

## Purchase Order Terms and Conditions:

### 1. Definitions and interpretation

#### 1.1 Definitions

**Australia Post** means Australian Postal Corporation (ABN 28 864 970 579)

**Background IPR** of a party means materials: (a) the Intellectual Property Rights in which are owned by that party as at the date of this Purchase Order; or (b) which are subsequently created by that party independently of the provision of the Goods or performance of the Services.

**Cardholder Data** means card account number, cardholder name, expiration date and/or service code (as defined by the PCI DSS)

**Confidential Information** in respect of a particular party, means all information of a private, confidential and/or commercially-sensitive nature, that belongs to, or is acquired by, that party from time to time, and includes all information concerning the business(es), finances, technologies, trade secrets, know-how, scientific and technical information, commercial opportunities or prospects, suppliers, customers, dealings or transactions of, or undertaken by, that party, but in any event includes: (a) information that is, by its nature, confidential; (b) information designated by that party as 'confidential' or an equivalent indicia of confidentiality; (c) information the receiving party knows or ought to know is confidential; but excludes information known to the public other than due to a breach of confidence, or already known to, or separately developed or obtained by, the receiving party Recipient independently of this Purchase Order and free of any obligation of confidence.

**Conflict of Interest** means the Supplier engaging in any activity, or obtaining any interest, whether pecuniary or non-pecuniary, that is likely or has the potential to be perceived as restricting the Supplier from performing its obligations under this Agreement in an objective manner.

**Data Breach** means (a) unauthorised access to, or unauthorised disclosure of, Personal Information, or any system where Personal Information is stored or (b) any loss of Personal Information in circumstances where unauthorised access to, or unauthorised disclosure of Personal Information is likely to occur.

**Defect** means any flaw, error or defect in design, materials, workmanship, operation or performance.

**Deliverable** means anything (including any document) which is supplied or required to be supplied to Australia Post in connection with the Goods and/or Services or under this Purchase Order.

**Fees** means the amount of any payment to be made by Australia Post to the Supplier in consideration for the Goods and/or Services set out in this Purchase Order.

**Goods** means the goods requested by Australia Post and set out on the cover of this Purchase Order.

**Group Member** means any Related Body Corporate of Australia Post.

**Insolvent** means, in relation to a party, when the party:

- (a) being a body corporate, is insolvent, under administration, or is subject to the appointment of a controller, administrator, liquidator or provisional liquidator under the *Corporations Act 2001*;
- (b) is otherwise unable to pay its debts as and when they become due and payable;
- (c) being a natural person, commits or suffers an act of bankruptcy.

**Insured Period** means, in respect of:

- (a) public and product liability, and motor vehicle insurance – from the date the Supplier receives this Purchase Order to the date that the Supplier ceases to provide the Goods and/or Services, or where applicable, the expiration date of any warranty period for the Goods and/or Services;
- (b) workers compensation – the period required by Law;
- (c) any policy written on a 'claims made' basis (including professional indemnity insurance and cyber liability insurance, where applicable) – from the date the Supplier receives this Purchase Order to 3 years after the date the Supplier ceases to provide the Services.

**Intellectual Property Rights** means all rights conferred under statute, common law or equity subsisting in and in relation to, inventions, designs, patents, copyright, trade secrets, Confidential Information, trademarks, business names, domain names and circuit layout rights.

**Law** means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, rule or subordinate legislation.

**Loss** means any damages, losses, costs, charges, interest, expenses and liabilities whether present, future or contingent, and whether based in contract, tort, statute or otherwise.

**Moral Rights** means the right of integrity of authorship, the right of attribution of authorship, and the right not to have authorship falsely attributed, more particularly as described in the *Copyright Act 1968* (Cth).

**Packaging and Delivery Requirements** means the requirements prescribed by Australia Post on how the Goods must be packaged, labelled, palletized and delivered, as published on [https://auspost.com.au/content/dam/auspost\\_corp/media/documents/supplier-goods-packaging-delivery-requirements.pdf](https://auspost.com.au/content/dam/auspost_corp/media/documents/supplier-goods-packaging-delivery-requirements.pdf)

**Personal Information** has the meaning given to it by Privacy Laws.

**Personnel** means in relation to a party or other entity, the directors, officers, agents, employees, contractors and sub-contractors of that party or other entity, provided however that the Supplier will not be considered to be the Personnel of Australia Post.

**Privacy Laws** means all Commonwealth, State and Territory legislation relating to the collection, use, disclosure, storage or granting of access rights to applicable information, including the *Privacy Act 1988* (Cth) and the Australian Privacy Principles found in that Act.

