



THESE TERMS (**Terms**) are for the purpose of procuring goods and services (collectively **Items**) through a Purchase Order (**PO**) issued by Mutual Marketplace Pty Ltd ABN 35 615 297 820 (**MM**). The PO and these Terms form a contract (**Contract**) in accordance with clause 2. The parties to this Contract are MM and the Supplier (as identified in the PO) (together the **Parties**). Where nominated in a PO (or as otherwise advised in writing), MM may direct that Items are provided to MM's customer (**Customer**). If a Customer is not identified in the PO then the Customer is MM. MM may notify the Supplier of an alternative or additional Customer. Other than MM, no member of the MM Group has liability under this Contract. Nothing in this Contract appoints or is to be construed as appointing the Supplier as agent of either MM or the Customer. The PO is presented in reliance on the Supplier's expertise and the Supplier cannot assign, novate or subcontract this Contract without MM's prior written consent, which will not be unreasonably withheld.

Headings are only for convenience and are not intended to have any legal effect.

The Parties agree:

## 1. DICTIONARY

In these Terms, unless the context requires otherwise:

**Claim** includes any claim, demand, proceeding, action, liability, obligation, litigation, investigation, judgment, Loss whether based in contract, tort, statute or otherwise (whether or not presently ascertained, immediate, future or contingent).

**Confidential Information** means information of, or supplied by, MM or the Customer that:

- a) is by its nature confidential;
- b) is designated as confidential, including the information specified in the PO; or
- c) the Supplier knows or ought to know is confidential.

**Cyber Incident** has the meaning given in clause 15.3(b)(i).

**Defect** in respect of an Item is any part or aspect of it which is not in compliance with the PO and requirements (including design, workmanship or operating characteristics) as agreed between the Customer and the Supplier.

**GST** and **Tax Invoice** and **Taxable Supply** have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Insolvency Event** means where a Party institutes proceedings to be declared bankrupt or insolvent; consents to being declared bankrupt or insolvent; enters into a deed of company arrangement or other compromise with its creditors.

**Intellectual Property (IP)** means all intellectual property rights, including the following rights (whether or not such rights are registered or capable of being registered):

- a) patents, copyright, rights in circuit layouts, designs, trade and service marks (including goodwill in those marks), domain names and trade names and any right to have Confidential Information kept confidential; and

- b) all rights of a similar nature to any of the rights in (a) above that may subsist anywhere in the world (including Australia).

**Loss** means a loss, cost or expense and includes an award of damages or legal costs.

**MM Group** means MM, the Customers and their respective Related Bodies Corporate, and each entity in the MM Group is a **MM Group Member**.

**Moral Rights** means moral rights conferred under the *Copyright Act 1968* (Cth) or equivalent laws of another jurisdiction.

**Personal Information** has the meaning given in the *Privacy Act 1988* (Cth) (**Privacy Act**).

**Policies** means any policies of MM and/or the Customer that MM notifies the Supplier are applicable to the supply of the Items.

**Related Bodies Corporate** has the meaning given in the *Corporations Act 2001* (Cth).

**Supply Costs** means any damages, compensation or reimbursement for any Items supplied or performed or expense incurred by the Supplier after the date of termination or any cost, charge or expense or loss of profit or other economic loss of any kind arising from or consequent upon such termination.

## 2. FORMATION OF THIS CONTRACT

2.1 A PO issued by MM to the Supplier is an offer to engage the Supplier to supply the Items in accordance with this Contract.

2.2 This Contract is formed when the Supplier:

- (a) communicates either in writing or verbally with MM, the content of which confirms or implies acceptance; or
- (b) dispatches and/or commences performance of the Items.

2.3 Subject to clause 2.4 this Contract consists solely of the PO and these Terms, subject to clause 2.4. All previous negotiations and communications are superseded and any terms or conditions included with the Items when delivered (or at any other time) are excluded.

2.4 At any time the Parties may agree to enter into a further agreement (a **Principal Contract**). Where a PO is used in accordance with an agreed Principal Contract then the Principal Contract supersedes these Terms.

## 3. SUPPLY UNDER THESE TERMS

3.1 A reference to services in this Contract includes the performance of incidental services and the materials and equipment necessary to allow or assist in the performance of a service.

3.2 If a statutory liability scheme applies to the Items supplied the Supplier must notify MM in writing.

3.3 For Items which are to be manufactured, the Supplier must not commence or approve manufacture until all patterns, parts or other specifications in relation to those Items are approved by the Customer.



