount owing to the Vendor, including any part payment of the Price, any amount which is payable by the Vendor to OptiComm under these Terms.

### **4 Inspection and Rejection of Goods and Services**

- 4.1 OptiComm may at any reasonable time (and with reasonable notice) enter the Vendor's premises where the Goods are being manufactured or Services are being provided to inspect, examine or test the Goods and/or Services. OptiComm will comply with all reasonable directions of the Vendor in respect of such access.
- 4.2 If following any inspection, examination or testing OptiComm discovers, anticipates or suspects (on reasonable grounds) that the Goods or Services may be defective or otherwise in breach of these Terms (including any warranty given under clause 5), OptiComm may (without limiting any other right available to it):
  - (a) reject or return any affected Goods or Services;
  - (b) give the Vendor a notice requiring it to, at its cost and within the reasonable time prescribed in the notice, remove, rectify or replace the Goods (at OptiComm's election) or to make good any defective works in the Goods, or to provide the Services again; or
  - (c) if the Vendor does not remedy a defect in the Goods or Services within the time identified in a notice under clause 4.2(b), rectify or re-supply the Goods or have the Goods or Services rectified or re-supplied and the cost, loss, damage and expense suffered or incurred by OptiComm will be a debt due from the Vendor to OptiComm.
- 4.3 If OptiComm rejects any Goods or Services under clause 4.2(a), the Vendor must pay OptiComm all amounts paid by OptiComm for the rejected Goods or Services.
- 4.4 The Vendor must at its cost:
  - (a) comply with any notice under clause 4.2(b); and
  - (b) collect and remove any Goods (and any parts or items supplied as part of a Service) that have been rejected under clause 4.2(a).

### **5 Warranties, intellectual property and policies**

- 5.1 The Vendor warrants that:
  - (a) each Service will be performed promptly, with due diligence, care and skill, by appropriately trained, experienced and supervised persons and to the best industry standards and be fit for the expected purpose;
  - (b) the Goods will be manufactured and delivered in accordance with:
    - (i) these Terms (including their description in the Purchase Order);
    - (ii) any relevant specifications;
    - (iii) any quality assurance requirements prescribed in the Purchase Order;
    - (iv) any other warranties or guarantees contained in these Terms; and
    - (v) all applicable Australian standards and law;
  - (c) the materials and standards of workmanship used to produce the Goods will be of a high quality;
  - (d) the Goods will be fit for their intended purpose and free from defects;
  - (e) the Goods will conform to any sample supplied;
  - (f) the Goods will be suitably packed to avoid damage in transit or storage;

- (g) the Goods (and any parts or items supplied as part of a Service) will be free from all security interests under the PPSA, liens and encumbrances and the Vendor has full title and ownership to sell the Goods;
  - (h) it has the necessary skills, resources and experience to successfully, effectively and efficiently supply the Goods and provide the Services in accordance with these Terms;
  - (i) all Goods supplied and Services provided will comply with all applicable laws and regulations and the Vendor will, at its cost, hold and maintain in good standing all necessary licences, permits, authorisations and approvals required in order to supply the Goods and provide the Services in accordance with these Terms; and
  - (j) it has all Intellectual Property necessary to supply the Goods and provide the Services in accordance with these Terms, and that the supply of the Goods and provision of Services will not infringe any third party's Intellectual Property rights.
- 5.2 The warranties in clause 5.1 are in addition to any warranties which are or may be implied under any legislation applicable to the Goods and Services (including the Australian Consumer Law).
- 5.3 The Vendor indemnifies OptiComm against any loss, cost, damage or expense incurred by OptiComm as a consequence of or in connection with any claim by a third party that it has a right to any Intellectual Property in the Goods or Services.
- 5.4 The Vendor grants to OptiComm a royalty-free, perpetual and irrevocable licence to use all Intellectual Property in the Goods and Services for any other works which OptiComm may perform in relation to those Goods and Services in the future. The licence will remain vested in OptiComm despite the termination of these Terms and in relation to any such works (or the Goods and/or Services) OptiComm may assign or sublicense the rights granted by the licence without the consent of the Vendor. Any Vendor Intellectual Property will remain the property of the Vendor and OptiComm acknowledges that nothing in these Terms will be construed as transferring title in or ownership of any Vendor Intellectual Property to OptiComm.

