

Purchase Order

Terms and Conditions

1 APPLICATION

- 1.1 These terms and conditions apply to the supply of goods or services as set out in a Purchase Order issued by Endeavour.
- 1.2 These terms and conditions are additional to any terms and conditions (including any special conditions) set out in a Purchase Order.
- 1.3 If Endeavour and the Supplier have separately agreed in writing to other Endeavour terms and conditions applying to a Purchase Order, those terms and conditions will prevail over these terms and conditions to the extent of any inconsistency.
- 1.4 Where the Supplier issues an invoice or any other document which contains terms and conditions other than the terms and conditions contained in this Agreement, the Supplier issued terms and conditions will not be of any effect unless both parties agree to the Supplier terms and conditions in writing.

2 FORMATION OF AGREEMENT

- 2.1 By issuing a Purchase Order, Endeavour is making an offer to the Supplier.
- 2.2 The Supplier accepts Endeavour's offer, and the Agreement is formed, by the Supplier accepting the Purchase Order in writing or delivering the goods or services described in the Purchase Order.
- 2.3 The Purchase Order, these terms and conditions, and any attachment to the Purchase Order expressly incorporated in writing will form a binding agreement between the Parties (**Agreement**).

3 CANCELLATION AND VARIATION

- 3.1 Endeavour may at any time before goods are delivered or services are performed vary or cancel a Purchase Order.
- 3.2 Endeavour agrees to pay any reasonable costs or expenses incurred by the Supplier in reliance on a Purchase Order that is subsequently varied or cancelled by Endeavour.
- 3.3 If a variation to a Purchase Order causes a change in the costs for supply of the goods and/or services or a change in the delivery time, the Supplier must notify Endeavour immediately and not incur any further expense until Endeavour has agreed to the change or cancels the Purchase Order.

4 PERFORMANCE

- 4.1 The Supplier must supply the goods and/or services:
 - (a) in accordance with the Purchase Order;
 - (b) in a professional manner and in accordance with any generally accepted industry standards for the goods and/or services; and
 - (c) in accordance with all applicable laws and regulations.
- 4.2 Except as expressly provided in the Purchase Order, the Supplier must not subcontract any of its obligations under this Agreement without Endeavour's prior written consent.
- 4.3 If the Supplier subcontracts any of its obligations under this Agreement, the Supplier remains liable for carrying out and completing those obligations.

5 DELIVERY AND ACCEPTANCE

- 5.1 The delivery time for the goods and/or services will be set out in the Purchase Order. Time is of the essence with respect to the Supplier's delivery obligations.
- 5.2 Endeavour may cancel the Purchase Order without penalty if the goods and/or services are not delivered by the specified time.
- 5.3 Where goods are provided:
 - (a) risk in the goods will pass to Endeavour when the goods are delivered to the delivery site or when the Supplier releases the goods to a logistics carrier appointed by Endeavour (as applicable); and
 - (b) title in the goods will pass to Endeavour on the earlier of receipt of those goods in accordance with this Agreement, or payment by Endeavour of the Fees.

- 5.4 Payment of any invoice by Endeavour will not be deemed acceptance of any goods and/or services but is payment on account only.
- 5.5 Endeavour, acting reasonably, may reject the goods and/or services within 14 days after delivery or such longer period as agreed to in writing by the parties (**Acceptance Period**), if the goods and/or services do not comply with the Purchase Order. If Endeavour rejects the goods and/or services, it will notify the Supplier in writing with the reasons for rejection and the remedy required to ensure the goods and/or services are in accordance with the Purchase Order.
- 5.6 If Endeavour does not notify the Supplier within the Acceptance Period, Endeavour will be taken to have accepted the goods and/or services.
- 5.7 Where Endeavour has prepaid any Fees in respect of such rejected goods and/or services. Upon request, the Supplier agrees to promptly refund to Endeavour such prepaid Fees in respect of the goods and/or services that are reasonably rejected by Endeavour under this **clause 5**.