**Related Body Corporate** has the meaning given to that term in the *Corporations Act 2001* (Cth).

**Relevant Standard** means an Australian standard relating to the Goods or Services published by Standards Australia International Limited, or a European or other international standard as required under Law, as set out in the Purchase Order, or otherwise agreed between the Supplier and Australia Post.

**Services** means the services requested by Australia Post and set out on the cover of this Purchase Order.

**Site** means an Australia Post site which the Supplier is required to occupy in order to provide the Goods and/or Services.

**Specifications** means the descriptions of and specifications in relation to the Goods and/or Services set out on the front of this Purchase Order and/or in any separate statement of work document provided or agreed by Australia Post, including any Relevant Standards.

**Supplier** means the entity identified on the cover of this Purchase Order as the Supplier.

**Supplier Personnel** means any Personnel of the Supplier involved in the Supplier's provision of the Goods and/or Services.

**Warranty Period** means the manufacturer's warranty period applicable to the Goods.

## 1.2 Interpretation

The following rules apply unless the context requires otherwise:

- (a) The singular includes the plural, and vice versa.
- (b) A reference to a party includes the party's successors, permitted substitutes and permitted assigns.
- (c) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (d) A reference to *dollars* or \$ is to Australian currency.
- (e) Mentioning anything after 'includes', 'including', 'for example' or similar expressions, does not limit what else might be included.
- (f) If there is any inconsistency between these terms and conditions and the terms set out in any Specifications, these terms and conditions will prevail to the extent of that inconsistency.

## 2. Supplier terms not to apply

2.1 The Supplier will supply the Goods and/or Services on the terms and conditions set out in this Purchase Order.

2.2 The Supplier acknowledges that any Supplier's terms and conditions will not apply to the supply of the Goods and/or Services and these terms and conditions will supersede any conditions of sale or supply appearing on or referred to, on any invoice, correspondence or other document provided by the Supplier.

## 3. Confidentiality

3.1 Each party (a **Recipient**) acknowledges that the Confidential Information of the other party (**Discloser**) is, and remains, the property of the Discloser. The Recipient must keep the Discloser's Confidential Information confidential and not disclose it or allow it to become available to any third party, except as permitted by these terms and conditions.

3.2 The Recipient may only access and use the Discloser's Confidential Information with the Discloser's prior consent or to perform its obligations or exercise its rights under these terms and conditions.

3.3 Notwithstanding clause 3.2, the Recipient may disclose the Discloser's Confidential Information to:

- (a) its Personnel, Related Bodies Corporate and their Personnel, provided that the Recipient complies with clause 3.4 and applicable Law;
- (b) its professional advisors, provided that the Recipient complies with clause 3.4 and applicable Law;
- (c) a third party, but only with the prior specific consent of the Discloser to disclose to that person; (each party in subclauses (a)-(c) being an **Authorised Disclosee**); and
- (d) the extent required to comply with any Law or stock exchange rule.

3.4 The Recipient must take, and ensure its Authorised Disclosees take, all reasonable precautions to maintain confidentiality of the Discloser's Confidential Information and protect it from unauthorised access, use and disclosure, including cooperating with the Discloser in any action taken by the Discloser for protection of the Confidential Information.

3.5 Each party acknowledges that damages are unlikely to adequately redress its breach of this clause, so a Discloser may seek injunctive or other equitable/interlocutory relief to protect its Confidential Information against breach of this clause.

## 4. Privacy

4.1 Each party must, in respect of any Personal Information, comply at all times with the Privacy Laws as though it were an APP Entity for the purposes of the *Privacy Act 1988* (Cth).

4.2 The Supplier must, in respect of any Personal Information comply with any privacy policy of Australia Post and/or any reasonable directions of Australia Post notified to the Supplier in connection with its privacy policy, or the collection, use or disclosure of any Personal Information.

4.3 Without limiting clause 4.1, the Supplier must:

- (a) only collect, use or disclose Personal Information as authorised or for the purpose of providing the Goods and/or Services;
- (b) take all reasonable steps to ensure that Personal Information is protected against misuse, loss, interference, unauthorised access, modification or disclosure;
- (c) not transfer or disclose any Personal Information to recipients located outside of Australia without the prior written approval of Australia Post;
- (d) immediately report to Australia Post any suspected or actual Data Breach; and
- (e) provide Australia Post with all information, documents and assistance required by Australia Post in respect of the Data Breach and cooperate with all reasonable directions of Australia Post in relation to the Data Breach.

