
Terms and Conditions of Purchasing

Version March 2017

This document sets out the Terms and Conditions of Purchasing where Engagis Pty Limited (“Company”) purchases goods and services from its supplier (“Supplier”). These terms and conditions may be changed by Engagis from time to time without notice to you. Please check the website www.engagis.com/legal-documents for the most up to date version.

The Supplier acknowledges and agrees that these Terms and Conditions of Purchasing by accepting the Purchase Order.

The Supplier acknowledges and agrees that these Terms of Business shall exclusively govern the relationship contemplated between the parties for any goods or services completed under these Terms and Conditions of Purchasing, and shall be deemed to automatically override any and all of the Supplier’s own business terms and conditions of purchasing/supply.

1. DEFINITIONS

1.1 Unless the context otherwise requires:

Company means **Engagis Pty Ltd** ABN 98 098 945 469 and includes its successors and assigns.

Conditions means these terms and conditions for the supply of Goods and/or Services by the Supplier to the Company. A reference to "Conditions" includes the Schedule.

Confidential Information has the meaning given to that term in clause 11.1.

Contracts has the meaning given to that term in clause 2.1.

Goods means the products, materials, supplies, equipment and other goods the subject of an Order and, if applicable, forming part of the Services.

Includes means includes but without limitation.

Order means an order by the Company on the Supplier for the supply of Goods or the supply of Services or both as detailed in each Purchase Order Form and referred to in Clause 2.

Receipt Date has the meaning given to that term in clause 8.3.

Order Specification means the Company's specifications for the Goods and/or Services as described in any Order.

Other Relevant Requirements means the requirements of all codes, standards, industry requirements, regulations, legislation, by-laws, ordinances, common law and other laws applying to the production, sale, use and consumption of the Goods and the supply of the Services.

Purchase Order Form means the Company's official printed purchase order form bearing a purchaser order number which is the only form recognised by the Company as authority for charging Goods or Services to its account.

Services means all things to be performed in accordance with an Order.

Site means the locations stated in the Order for the delivery of the Goods or the performance of the Services.

Supplier means the party named in the Purchase Order Form.

Supply has the meaning given to that term in clause 2.1.

Where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.

A reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements or any of them.

2. ORDERS

2.1 The Conditions apply to and govern all Orders placed by the Company and all contracts (Contracts) entered by the Company whereby goods and/or services are supplied, provided and/or delivered (supply or supplied) to the Company.

2.2 No order is valid other than an order issued on a Purchase Order Form.

2.3 Unless otherwise agreed in writing by the Company, for each Contract, an Order and the Conditions will constitute the entire agreement between the Company and the Supplier under which Goods and/or Services will be supplied by the Supplier to the Company. No terms and conditions stated by the Supplier in any quotation, invoice or other document will be binding upon the Company unless accepted in writing by the Company.

2.4 Unless otherwise agreed in writing by the Company, to the extent that any conflict exists between the Conditions and any other documentation or correspondence forming part of any Order or any Contract, these terms are paramount and prevail. The Conditions may only be varied by agreement in writing between the parties.

3. Supply of Goods and Services

3.1 Goods supplied pursuant to an Order must:

- (a) comply strictly with the quantity, volume and description as noted in the Order;
- (b) comply strictly with any specifications as noted in the Order Specification;
- (c) be fit for and of suitable quality for the purpose required by the Company;
- (d) be to or of any standard specified in the Order;
- (e) be of merchantable quality;
- (f) be delivered by the time specified in and in accordance with all instructions in the Order;
- (g) pass such inspections and tests as may be required by the Company.

3.2 Services performed pursuant to an Order must:

- (a) comply strictly with the description as noted in the Order;
- (b) comply strictly with any specifications as noted in the Order Specification (including any due date for commencement of the Services);
- (c) be fit for the purpose required by the Company and any Goods supplied in connection with the Services must be fit for the purpose required by the Company;
- (d) be to or of the standard of skill and care and the quality expected of a provider experienced in the provision of the type of services required;
- (e) be completed by the time specified in and in accordance with all instructions in the Order;
- (f) comply with the Relevant Requirements;
- (g) pass such inspections and tests as may be required by the Company; and
- (h) be rendered in a diligent manner and with due care and skill.