## 6 Invoicing and Price disputes

- 6.1 On delivery of the Goods or provision of the Services, the Vendor must give OptiComm a valid tax invoice (**Invoice**) for the Price identified in the Purchase Order. An Invoice must include:
- (a) a reference to these Terms, including any line item numbers on the order and the Purchase Order number;
  - (b) a detailed description of the Goods delivered or Services provided in respect of which the Invoice relates;
  - (c) an individual reference number for OptiComm to quote with remittance of payment; and
  - (d) the Price claimed by the Vendor, broken down to reflect the Price component (if any) identified in the Purchase Order to which the Invoice relates.
- 6.2 If an Invoice provided by the Vendor does not satisfy the requirements of clause 6.1, OptiComm may reject the Invoice and require the Vendor to re-submit an Invoice which meets the requirements of clause 6.1.
- 6.3 On request, the Vendor will provide OptiComm with all relevant records to calculate and verify the amount set out in any Invoice.
- 6.4 Subject to clause 6.5, OptiComm will pay the amount claimed by the Vendor in a valid Invoice which meets the requirements of clause 6.1 within 60 days of receipt of the Invoice by OptiComm (or such other period as may be agreed in writing by the parties).
- 6.5 If OptiComm disagrees with the amount claimed by the Vendor in an Invoice, OptiComm must determine the value of the Goods delivered or Services provided by the Vendor in accordance with these Terms and must issue a payment schedule to the Vendor within 10 Business Days of receiving the Invoice under clause 6.1 stating:
- (a) the amount determined by OptiComm, acting reasonably, as the correct Price (having regard to the provisions of these Terms);
  - (b) the reason why the amount in the payment schedule is different than the amount claimed by the Vendor; and
  - (c) if the reason for the difference is that OptiComm has deducted, set-off or withheld payment (or proposes to take such action) for any reason, the reason for the deduction, set-off or withholding.

Except to the extent of any manifest error in the payment schedule, the Vendor must, within 5 Business Days of receipt of the payment schedule, provide OptiComm with a revised Invoice in accordance with clause 6.1 for the amount assessed as payable in the payment schedule. Nothing in this clause 6.5 will limit or affect the right of the Vendor to dispute OptiComm's determination of the value of the Goods delivered or Services under this clause 6.5. OptiComm must pay the amount determined as payable to the Vendor under this clause 6.5 within 60 days (or within any other agreed timeframe) in which the revised Invoice is received by OptiComm.

## 7 Goods and Services Tax

- 7.1 Unless expressly stated otherwise in these Terms, the Price does not include GST. OptiComm is not required to pay the GST component of the Price until OptiComm receives a *tax invoice* from the Vendor in respect of the *taxable supply*.
- 7.2 If an *adjustment event* occurs, the Vendor must issue an *adjustment note* and a payment must be made as between the parties to reflect the adjusted amount of the GST on the *taxable supply*.
- 7.3 In this clause 7, italicised expressions have the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

## 8 Risk and title

- 8.1 Risk in the Goods (and any parts or items supplied as part of a Service) passes to OptiComm on delivery and acceptance of the Goods or Services by OptiComm.
- 8.2 Title to the Goods (and any parts or items supplied as part of a Service) passes to OptiComm when the Goods are paid for in full by OptiComm.

## 9 Indemnity

- 9.1 The Vendor indemnifies OptiComm and its officers, employees, agents and other contractors against any claim, expense, liability or loss arising out of or in connection with:
- (a) personal injury or death or loss of, or damage to, any other property including, without limitation, OptiComm property arising out of or as a consequence of any act or omission of the Vendor (or its agent, other contractors or subcontractors); and/or
  - (b) any breach by the Vendor of these Terms,
- but this indemnity will be reduced proportionally to the extent that any act or omission of OptiComm or its agents or other contractors (not being employed by the Vendor) contributed to the claim, expense, liability, loss, injury, death, or damage.
- 9.2 Notwithstanding any other provision of these Terms, neither OptiComm or the Vendor will be liable to the other in respect of any indirect, consequential or special damages, loss of profit, loss of revenue, loss of goodwill or loss of business opportunity except to the extent such liability is covered by a policy of insurance obtained by OptiComm or the Vendor (as applicable).

## 10 Occupational Health and Safety

- 10.1 The Vendor is responsible for the health and safety of its employees.
- 10.2 Without limitation to its other obligations under these Terms, the Vendor must:
- (a) comply with all requirements under OH&S Legislation;

- (b) comply with any reasonable OptiComm (or nominee) direction in relation to occupational health and safety at a Delivery Location;
- (c) comply with any OptiComm's occupational health and safety requirements in relation to the Vendor's conduct at a Delivery Location (as notified by OptiComm to the Vendor from time to time); and
- (d) cause all of its employees at the Delivery Location to complete such safety or other training or induction as OptiComm may direct (acting reasonably).