## 5. Intellectual Property

5.1 The Supplier warrants that it owns or is licensed to use all its Background IPR in or required to be used to (a) manufacture and supply the Goods, (b) provide the Services and/or (c) provide the Deliverables.

5.2 Subject to clauses 5.4 and 5.5, Australia Post will own all rights and title (including all Intellectual Property Rights) in the Deliverables from the time of their creation and the Supplier assigns to Australia Post all Intellectual Property Rights comprised in the Deliverables with effect from the date of creation or modification.

5.3 The Supplier must execute any assignment or other document reasonably requested by Australia Post to evidence Australia Post's ownership of the Intellectual Property Rights in the Deliverables.

5.4 If the Deliverables include any Background IPR of the Supplier, the Supplier grants to Australia Post a perpetual, irrevocable, worldwide, non-exclusive, royalty-free licence to use such Background IPR in order for Australia Post to enjoy the full benefit and use of the Goods, Services and/or Deliverables.

5.5 Where the Deliverables include or incorporate Intellectual Property Rights owned by third parties, the Supplier must obtain from the

licensor of those Intellectual Property Rights (at no charge to Australia Post) a licence enabling Australia Post to use those Intellectual Property Rights to the extent required for Australia Post to obtain the full benefit of the Goods, Services and/or Deliverables.

- 5.6 The Supplier must, in relation to any Deliverables to which Moral Rights attach, procure from each Supplier Personnel used to create those Deliverables, an irrevocable and unconditional consent in favour of Australia Post, the Group Members and Australia Post's licensees, and their assigns to:
- (a) Use, disclose, reproduce, copy, adapt, publish, perform, exhibit, communicate or transmit those Deliverables or any adaptation of those Deliverables anywhere in the world, in whatever form and whatever circumstances Australia Post reasonably thinks fit; and
  - (b) To undertake the activity in clause 5.6(a) without making any identification of the author of those Deliverables.

## 6. Requirements in respect of Goods

6.1 **(Compliance)** The Supplier must ensure that:

- (a) it has the right to supply, manufacture (where applicable) and sell the Goods;
- (b) the Goods conform to the Specifications;
- (c) the Goods are of merchantable quality and fit for the purpose for which the Goods are being acquired by Australia Post (which may include resale to third parties);
- (d) the Goods are free of Defects for the Warranty Period;
- (e) the Goods are free from any charges or encumbrances;
- (f) the Goods and the conditions under which the Goods are manufactured, comply with all Laws and Relevant Standard relating to the Goods, (including without limitation all packaging and labelling requirements).

6.2 **(Inspection)** Australia Post may inspect the Goods at the Supplier's premises upon reasonable request by Australia Post. Following such inspection, Australia Post may, acting reasonably, reject any Goods that do not comply with the Specifications or which in Australia Post's reasonable opinion are: (a) unfit for the purpose for which they were acquired or (b) not of merchantable quality, and the Supplier must not attempt to deliver any Goods which have been rejected by Australia Post.

6.3 **(Packaging & delivery)** The Supplier must pack and deliver the Goods in accordance with the Packaging and Delivery Requirements.

6.4 **(Delivery Times and location)** The Supplier must deliver the Goods in accordance with the delivery lead times and to the delivery location as agreed with Australia Post.

6.5 **(Manufacturer's warranty)** Where Goods are covered by a manufacturer's or distributor's guarantee/warranty, the Supplier must provide Australia Post with written details of the guarantee/Warranty Period and any associated conditions.

6.6 **(Title)** Subject to clause 6.8, ownership of and title to the Goods pass to Australia Post upon delivery at the location specified by Australia Post.

6.7 **(Rectification of Defects)** Without limiting Australia Post's rights under Law or this Purchase Order, the Supplier must rectify, at no cost to Australia Post, all Defects in the Goods which arise during the Warranty Period as soon as reasonably practicable. If the Supplier is unable to rectify a Defect, the Supplier must replace the Goods which are the subject of the Defect at no cost to Australia Post as soon as reasonably practicable.

6.8 **(Non-compliance with Specifications)** A signature on a delivery docket is not an acknowledgement by Australia Post that the Goods comply with the Specifications. Without limiting Australia Post's rights under Law or this Purchase Order, if any Goods do not in Australia Post's reasonable opinion, comply with the Specifications, then Australia Post may within 30 days of the delivery date of those Goods, reject and return them to the Supplier at the Supplier's expense and risk. Australia Post is not liable to pay for any Goods which have been returned to the Supplier and do not meet the Specifications. Non-compliant Goods must be replaced by the Supplier as soon as reasonably practicable.