3.3 The Company relies upon the skill and knowledge of the Supplier in providing the Services.

3.4 The Company may object to person(s) providing Services if that person(s) does not have (in the opinion of the Company) sufficient skills, qualifications, or competency of skills to perform the relevant Services part of the Services. If requested by the Company, the Supplier must remove such person(s) and replace them with a suitable replacement as required by the Company.

4. PRICE

4.1 Unless otherwise agreed by the Company in writing, the prices specified for the Goods and Services in the Order:

- (a) will remain fixed for the term of the Order and will not be subject to any variation in the cost of materials, labour, delivery, taxes or otherwise;
- (b) include all duties, taxes (including GST), levies, imposts and other like costs; and
- (c) in relation to Goods, include all costs of delivery to the Site as well as the full cost of packaging and marking and, in relation to Services, include all costs of performance at the Site.

4.2 The Supplier must provide the Company with a valid tax invoice for GST purposes in respect of each supply of Goods and Services.

4.3 The Company at any time may issue a written instruction to the Supplier requiring additions, deletions or changes to the Goods and Services to be supplied or in the arrangement of transportation of the Goods.

Where an instruction under this clause results in an additional cost to the Company, the Supplier must clearly identify the increases in costs and provide necessary documentation to substantiate any increased cost of the Goods and Services.

5. Delivery

5.1 Time is of the essence for each Order and each Contract. If the Supplier does not supply the Goods or complete the performance of the Services within the time(s) stated in the Order, the Company may terminate the Order and the Contract which termination will be without prejudice to any other rights or remedies of the Company.

5.2 Unless otherwise agreed by the Company in writing, the Supplier must deliver the Goods together with any technical material, warranties or other required documentation to the Site and perform the Services at the Site set out in the Order.

5.3 Goods must be accompanied by a delivery docket stating the Order number and the item number, description, quantity and price of the Goods.

6. TITLE, RISK, inspection AND acceptance

6.1 The Supplier warrants that, at the time of delivery, it has the right to sell the Goods and the Goods are free from all liens, charges and encumbrances of any kind.

6.2 The Company may inspect and test the Goods and Services at the Supplier's premises or elsewhere and at any stage during or after manufacture, production, supply or performance. The Company's right to inspect and test will not reduce the obligations or liabilities of the Supplier under an Order or a Contract.

6.3 Title and risk in the Goods will pass to the Company after the Goods have been physically delivered to and inspected and accepted by the Company as being in accordance with the Order and the Contract.

6.4 If Goods are supplied with Services, title and risk in the Goods will not pass to the Company, until both the Goods and the Services have been supplied by the Supplier and inspected and accepted by the Company as being in accordance with the Order and the Contract.

6.5 The Company may reject any Goods and Services which the Company determines to be contrary to the requirements of the Order or the Contract.

6.6 The Company may at any time return rejected Goods to the Supplier at the Supplier's expense and obtain full credit in respect of the purchase price thereof.

6.7 If required by the Company, the Supplier must re-supply any rejected Goods and remedy any rejected Services at no additional cost to the Company

7. INSURANCE

7.1 The Supplier must arrange adequate insurance coverage in respect of the Goods and Services in accordance with the reasonable requirements of the Company regarding the entities insured, the risks insured against and the amount of the insurance.

7.2 Without limiting clause 7.1, the Supplier must insure itself and the Company in relation to the Goods against product liability.

8. INDEMNITY

8.1 Subject to clause 8.3, without prejudice to any other right or remedy, the Supplier must indemnify, and keep indemnified, the Company in respect of all costs, expenses, fees, claims, damages, liabilities and losses (including in respect of bringing or defending any action, claim or proceedings and including any indirect or consequential loss or damage including loss of opportunity, loss of profits, loss of goodwill or other financial loss or expense) suffered, paid or incurred by the Company or for which the Company is or may become liable by reason of, in relation to or in connection with:

- (a) the breach by the Supplier of the terms of a Contract including any of the Conditions;
- (b) the breach by the Supplier of any warranty as may be implied by operation of law; or
- (c) the negligence of the Supplier or any of its employees, servants, agents or sub-contractors.

The Supplier is to make payment immediately on demand from the Company.

8.2 At its option the Company may deduct from or withhold from any amount then due and owing or to become due and owing to the Supplier by the Company an amount equivalent to not more than the sum of the moneys payable to the Company by the Supplier under clause 8.1.