## **11 Insurance**

- 11.1 At all times, the Vendor must effect and maintain with a reputable insurer professional indemnity and public liability insurance for not less than \$20 million per occurrence, and appropriate workers compensation and plant and equipment insurance reflecting the nature, value and volume of Goods and Services to be supplied to OptiComm.
- 11.2 On request, the Vendor will provide evidence of the terms and currency of insurances to OptiComm.

## **12 PPSA**

- 12.1 If the Vendor believes that a Security Interest arises under these Terms, it must notify OptiComm at least five days before the Vendor takes steps to register such Security Interest on the PPS Register.
- 12.2 Within ten days of the earlier of payment of the Price or the expiry or termination of these Terms, the Vendor will at its cost procure the removal from the PPS Register each Security Interest it has registered in connection with these Terms (if any) and must provide OptiComm with verification of the removal of the Security Interests pursuant to section 157 of the PPSA.
- 12.3 For the purposes of section 115 of the PPSA, the parties agree the following sections of the PPSA will not apply to any Collateral which is the subject of a Security Interest granted under these Terms: section 120 (enforcement of liquid assets), section 126 (apparent possession), and section 128 (secured party may dispose of collateral).
- 12.4 If OptiComm considers the PPSA applies or will in the future apply to OptiComm's rights under these Terms, and that the PPSA:
- (a) affects or could affect OptiComm's security position or the rights or obligations of OptiComm under or in connection with these Terms; and
  - (b) enables or would enable OptiComm's security position to be improved,
- OptiComm may give notice requiring the Vendor to do anything (including provide all reasonable assistance to OptiComm in relation to the registration of a security in respect of OptiComm's rights, including the execution of documents relating to such registration) that OptiComm considers necessary. Vendor will comply with such requirements within the reasonable period stated in the notice.
- 12.5 In this clause 12, the terms 'Security Interest' and 'Collateral' have the same meaning as given in the PPSA.

## **13 Confidentiality**

- 13.1 Each party must treat these Terms and all information provided by the other (or on that party's behalf) under or in respect of these Terms (**disclosing party**) as confidential and must not disclose:
- (a) its existence, the information contained in it or its subject matter to any third party or use it for advertisement, display or publication without the prior written consent of the disclosing party; or
  - (b) information about obligations secured by a Security Interest under these Terms, terms of payment or performance in respect of any obligation under these Terms at any particular time or any information of the kind described in section 275(1) of the PPSA, except:
    - (c) to its officers, employees, legal and other advisers and auditors for the purpose of supplying or receiving the Goods and/or Services;
    - (d) with the consent of the disclosing party; or
    - (e) to the extent it is necessary for the disclosing party to disclose information to (i) enforce its rights under these Terms, or (ii) comply with any applicable law, the rules of any securities or stock exchange or an order of a court or tribunal (and, unless otherwise restricted by law, the disclosing party is given prior notice of such compliance related disclosure).
- 13.2 Each party (their employees, agents, directors, partners, shareholders or consultants) will not disclose any confidential information relating to the disclosing party (or the affairs of others which may have come to their knowledge as a result of these Terms) to any person.

## **14 Suspension and termination**

- 14.1 Upon written notice to the Vendor, OptiComm may suspend all or part of the delivery of the Goods or provision of Services at any time for any period. The Vendor must comply with such a notice and must recommence delivery of the Goods or provision of the Services when required by further written notice from OptiComm. The Vendor will be entitled to be paid by OptiComm the direct, reasonable and demonstrable extra costs incurred by the Vendor as a result of any such suspension, unless the suspension arises as a result or consequence of the Vendor's failure to perform its obligations in accordance with these Terms, and subject to the Vendor taking all reasonable steps to mitigate the extra costs incurred by it as a result of the suspension.
- 14.2 Either party may terminate these Terms with immediate effect by giving written notice to the other if:
- (a) the other party commits a breach of any warranty or material term of this agreement which:
    - (i) is not capable of remedy; or
    - (ii) is capable of remedy but the other party fails to remedy that breach within 10 Business Days from the date of receiving notice in writing requiring it to do so; or
  - (b) the other party is subject to an Insolvency Event; or
  - (c) a Force Majeure Event has subsisted for a continuous period of 4 weeks.
- 14.3 If these Terms are terminated prior to delivery of all of the Goods, or the provision of all Services, OptiComm will only be liable to pay for those Goods delivered and/or Services provided to OptiComm (as applicable in the circumstance) prior to termination taking effect.