- 3.4 The Supplier must supply the Items by any dates applicable to an Item in the PO. Where a period of supply is specified then Items continue to be supplied for the term of service set in the PO until the period expires or this Contract is terminated.
- 3.5 The Supplier must ship Items to each site specified in the PO in accordance with packaging, shipping and delivery requirements as described in the PO or as otherwise specified by MM.
- 3.6 The Items must be of the best quality and workmanship, free from faulty design and defects and suitable for the purpose specified in the PO or the Supplier knows or ought to know is a reasonable use. The Items must conform to the requirements detailed in the PO or associated with the PO. Title to and property in the Items (including Intellectual Property subsisting in the Items) immediately passes to the Customer upon payment or delivery, whichever occurs first. The Items must be appropriately marked and identified as the property of the Customer. Risk in the Items remains with the Supplier until delivery and acceptance by the Customer.
- 3.7 In providing the Items the Supplier will observe and comply with all laws and standards applicable to the supply of the Items, this Contract and the Policies.
- 3.8 The Supplier must, at its own cost, ensure that its relevant officers, employees, agents or sub-contractors (**Personnel**) are aware of and comply with any health, safety or security directions applicable to any Customer site where Items are to be delivered. Access to the site is not exclusive and the Supplier must minimise disruption to the business at the site.
- 3.9 If required by MM, the Supplier must procure, at its own cost, that its Personnel complete induction training to the reasonable satisfaction of the Customer prior to their first entry on to a site. Personnel must immediately leave a site when directed by the Customer.
- 4. GST EXCLUSIVE**
- 4.1 The fee for Items includes any costs, expenses, imposts, duties and taxes other than GST as may apply.
- 4.2 To the extent that the supply of the Items is a Taxable Supply, MM will pay an amount equal to the GST on the price of the Item.
- 5. INVOICE PROCESS**
- 5.1 After delivery and acceptance of the Items the Supplier will issue an itemised valid Tax Invoice to MM for the price of the Items in accordance with the fees set out in the PO.
- 5.2 The Supplier must itemise expenses and include receipts and must, where applicable, include a subcontractor's statement.
- 5.3 All invoices must be sent to [invoices@mmpl.com.au](mailto:invoices@mmpl.com.au) and include the PO reference in the subject line unless MM notify an alternative process.
- 5.4 MM must pay the Supplier within 30 days of receipt of a valid Tax Invoice.
- 5.5 Payment will be in Australian dollars unless an alternative currency is specified in the PO.
- 5.6 If MM is obliged to make any deduction or withholding on account of the applicable tax in connection with the PO, it will withhold the relevant amount from the gross amount due to the Supplier and will promptly pay the amount to the relevant tax authority. MM will have no obligation to pay any additional amount to the Supplier in relation to the withheld amount.
- 6. TERMINATING BY NOTICE OR WHEN THERE IS DELAY**
- 6.1 If it is foreseeable that the time for delivery of an Item will not be met, the Supplier must immediately notify MM of any anticipated delay. The Supplier must provide MM with complete information regarding the cause of the delay, a remedial plan to mitigate the delay and an alternative delivery date. If that alternative delivery date is not acceptable to MM, then MM may (without prejudice to any other rights) direct the Supplier to cease supply of the Item without incurring any Supply Costs. If the delay has been caused by the negligence of the Supplier, MM will not be liable for any costs associated with the Items impacted by the delay.
- 6.2 MM may, by giving at least 7 days' written notice to the Supplier, suspend or stop the supply of Items without incurring any Supply Costs except in relation to any amount that has been incurred for that part of the Items performed to the date of the notice.
- 6.3 The Supplier acknowledges that time is of the essence in effecting delivery of the Items. If supply of the Items is delayed for more than 7 days past the date for delivery set out in a PO then MM may, by notice in writing, immediately terminate supply of the Items without incurring any Supply Costs.
- 7. TERMINATING FOR BREACH OR INSOLVENCY**
- 7.1 If the Supplier has failed to perform or observe any of its obligations under this Contract and, if capable of remedy, fails to remedy such breach within 7 days after receiving a notice requiring the alleged breach to be remedied (such notice giving adequate particulars of the alleged breach and of the intention of MM to terminate supply under this Contract) then MM may terminate this Contract with immediate effect.
- 7.2 If a Party is subject to an Insolvency Event the other Party may, by notice, terminate this Contract with immediate effect.
- 7.3 If clause 7.1 or 7.2 applies, MM will not be liable to pay the Supplier any Supply Costs and MM is released to the extent allowed under the law from any damages, compensation or reimbursement for any Items supplied or performed after the date of termination.
- 7.4 Termination does not affect any accrued rights or remedies of a Party or beneficiary under this Contract.