8.3 If the Supplier fails to deliver or complete an Order by the date set out in the Order (Receipt Date) :

- (a) the Supplier will be indebted to the Company for liquidated damages at the rate of 5% of the total price set out in the Order for every day after the Order Date to and including the first to occur of the date on which:

- (i) the Order is completed; or
- (ii) the Order and the relevant Contract is terminated;

(b) at its option the Company may deduct from or withhold from any amount due and owing or to become due and owing to the Supplier by the Company an amount equivalent to not more than the sum of the monies to be paid to the Company by the Supplier pursuant to this clause 8.3; and

(c) the parties agree that the amount calculated under this clause 8.3 is a reasonable estimate of the loss the Company will suffer in the event the Supplier fails to complete an Order by the Order Date.

9. LAWS AND other requirements

9.1 The Supplier will, at its cost:

- (a) comply with the Relevant Requirements;
- (b) comply with all lawful requirements of the Company in any way affecting or applicable to the Goods or Services from time to time.

The Supplier agrees that it will ensure that its employees, agents and sub-suppliers agree to be so bound by the obligations contained in this clause.

9.2 The Supplier will obtain all permits, licences, consents, approvals and authorisations required in respect of the Goods and Services and will give all notices required to be given in respect of the Goods and Services and will pay all requisite fees, deposits, and taxes. The Supplier will provide evidence of compliance at the request of the Company.

10. WARRANTY

10.1 All usual and customary trade warranties will be obtained for the Goods and Services (including manufacturers' warranties in respect of the Goods), as well as any warranties which the Company may specifically request, and the Supplier must, at its cost, ensure the Company is assigned and has the benefit of any unexpired warranties at the completion of the supply of the Goods or the Services.

10.2 Any Goods or Services determined by the Company not to be in accordance with the Order or the relevant Contract must be remedied by the Supplier at its own expense. In the case of Goods, without limitation the remedy will be re-supply of the relevant Goods. If the Supplier fails to promptly remedy any defect in the Goods or Services on request by, and to the satisfaction of, the Company, then the Company may remedy (or arrange for a third party to remedy) that defect at the cost of the Supplier which will be a debt due and owing to the Company.

10.3 All Goods must be clearly identified and appropriately packed to avoid any possibility of damage.

11. CONFIDENTIAL INFORMATION

11.1 All drawings, specifications, know-how and other information relating to the Services, the Goods, the Company's operations or affairs which the Supplier becomes aware of during the term of the Order, including information which by its nature should reasonably be considered to be confidential information, (collectively, Confidential Information) are confidential to the Company. Confidential Information does not include any information which the Supplier can prove either is in the public domain or was known by the Supplier at the time of disclosure, other than through a breach of the Conditions.

11.2 The Supplier must keep the Confidential Information confidential and must not disclose the Information to any third party except that the Supplier may disclose the Information:

- (a) as expressly required or permitted by the Contract;
- (b) with the written consent of the Company;
- (c) to the extent required by a law, by an order of a court or of a regulatory body or by the Listing Rules of the ASX Limited; or
- (d) to the extent necessary, to any employee or agent of the Supplier or any other person who is bound by terms no less onerous than those contained in this clause.

11.3 The Supplier indemnifies the Company from all damages, losses, expenses, claims or actions arising out of a breach by the Supplier of any obligation under this Clause 11 or a breach by any third party of any confidentiality obligation which is imposed on that party and which applies to the Confidential Information.

11.4 The Supplier must not use or permit the use of any Confidential Information for any purpose other than that contemplated by the Order or the Contract, unless authorised by a separate agreement between the parties.

12. DISCONTINUANCE BY SUPPLIER

The Supplier must provide the Company with a minimum of 3 months written notice prior to the time it wishes to cease providing the Services or supplying the Goods where there is no fixed period of the Contract.

13. PAYMENT

13.1 The Supplier will invoice the Company for payment after supply of the Goods or completion of the Services unless:

(a) supply of the Goods or performance of the Services extends for more than 1 calendar month in duration, in which case the Supplier may invoice the Company at the end of each month for Goods supplied or Services performed on the Site during the relevant month, or

(b) there is a different arrangement in writing between the Supplier and the Company covering payment for Goods and Services, in which case the terms of such arrangement will apply.