## **15 Assignment and subcontracting**

- 15.1 OptiComm may assign or deal with its interests under these Terms without the prior written consent of the Vendor.
- 15.2 The Vendor must not assign or deal with its interests under these Terms and must not subcontract any part of the Goods or Services without the prior written approval of OptiComm. The Vendor will be liable for the acts, defaults and omissions of the Vendor's subcontractors (and the employees and agents of such subcontractors) as if they were those of the Vendor.

## **16 General**

- 16.1 These Terms are governed by and is to be construed in accordance with the laws applicable in Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.
- 16.2 No waiver by a party of a breach of these Terms by the other party constitutes a waiver for any subsequent or continuing breach by that other party. A single or partial exercise or waiver by a party of a right relating to these Terms does not prevent any other exercise of that right or the exercise of any other right. A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

- 16.3 If any provision of these Terms is held by a court of competent jurisdiction to be invalid or otherwise unenforceable that provision may be severed from these Terms and the remainder of these Terms will continue to be effective and valid notwithstanding such severance.
- 16.4 To the extent of any inconsistency between a separate supply agreement between the Vendor and OptiComm (if any), the Purchase Order, these Terms and any other documents attached to or prescribed in the Purchase Order (except for any document described in clause 1.2 which are excluded), the documents must be construed in that order of priority.

## 17 Definitions and interpretation

17.1 In this agreement, unless the context otherwise requires:

- (a) **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the *Fair Trading Act 1999* (Vic).
- (b) **Business Days** means a day other than a Saturday, Sunday or public holiday in the State or Territory where the Delivery Location is located.
- (c) **Delivery Date** means the date for delivery of the Goods or provision of Services identified in the Purchase Order.
- (d) **Delivery Location** means the delivery location of the Goods (or place of provision of the Services) identified in the Purchase Order.
- (e) **Force Majeure Event** means an event beyond the reasonable control of the Vendor including act of God, fire, flood or other physical disaster, disruption to transport infrastructure, supply or production facilities, but does not include industrial action.
- (f) **Goods** means the good described in the Purchase Order.
- (g) **Intellectual Property** means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, inventions, and other results of intellectual activity, including moral rights, in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable.
- (h) **Insolvency Event** means any step by any mortgagee or creditor to take possession of the whole or a part of a party's assets, operations, business or undertaking, or any step is taken to appoint a receiver, administrator, liquidator or other like person to the whole or a part of a party's assets, operations, business or undertaking.
- (i) **OH&S Legislation** means all legislative requirements relating to work health and safety including as is applicable to the Vendor and/or the Goods, applicable in the place where the Delivery Location is located and any other occupational health and safety statutes enacted or which may be enacted in any Australian States and/or Territories (if applicable).
- (j) **OptiComm** means OptiComm Limited ACN 117 414 776. OptiComm enters into this agreement on behalf of itself and each of its related bodies corporate, including (but not limited to) OptiComm Integration Pty Ltd ACN 610 697 106.
- (k) **PPSA** means the *Personal Property Securities Act 2009* (Cth).
- (l) **PPS Register** means the Personal Property Securities Register established under the PPSA.
- (m) **Price** means the price for the Goods or Services stated in the Purchase Order.
- (n) **Purchase Order** means a purchase order issued by OptiComm which contains the written order from OptiComm to the Vendor for the supply of Goods or provision of Services.
- (o) **Services** mean the services described in the Purchase Order.
- (p) **Terms** means these General Conditions for Supply of Goods and Services to OptiComm Limited and its Related Bodies Corporate, as may be updated by OptiComm from time to time on its website at [www.opticomm.net.au](http://www.opticomm.net.au).
- (q) **Vendor** means the supplier of the Goods or Services identified in the Purchase Order.

17.2 In these Terms, unless the context requires otherwise:

- (a) a word that has a capitalised first letter has the meaning given to it by these Terms;
- (b) the singular includes the plural and vice versa;
- (c) headings are for reference only and do not affect the interpretation of these Terms;
- (d) a reference to any legislation includes a reference to any proclamation, order, amendments or modification made under that legislation;
- (e) where the Vendor comprises two or more persons, then the obligations on the Vendor will bind and be observed and performed by those persons jointly and severally;
- (f) "include", "includes" and "including" means "includes without limitation";
- (g) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or benefits from it; and
- (h) a reference to a person includes that person's legal personal representatives, successors, assigns.