6 WARRANTIES

- 6.1 The Supplier warrants that:
 - (a) it has all rights, title, interests and licences necessary to supply the goods and/or services under this Agreement;
 - (b) the Supplier and its personnel are suitably qualified, skilled and competent to supply the goods and/or services;
 - (c) the goods and/or services will be of a suitable quality, free from defects and fit for the purpose intended;
 - (d) the goods and/or services will meet any specification or performance criteria, and correspond with any sample;
 - (e) Endeavour's use of the goods and/or services will not infringe the IP Rights of any person;
 - (f) it will not knowingly or negligently damage or destroy any part of Endeavour's data, networks, systems, devices or computers, or knowingly or negligently introduce any viruses or similar programming effects into the same; and
 - (g) it will supply accurate and up-to-date documentation associated with the good and/or services.
- 6.2 The warranties in **clause 6.1** are in addition to any statutory warranties applicable to the goods and/or services.
- 6.3 During the Warranty Period:
 - (a) Endeavour may give written notice to the Supplier of any failure or defect in the goods and/or services; and
 - (b) the Supplier must promptly correct any defect or failure notified by Endeavour by repair, replacement, modification or other means acceptable to Endeavour, at no cost to Endeavour.

7 COMPLIANCE

- 7.1 The Supplier must comply with Endeavour's Supplier Code of Conduct in performing its obligations under this Agreement.
- 7.2 If the Supplier is required to perform its obligations under this Agreement at any site owned or occupied by Endeavour, the Supplier must:
 - (a) observe all applicable Endeavour policies; and
 - (b) comply with all reasonable directions of Endeavour relating to health, safety and security.

8 FEES AND PAYMENT

- 8.1 In consideration for the supply of goods and/or services under this Agreement, Endeavour will pay the Supplier the amount set out in the Purchase Order (**Fees**).
- 8.2 All Fees are inclusive of GST unless the Purchase Order specifies otherwise.

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8.3 Subject to **clause 8.4**, and unless otherwise specified in the Purchase Order, Endeavour agrees to pay the Fees within 30 days of receipt of a valid tax invoice.

8.4 Endeavour is under no obligation to pay any Fees until the goods or services to which those Fees relate are supplied in accordance with the requirements of this Agreement.

9 INTELLECTUAL PROPERTY RIGHTS

9.1 Subject to **clause 9.4**, any IP Rights created for the benefit of Endeavour (whether created prior to the date of the Agreement or otherwise) will vest in and be owned by Endeavour.

9.2 The Supplier will do all things necessary to ensure Endeavour owns IP Rights in accordance with **clause 9.1**, including executing all documents required to transfer or assign ownership to Endeavour.

9.3 The Supplier must also procure for Endeavour's benefit any moral rights waivers or consents to enable Endeavour to make full use of the goods or services as owner.

9.4 Any Background IP will remain with the contributing party and will not be transferred as a result of its use in the supply of goods or services.

9.5 The Supplier grants to Endeavour a non-exclusive, perpetual, irrevocable, royalty-free, worldwide licence (with the right to assign and sub-license) to use the Background IP of the Supplier to the extent necessary to use the goods or services.

10 CONFIDENTIALITY

10.1 Each party must keep any Confidential Information disclosed to it confidential and must take reasonable steps to ensure its security.

10.2 The obligation in **clause 11.1** does not apply to disclosure:

- (a) where required by law; or
- (b) to a party's officers or employees who need to know the information for the purposes of the Agreement and have been directed to keep the information confidential.

11 PRIVACY AND DATA PROTECTION

11.1 Each party must comply with all applicable privacy laws in the performance of this Agreement.

11.2 If the Supplier handles Data on behalf of Endeavour under this Agreement, the Supplier must:

- (a) only use the Data for the purpose of performing its obligations under this Agreement;
- (b) not transfer Data outside Australia without Endeavour's prior written consent;
- (c) take reasonable and prudent measures to ensure the Data is protected from unauthorised access or damage; and
- (d) implement and maintain effective systems, controls and other measures (including data protection plans) that comply with all relevant laws and meet accepted industry standards for data security and integrity.