## 8. DELIVERY AND ACCEPTANCE PROCESS

8.1 Items delivered are subject to inspection and acceptance or rejection by the Customer. If the Customer rejects an Item for a Defect it must issue a notice to the Supplier within 30 days of receipt of the Item, setting out the Defect. Upon rejection of the Items the Supplier must:

- (a) arrange, at its own cost, to remove within a reasonable time the rejected Items from the site; and
- (b) at Customer's election, either arrange for the Items to be re-supplied at the Supplier's own cost (subject to the same right of rejection) and at a time to be specified by the Customer or as soon as possible, or reimburse or credit MM for any amount paid on account of the fee for the rejected Items.

8.2 Where an Item is equipment supply or software development the Customer is entitled to inspect the Items and request and witness tests on the Items at the Supplier's and any subcontractor's premises. The Supplier must allow the Customer access or procure such access at any reasonable time to the Supplier's and any subcontractor's premises for this purpose. The Supplier must make this a condition of any subcontract.

## 9. MANAGING A DEFECT

9.1 Notwithstanding clause 6.3, the defect period for an Item, subject to clause 9.4, is the longer of:

- (a) 12 months from the date when the Item is first put into service by the Customer; or
- (b) 24 months from the date of delivery of the Item; or
- (c) any other warranty applying to the Item provided by the Supplier or manufacturer of such Item,

### (Defect Period).

9.2 If there is a Defect in the Defect Period the Supplier must, at its own cost, do all things necessary to remedy the Defect and must reimburse MM for any Loss incurred in connection with the Defect, including the cost of remedying the Defect if the Supplier does not do so within a reasonable period following receipt of notice of the Defect.

9.3 If MM determines that a Defect cannot adequately be remedied, then MM may, at its option, elect either to accept the non-conforming Items with an adjustment in the purchase price or to direct that the defective Items be removed and re-supplied at the Supplier's expense or that the Supplier reimburse or credit MM for any amount paid on account of the price of the Items the subject of a Defect.

9.4 In the event of any remedial work, a new Defect Period will apply to such work for a period of 12 months from its completion or until expiry of the Defect Period specified in clause 9.1, whichever is the later.

9.5 The Supplier must notify the Customer of any open source software incorporated in the Items.

9.6 Where the Items incorporate computer software, the Supplier warrants that:

- (a) the software is free from viruses, trojan horses, bugs, worms or any other defects that are intended to, or do, damage or interfere with the proper working of the software; and
- (b) any software maintenance, upgrade, patch or fix supplied by the Supplier for the software will comply with subparagraph (a) and will be compatible with the existing version of the software.

## 10. INTELLECTUAL PROPERTY

10.1 The Supplier warrants that the supply and use of the Items by a MM Group Member will not infringe any Intellectual Property. The Supplier indemnifies the MM Group against any Claims made by third parties in respect of the use of Intellectual Property in connection with any Items excluding that Intellectual Property that is made available to the Supplier by MM and/or the Customer (**User IP**).

10.2 The Supplier may use the User IP for the sole purpose of provisioning an Item under this Contract.

10.3 If Intellectual Property is created or invented as a result of this Contract:

- (a) that IP vests in the Customer or as MM otherwise directs; and
- (b) the Supplier consents and must procure from any person involved in creating or inventing the Intellectual Property subsisting in an Item a consent to any act or omission by MM and/or the Customer in using the Intellectual Property that might otherwise breach the individual's Moral Rights.

10.4 The Supplier must (and must ensure its relevant Personnel) sign all documents and do anything else required to give effect to the benefit of the supply of Items under this Contract.

## 11. INSURANCE

11.1 The Supplier must effect and maintain statutory workers compensation insurance and public liability insurance to cover Loss of whatsoever kind or nature which MM Group may suffer or incur as a result of or in connection with any Claim brought by any person including the Supplier's Personnel.

11.2 Unless otherwise specified in the PO and subject to any statutory liability scheme as notified to MM the Supplier must hold:

- (a) public liability insurance cover for not less than \$10,000,000 per Claim;
- (b) where a Supplier uses a motor vehicle for providing the Items, motor vehicle third party property damage with an indemnity of not less than \$5,000,000 for any one occurrence;
- (c) where an Item includes professional or consulting services, professional indemnity