## 7. Requirements in respect of Services

7.1 The Supplier must:

- (a) provide the Services in accordance with the Specifications and any performance standards specified by Australia Post;
- (b) provide the Services efficiently, with due skill, care and diligence;
- (c) comply with all applicable Laws and Relevant Standards in the performance of the Services;
- (d) ensure it has obtained all necessary approvals required to provide the Services;
- (e) ensure that the Supplier Personnel: (i) are suitably qualified to provide the Services and (ii) at all times when providing the Services, not engage in any conduct which may adversely impact Australia Post's reputation and not have a Conflict of Interest that has not been disclosed to Australia Post.

## 8. Specifications

8.1 The Supplier must only use the Specifications for the sole purpose of providing the Goods and/or Services.

8.2 Any amendments to the Specifications must be agreed between Australia Post and the Supplier prior to the commencement of any work associated with the Purchase Order.

8.3 All information (including any drawings) provided to the Supplier by Australia Post as part of the Specifications, remain the sole property of Australia Post and will be returned upon request.

## 9. Termination

9.1 **(Termination by Australia Post)** Australia Post, acting reasonably, may by written notice to the Supplier,

- (a) terminate this entire Purchase Order effective immediately; or
- (b) partially terminate the Purchase Order in respect of some unfulfilled Goods and/or Services under this Purchase Order (**Partial Termination**)

if:

- (i) the Supplier commits a breach of these terms and condition that is capable of remedy but fails to remedy that breach within 14 days after receiving a written notice from Australia Post requiring that breach to be remedied;

- (ii) the Supplier commits a breach of these terms and conditions which cannot be remedied. For clarity, this includes where the Supplier fails to provide the Goods and/or Services by the required delivery date or at a rate of progress set out in the Specifications; or
  - (iii) the Supplier is, or becomes, Insolvent.
- 9.2 **(Termination by the Supplier)** The Supplier, acting reasonably, may by written notice to Australia Post terminate this Purchase Order effective immediately if:
- (a) Australia Post commits a breach of these terms and condition that is capable of remedy but fails to remedy that breach within 14 days after receiving a written notice from the Supplier requiring that breach to be remedied;
  - (b) Australia Post commits a breach of these terms and conditions which cannot be remedied.
- 9.3 **(Consequences of Partial Termination)** In the event of a Partial Termination:
- (a) Australia Post may engage a third party to provide the Goods and/or Services which have not been fulfilled by the Supplier;
  - (b) Australia Post must pay all Fees for Goods and Services that have been properly supplied in accordance with these terms and conditions, up to the effective date of the Partial Termination;
  - (c) The Supplier must continue to provide such Goods and/or Services that are unaffected by the Partial Termination.
  - (d) The Supplier will be liable for such additional costs reasonably incurred by Australia Post (and notified to the Supplier) in engaging a third party to supply the Goods and Services the subject of a Partial Termination.
- 9.4 **(Consequences of complete Termination)** Where the Purchase Order has been terminated in its entirety:
- (a) The Supplier will cease to supply the Goods and/or Services from the effective date of such termination; and
  - (b) Australia Post will pay all Fees for the Goods and/or Services that are properly supplied by the Supplier in accordance with these terms and conditions.
- 9.5 **(Survival)** Clauses 1 to 9<sup>1</sup>, 12, 13, 15 and 18 survive the termination of this Purchase Order.

## 10. Invoice and payment terms

- 10.1 The Supplier must provide Australia Post with a valid tax invoice containing all the elements of a tax invoice required under GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth). Each invoice must also set out: (a) the Purchase Order number, (b) itemised details of the Goods; (c) the description of the Services provided, including the location; (d) the Fees; (e) the date of delivery of the Goods and/or performance of the Services; (f) any other information prescribed by Australia Post, acting reasonably.
- 10.2 Unless specified otherwise on the cover of this Purchase Order, all Fees are inclusive of GST.
- 10.3 Where Australia Post makes payment of an invoice by Electronic Funds Transfer, payment will be made within 30 days from the date of the invoice.
- 10.4 Where permitted by the Supplier, Australia Post may pay an invoice by credit card. Where payment is made by credit card: (a) payment will be made within 15 days from the date of the invoice; (b) the Supplier must not pass on to Australia Post and Australia Post will not be liable for, any surcharge or fees levied by the credit card provider.
- 10.5 Unless otherwise advised by Australia Post, the Supplier must send all invoices in PDF format by email to: [ap.vendorinvoices@deciphab.com.au](mailto:ap.vendorinvoices@deciphab.com.au).