11.3 The Supplier must notify Endeavour immediately of any Data Threat (including providing all relevant details) and comply with Endeavour's reasonable directions with respect to protection of Data and minimising the impact of the Data Threat.

12 LIABILITY AND INDEMNITY

12.1 The Supplier indemnifies Endeavour against any Loss that Endeavour sustains or incurs as a result of:

- (a) the Supplier's breach of this Agreement;
- (b) the Supplier's negligence or wilful misconduct; or
- (c) any fraud, criminal conduct, or breach of any law or regulatory requirement by the Supplier,

except to the extent that Endeavour caused or contributed to the relevant Loss.

12.2 Neither party is liable to the other for Consequential Loss under any circumstances.

13 INSURANCE

13.1 The Supplier must hold and maintain:

- (a) all insurances the Supplier is required to hold by law (including worker's compensation insurance);
- (b) public and product liability insurance to the value of no less than \$20 million; and
- (c) if specified in the Purchase Order, professional indemnity insurance to the value of no less than \$10 million.

13.2 The Supplier must provide evidence of the currency of its insurance policies to Endeavour on request.

13.3 The Supplier must ensure that any of its subcontractors comply with these insurance requirements.

14 ASSIGNMENT

14.1 The Supplier must not assign this contract without the prior written consent of Endeavour.

14.2 Endeavour may assign the benefit of this Agreement, or warranties pursuant to this Agreement to a Related Body Corporate or third party without consent of the Supplier.

15 TERMINATION

15.1 Endeavour may terminate this Agreement by providing written notice to the Supplier if the Supplier:

- (a) breaches a term of this Agreement and fails to remedy that breach within 14 days after receiving written notice requiring it to do so;
- (b) breaches a material term of this Agreement which is not capable of remedy.

15.2 To the extent permitted by law, a party may terminate this Agreement on written notice if the other party suffers an Insolvency Event.

15.3 On termination or expiry of this Agreement, a party must comply with any reasonable request of the other party to return any Confidential Information of the requesting party.

15.4 Any accrued rights or remedies of a party remain unaffected by termination or expiry of this Agreement.

15.5 **Clauses 6, 9, 10, 12, 15.3, 15.4, 15.5, 16, 19, and 20** survive termination or expiry of this Agreement.

16 DISPUTES

16.1 If a dispute arises under this Agreement:

- (a) the disputing party must notify the other party in writing of the dispute and include all relevant details;
- (b) senior representatives of each party will meet within 10 days of that notification to resolve the dispute; and
- (c) discussions to resolve the dispute will be without prejudice.

16.2 If no agreement is reached by the senior representatives within 10 days, a party may commence legal proceedings.

16.3 During a dispute, each party must continue to perform its obligations under this Agreement.

16.4 This clause does not prevent a party seeking urgent or injunctive relief.

17 CONFLICTS OF INTEREST

17.1 The Supplier warrants that, as at the date of this Agreement, it is not aware of any actual or potential conflict of interest in relation to the supply of goods or services under this Agreement.

17.2 The Supplier must exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with Endeavour's best interests.

18 MODERN SLAVERY

18.1 The Supplier must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the supply of the goods and/or services.

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- 18.2 If the Supplier becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of this Agreement, as soon as reasonably practicable, they must:
- (a) take all reasonable action to address or remove these Modern Slavery practices including, where relevant, by addressing any practices of other entities in its supply chains; and
 - (b) notify Endeavour in writing. Such notice must set out the full details of the actual or potential Modern Slavery practices and the steps the Supplier has taken, or proposes to take, in response.
- 18.3 The Supplier must provide all reasonable assistance to Endeavour to allow Endeavour to comply with its obligations under the *Modern Slavery Act 2018* (Cth), including provision of all information reasonably requested by Endeavour in connection with the Supplier's compliance with this **clause 18**.