13.2 Unless otherwise agreed by the Company in writing, the Company will pay the Supplier within 30 days after the end of the month in which the Company receives an invoice properly issued in accordance with the requirements of the Contract, provided the Supplier has complied with all of the requirements in the Contract.

14. CANCELLATION

14.1 The Company may, on providing notice at least 30 days prior to the time for supply of the Goods or the completion of the Services, cancel an Order for any Goods not supplied or incomplete Services and the Supplier will not supply those Goods or perform the Services in accordance with and to the extent specified in the notice.

14.2 If an Order is cancelled under clause 14.1, the Supplier will immediately do everything possible to mitigate any costs incurred by it arising from the Order and the cancellation.

14.3 The Company will pay for any Goods delivered or Services performed at the time of receipt of the notice referred to in clause 14.1 and will pay the costs of Goods and Services ordered but not supplied which the Supplier is legally bound, at the time of receipt of the notice under clause 14.1, to pay, provided that the Company will have no other liability for any damages or losses (whether direct, indirect or consequential), costs or expenses in connection with the Orders or their cancellation. Title to any Goods which the Company pays for will pass to the Company in accordance with clause 6.

15. TERMINATION FOR DEFAULT

15.1 If the Supplier:

(a) breaches any term or condition of a Contract, suspends the provision of Goods or Services the subject of any Order or fails to proceed with due diligence so as to endanger completion of the supply of Goods or Services by the time stated in the Order, and does not rectify such breach, suspension or failure within 7 days of receipt of notice from the Company regarding the breach, suspension or failure; or

(b) becomes insolvent, commits an act of bankruptcy or has a petition for bankruptcy presented against it or, being a company, a liquidator, provisional liquidator, receiver, receiver and manager, administrator or official manager is appointed in respect of the Supplier, a mortgagee goes into possession of the Supplier's assets or business, an application is made to appoint a liquidator or to have the company wound up, the Supplier resolves to go into liquidation, the Supplier is made subject to the supervision of a court or enters into a scheme or arrangement with its creditors or if anything analogous occurs in respect of the Supplier, then the Company may:

(c) suspend payment in respect of all Orders placed by the Company with the Supplier whether or not the Supplier has complied with the terms and conditions attaching to any of those particular Orders;

(d) remedy the breach referred to in clause 15.1(a) on behalf of the Supplier at the cost of the Supplier; and/or

(e) terminate the Order and the relevant Contract at no cost to the Company.

15.2 Termination of the Order and the Contract under clause 15.1 will be without prejudice to any of the other legal rights and remedies (including damages) that the Company may have as result of the breach, suspension or failure referred to in clause 15.1.

16. LAW APPLICABLE

All of the Conditions and all of the Orders and Contracts will be governed by and interpreted in accordance with the laws of the State of New South Wales.

17. ASSIGNMENT

The Supplier must not assign or subcontract, in whole or in part, an Order or a Contract or assign money due to the Supplier under an Order, except with the prior written consent of the Company.

18. INTELLECTUAL PROPERTY RIGHTS

The Supplier must indemnify the Company and its affiliates from and against any loss, damage, injury, cost (including legal costs), action, claim, demand or proceedings arising from or incurred by reason of, directly or indirectly, any infringement or alleged infringement of patents, registered designs, trademarks, copyright and/or any other industrial or intellectual property right in connection directly or indirectly with the Supplier's provision of the Goods or performance of the Services.

19. LIENS

The Supplier must not claim any liens, attachments or similar claims in connection with the Goods or the Services and must defend and indemnify the Company against any liens, attachments or other similar claims arising out of or in connection with an Order.

20. WAIVERS

Any waiver of any right or remedy of the Company under a Contract:

20.1 is effective only if it is issued in writing and properly signed on behalf of the Company;

20.2 is effective to the extent that the Company expressly states in writing; and

20.3 does not constitute a waiver of any other right or remedy under the Contract.

21. Dispute Resolution

Any dispute between the Supplier and the Company arising out of or in any way connected with an Order which is not resolved by the Supplier and the Company within 14 days of a notice by either party to the other advising that it is a notice pursuant to this clause 21 shall be referred for determination to the person agreed between the Company and the Supplier or, failing such agreement, to the nominee of the Company, who will act as an independent expert and not as an arbitrator and the expert's written determination is final and binding on the parties.