- insurance cover for not less than \$2,000,000 per occurrence; and
- (d) insurance to protect against the risks of a Cyber Incident.
- 11.3 Upon request the Supplier must provide certificates of currency in respect of the insurances required under this clause 11.
- 12. EXCLUSION OF CONSEQUENTIAL LOSS**
- 12.1 A Party will not be liable to another for any loss of profits, loss of revenue, loss of reputation, loss of business opportunity, business interruption, or any other consequential, indirect or special damages in connection with any breach of this Contract.
- 13. INDEMNITY**
- 13.1 The Supplier indemnifies the MM Group against any Claim which may be brought against or made upon or incurred in connection with the supply of the Items to the extent caused or contributed to by the negligent or wilful act or omission of the Supplier or its Personnel or as a result of the Supplier's failure to comply with any of its obligations under clause 15.
- 13.2 If the MM Group suffers or incurs any Loss which the Supplier has indemnified the MM Group against pursuant to clause 13.1, the Supplier must diligently and in good faith take all action to make and pursue a claim for indemnity under the insurances that the Supplier is required to obtain and maintain pursuant to clause 11.
- 14. CONFIDENTIALITY**
- 14.1 The Supplier will take all reasonable precautions to ensure that all Confidential Information is treated as confidential and not disclosed to any person(s) or used other than for the purposes of the supply of Items and will return all Confidential Information immediately upon request by MM.
- 14.2 The Supplier will notify the Customer of any suspected or actual breach of confidentiality, take all reasonable steps required to prevent or stop the breach at the Customer's request and assist the Customer in connection with any action or investigation regarding any possible or actual unauthorised disclosure.
- 15. PRIVACY**
- 15.1 Where the Supplier has access to the Personal Information controlled by the MM Group the Supplier agrees to be bound by, and will comply with, the requirements of the Privacy Act. The Supplier must obtain written consent from MM prior to any Personal Information being disclosed overseas.
- 15.2 The Supplier must:
- (a) do all things that a reasonable and prudent entity would do to ensure that all Personal Information is protected at all times by appropriate physical, technical, and managerial procedures from unauthorised access or use by a third party or misuse, damage or destruction by any person;
- (b) comply with all security regulations or procedures or directions as are specified in this Contract or given by the Customer from time to time and answer the Customer's questions regarding any aspect of security of, or access to, the Personal Information provided to the Supplier by the Customer; and
- (c) only use Personal Information obtained from any MM Group Member for the purpose for which it was provided or accessed under this Contract.
- 15.3 If the Supplier:
- (a) receives a complaint in relation to the privacy practices of the Supplier or a breach or alleged breach of this Contract relating to such privacy practices; or
- (b) becomes aware of:
- (i) any actual or suspected action taken through the use of digital devices or interfaces or computer networks that results in (or could result in) an actual or potentially adverse effect on any of the Supplier's or MM Group Member's information technology systems or any of the Supplier's third-party service providers or contractors (or their respective information technology systems) and/or Personal Information residing on that system (**Cyber Incident**); or
- (ii) any other unauthorised access to, disclosure of or use by a third party of Personal Information or loss, misuse, damage or destruction by any person of Personal Information, or other "eligible data breach" or similar expression as may be defined in the Privacy Act from time to time (**Other Incident**),
- the Supplier must:
- (c) notify the Customer by telephone and in writing immediately (and no longer than 12 hours after becoming aware of the complaint or the actual or suspected Cyber Incident or Other Incident); and
- (d) comply with any directions issued by the Customer in connection with the complaint, Cyber Incident or Other Incident, including in relation to:
- (i) notifying the Australian Cyber Security Centre, the Office of the Australian Information Commissioner or any other relevant body, and any affected individuals, as required by the Customer;
- (ii) coordinating with the Customer and MM Group to investigate the complaint or incident including obtaining evidence about how, when and by whom the