19 GENERAL

- 19.1 A notice given by one party to the other under this Agreement must be in writing and sent to the address of the other party set out in the Purchase Order.
- 19.2 This Agreement is governed by the laws in force in Queensland and the parties submit to the non-exclusive jurisdiction of the courts of that State.
- 19.3 This Agreement is not intended to create any relationship of partnership, agency or joint venture between the parties.
- 19.4 A waiver of any right arising under this Agreement must be in writing and executed by the party granting the waiver. A failure or delay in exercising a right under this Agreement does not result in a waiver of that right.
- 19.5 If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, that provision is severed, and the Agreement will otherwise remain in full force and effect.
- 19.6 The Supplier acknowledges that the supply under this Agreement is non-exclusive, and Endeavour retains the right to obtain supply of the goods or services from other persons.
- 19.7 These terms and conditions can only be varied in writing signed by both parties.
- 19.8 This Agreement may be executed by exchange of signed counterparts, including both counterparts that are executed on paper and counterparts that are in the form of electronic records and executed electronically. All executed counterparts shall constitute one document.

20 DEFINITIONS AND INTERPRETATION

- 20.1 In this Agreement:

Background IP means the IP Rights of a party that existed prior to the date of this Agreement.

Confidential Information means all information which is by its nature confidential, designated by a party as confidential or disclosed in circumstances where the recipient ought to be aware the information is confidential, but does not include information that is or becomes public knowledge other than because of a breach of this Agreement.

Consequential Loss means consequential, special, indirect, punitive or exemplary loss or damage including without limitation pure economic loss, loss of profits and loss of opportunity or expectation.

Data means any data or information organised or formatted in a manner capable of being communicated and includes without limitation Confidential Information and Personal Information.

Data Threat means any actual or suspected threat to the security or integrity of any Data or Endeavour systems of any kind or by any means including, without limitation, unauthorised access or corruption of data.

Endeavour means Endeavour Foundation Limited ABN 80 009 670 704.

Insolvency Event means the occurrence of any of the following events:

- (a) a party is unable to pay its debts when they become due;

- (b) a party comes under a form of external administration;
- (c) proceedings are initiated to wind up a party;
- (d) a party resolves to wind itself up, or notifies of an intention to do so;
- (e) a receiver, liquidator or administrator is appointed to a party; or
- (f) a party becomes bankrupt or enters into a scheme of arrangement with creditors.

IP Rights means all intellectual property rights including patents, copyright, rights in circuit layouts, plant breeder's rights, registered designs, trademarks and the right to have confidential information kept confidential and any application or right to apply for any of those rights.

Loss means any loss, liability, damage, fine, costs or other expense (including reasonable legal costs and expenses) and excludes Consequential Loss.

Modern Slavery has the meaning given in the *Modern Slavery Act 2018* (Cth);

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

Purchase Order means the order for goods or services issued by Endeavour and accepted by the Supplier under **clause 2.2**.

Related Body Corporate has the meaning given in the *Corporations Act 2000* (Cth).

Supply means the supply of goods or performance of services as set out in a Purchase Order.

Warranty Period means:

- (a) for goods, the period of 24 months commencing on the date of supply of the goods; and
- (b) for services, the period of 12 months commencing on the date of the performance of the services.

- 20.2 In this Agreement, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) headings are for convenience only and do not affect interpretation;
- (c) the word 'includes' is not a word of limitation;
- (d) other grammatical forms of defined words and expressions have corresponding meanings;
- (e) a reference to a law includes any amendment or replacement of that law and includes any delegated legislation, regulations, codes or standards made under it;
- (f) a reference to a person includes a firm, body corporate, partnership, joint venture, association or authority;
- (g) a reference to a party includes that party's successors and permitted assignees;
- (h) a promise on the part of two or more persons binds them jointly and severally; and
- (i) no provision of the Agreement will be construed adversely to Endeavour because Endeavour was responsible for the preparation of this Agreement.