## 11. Occupation and maintenance of Site

- 11.1 Where the Supplier is required to enter onto a Site, the Supplier must only occupy such areas on the Site that enable the Supplier to provide the Goods and/or Services and only for such period of time as is required to provide the Goods and/or Services.
- 11.2 Australia Post may at any time, acting reasonably, require the Supplier to vacate the Site for operational reasons and the Supplier must vacate the Site upon request.
- 11.3 The Supplier must keep the Site clean and tidy when providing the Goods and/or Services.
- 11.4 Upon provision of the Goods and/or completion of the Services, the Supplier must: (a) remove all temporary structures that have been erected and all equipment, surplus materials and rubbish that may have accumulated during the Supplier's occupation of the Site and (b) leave the Site in a clean and tidy condition that is fit for immediate use and operation.

## 12. Subcontracting, assignment and variation

- 12.1 The Supplier must not (a) subcontract its obligations (b) assign its rights or (c) novate its rights or obligations, under this Purchase Order without the prior written consent of Australia Post, which must not be unreasonably withheld.
- 12.2 Australia Post may (a) subcontract its obligations (b) assign its rights or (c) novate its rights or obligations, under this Purchase Order to a Related Body Corporate.
- 12.3 Any variation or amendment to these terms and conditions (including the Specifications) is not effective unless it is in writing and signed by Australia Post and the Supplier.

## 13. Payment Card Industry Data Security Standard (PCI DSS)

- 13.1 This clause applies where the Supplier transmits, stores or processes Cardholder Data on behalf of Australia Post or can influence the security of Cardholder Data.
- 13.2 The Supplier must:
- (a) protect and be responsible for the security of the Cardholder Data it possesses, stores or transmits;
  - (b) ensure that its provision of the Goods and/or Services is compliant with the PCI DSS;
  - (c) if requested, provide evidence (acceptable to Australia Post, acting reasonably) of its compliance status with the PCI DSS; and
  - (d) allow Australia Post (or its appointed third party) to audit or to undertake certain testing procedures on the Supplier (and if necessary the Supplier's premises) to ensure satisfactory compliance with PCI DSS.

#### **14. Occupational Health, Safety and Environment**

14.1 Australia Post is entitled, but not obliged, to issue any reasonable direction in relation to any occupational health, safety and environmental issues that arise pursuant to this Purchase Order and the Supplier must, at its own cost, comply with such directions.

#### **15. Insurance**

15.1 The Supplier must take out and maintain during the Insured Period the following types of insurance policies with insurers acceptable to Australia Post (such approval not to be unreasonably withheld):

- (a) combined public liability insurance and product liability insurance for an insured amount of not less than \$10 million for each and every event and in the aggregate per annum;
- (b) workers compensation insurance as required by the relevant State or Territory legislation;
- (c) where the Supplier is providing professional services, advice or opinion – professional indemnity insurance for an insured amount of not less than \$10 million each claim and in the aggregate per annum;
- (d) where the Supplier is providing information technology services – cyber liability insurance for an insured amount of not less than \$10 million; and
- (e) where the Supplier or Supplier Personnel will be driving a vehicle on Australia Post property – motor vehicle third party legal liability insurance for an insured amount of not less than \$20 million for each and every event.

#### **16. Supplier Code of Conduct**

16.1 The Supplier must comply with the Australia Post Supplier Code of Conduct published at [https://auspost.com.au/content/dam/auspost\\_corp/media/documents/supplier-code-of-conduct.pdf](https://auspost.com.au/content/dam/auspost_corp/media/documents/supplier-code-of-conduct.pdf). If the link does not work the document can be found by searching “Australia Post supplier Code of Conduct” on the internet.

#### **17. Supply to Group Members**

17.1 The Supplier acknowledges that Australia Post enters into these terms and conditions for the benefit of itself and each Group Member and that each Group Member is entitled to all rights and privileges under these terms and conditions as if each reference to Australia Post were to that of the relevant Group Member.

17.2 Australia Post may on-supply any of the Goods and/or Services to a Group Member.

17.3 Australia Post holds the benefits of the rights under these terms and conditions (including the right to be indemnified) on trust for its own benefit and for the benefit of each Group Member and may enforce them on behalf of any Group Member.

#### **18. Governing law**

18.1 The laws of Victoria, Australia govern these terms and conditions. The parties submit to the exclusive jurisdiction of the courts of Victoria and the Federal Court of Australia.