- Supplier's, MM Group Member's or other person's information technology system and/or the Personal Information has or may have been compromised or lost, providing it to the Customer on request as soon as practicable, and preserving and protecting that evidence for a period of up to 12 months;
- (iii) implementing any mitigation strategies to remedy the cause of the complaint or incident and reduce the impact of the Cyber Incident or Other Incident or the likelihood or impact of any future similar incident; and
- (iv) preserving and protecting Personal Information (including as necessary reverting to any backup or alternative site or taking other action to recover Personal Information).
- 15.4 With respect to giving notice of a complaint, Cyber Incident or Other Incident to third parties, the Supplier agrees that:
- (a) it will not inform any third party of any complaint or incident without first obtaining the Customer's prior written consent, other than:
- (i) to inform a complainant who has made a complaint to the Supplier that the matter has been forwarded to the Customer's Privacy Officer; or
- (ii) where the Customer has not made required notifications (under the Privacy Act) on the Supplier's behalf in a timely manner. Before notifying third parties of the complaint or Cyber Incident or Other Incident, the Supplier must provide the Customer with notice of its intention to do so under this clause, and must provide the Customer with a reasonable opportunity to make this notification;
- (b) the Customer will (other than in respect of a notification which the Supplier is mandatorily required by law to provide to a third party) have the sole right to determine:
- (i) whether notice of the complaint, Cyber Incident or Other Incident is to be provided to any individuals, regulators, law enforcement agencies, credit reporting bodies or others as required by law or otherwise in the Customer's discretion;
- (ii) whether the Customer or the Supplier gives such notice; and
- (iii) the contents of such notice, whether any type of remediation may be offered to affected persons, and the nature and extent of any such remediation.
- 1.2 The Supplier must ensure that:
- (a) all subcontracts and other supply chain arrangements, which may allow or cause third parties to have access to Personal Information, contain no provisions that are inconsistent with clauses 15.2, 15.3 or 15.4; and
- (b) all personnel and any subcontractors who have access to Personal Information comply with clauses 15.2, 15.3 and 15.4.
- 2. PRESS AND SOCIAL MEDIA ANNOUNCEMENTS**
- 2.1 The Supplier will not make any press or other public announcements relating to this Contract without the prior written approval of MM.
- 3. BENEFIT IN FAVOUR OF MM GROUP**
- 3.1 Despite any other provision of this Contract:
- (a) any MM Group Member may make use of the Items;
- (b) the Supplier agrees that an act or omission of the Supplier, including any breach of this Contract or negligence in relation to the performance or failure to perform its obligations under this Contract, may result in Loss by a MM Group Member;
- (c) MM is not prevented from recovering a Loss by the fact that such Loss was suffered by a MM Group Member under or in connection with this Contract, if that Loss would have been capable of being recovered by MM against the Supplier had MM suffered that Loss itself;
- (d) a Loss arising from or in connection with this Contract by a MM Group Member is deemed to be suffered by MM for the purposes of this Contract;
- (e) the Supplier indemnifies MM against that Loss suffered by a MM Group Member under or in connection with a breach of this Contract by the Supplier to the extent the Loss is not recovered by the Customer; and
- (f) MM may act in its own right and on behalf of each member in the MM Group with respect to the enforcement of any rights and remedies under this Contract.
- 4. DISPUTE RESOLUTION**
- 4.1 All disputes between the Parties relating to this Contract must be referred in writing to a representative appointed by each Party for the purpose of facilitating resolution in good faith (**Dispute Notice**).
- 4.2 If a dispute remains unresolved for more than 20 days after receipt of a Dispute Notice then a Party may refer the dispute to mediation at Australian Disputes Centre.
- 4.3 This clause 18 does not prevent any Party from obtaining any injunctive, declaratory or other interlocutory relief from a court which may be urgently required.
- 4.4 Subject to clause 18.3, a Party must not commence or maintain a court action or proceeding in relation to a dispute in connection with this Contract until the dispute has been submitted to the dispute resolution process under this clause 18.



**5. REPRESENTATIVES AND NOTICES**

- 5.1 MM, each Customer and the Supplier will appoint a representative for the purpose of liaising with each other and will notify each other of its appointed representative.
- 5.2 Any notice under this Contract must be in English and in writing.
- 5.3 The Parties consent to using email for notification provided the Supplier's email is that specified for the Supplier on the PO and for MM it is [legal@mmpl.com.au](mailto:legal@mmpl.com.au). The Supplier's email system must allow for delivery receipts when requested by MM.

**6. OBLIGATION TO ACT REASONABLY**

- 6.1 If by application of Section 23 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) this Contract is a small business contract MM will:
- (a) in the circumstances and to the extent practicable, provide a reasonable opportunity for the Supplier to remedy a default under clause 6.1;
  - (b) act reasonably in exercising its rights under clauses 7 and 8.1; and;
  - (c) reduce proportionately any obligation of the Supplier to indemnify the MM Group to the extent that a MM Group Member's breach or negligence contributed to the loss or damage.

**7. GOVERNING LAW**

- 7.1 This Contract is governed by the laws of the place where the Customer has its head office and each Party submits to the jurisdiction of the courts of that place.

**8. VARIATION**

- 8.1 Any variations to this Contract must be agreed in writing.

**9. READING DOWN AND SEVERANCE**

- 9.1 Any provision in this Contract which is invalid or unenforceable (including, without limitation, under the *Competition and Consumer Act 2010* (Cth) or the Australian Consumer Law):
- (a) must be read down to the extent necessary to avoid that result; and
  - (b) if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of this Contract.