

Macquarie Telecom Standard Purchase Order Terms and Conditions.

1. TERMS AND CONDITIONS

Documentation means documentation specified in this Purchase Order or otherwise required to enable Macquarie Telecom to make full use of the Products or Services.

GST means any goods and services tax, value added tax or sales tax imposed on the sale or supply of goods, services and rights including but not limited to a tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the related imposition Acts of the Commonwealth.

IPR means intellectual property rights.

Insolvency Event means any of the following events in relation to a party:

- (a) having a receiver and/or manager appointed over any of its assets and property;
- (b) having a liquidator appointed (whether under a creditor's petition, voluntary liquidation or otherwise);
- (c) passing a resolution for winding-up (otherwise than for a purpose of amalgamation or reconstruction);
- (d) being placed under any form of insolvency administration;
- (e) entering into any composition or arrangement with its creditors;
- (f) becoming insolvent; or
- (g) ceasing to carry on business.

Macquarie Telecom Contact means the person specified by Macquarie Telecom in the Purchase Order as amended from time to time.

Personnel of a party means the officers, employees, agents and contractors (including their employees and contractors) of that party.

Products means the goods specified in the Purchase Order including without limitation, any Software, hardware and/or Services.

Purchase Order means (in order of priority):

- (a) the purchase order for the Products and/or Services in the form prescribed by Macquarie Telecom;

(b) these terms and conditions; and

(c) any attachments to the purchase order.

Services means the services specified in the Purchase Order.

Software means the software specified in the Purchase Order or provided to Macquarie Telecom as part of Services and Documentation.

Specifications means (in order of priority):

- (a) any description of, or representation about the Products provided to Macquarie Telecom or referred to in the Purchase Order; and
- (b) the Supplier's or manufacturers' published specifications for the Products.

Supplier means the supplier specified in the Purchase Order.

2. PURCHASE ORDER FORMATION

The Purchase Order may be sent electronically to the Supplier. A binding agreement between Macquarie Telecom and the Supplier will come into existence on the earlier of the date the Supplier confirms acceptance of the Purchase Order or the Supplier commences delivery of any of the Products or Services.

3. DELIVERY

The Supplier must deliver the Products and Services to the delivery address on the delivery date set out in the Purchase Order. On delivery, the Supplier must obtain the name (printed) and signature of the Macquarie Telecom Personnel that receives the Products or Services.

4. ACCEPTANCE

- 4.1 Macquarie Telecom may test the Products within one month after delivery to determine whether the Products comply with the Specifications. Macquarie Telecom will accept the Products if they comply with the Specifications.
- 4.2 If the Products do not comply with the Specifications, Macquarie Telecom may terminate the Purchase Order or require the Supplier to promptly modify the Products so that they comply with the Specifications.
- 4.3 Execution of a delivery document or payment by Macquarie Telecom does not constitute acceptance by

Macquarie Telecom.

5. PRICE

Unless stated otherwise in the Purchase Order:

- (a) the prices specified in the Purchase Order are fixed and include all levies, duties, taxes (except GST), insurance, packaging and delivery costs; and
- (b) all prices set out in the Purchase Order are in Australian dollars.

6. PAYMENT

- 6.1 Unless otherwise agreed, the Supplier must invoice Macquarie Telecom monthly in arrears. Each invoice must itemise the GST included in the prices, state the Purchase Order number and be addressed to the Macquarie Telecom Contact at the address for invoices specified in the Purchase Order.
- 6.2 Macquarie Telecom will pay the invoice (less any amounts due to Macquarie Telecom from the Supplier) by the end of the month following the month in which the invoice was received by Macquarie Telecom.
- 6.3 Method of payment will be electronic funds transfer, with payments made to Supplier to an account nominated by the Supplier.

7. GOODS AND SERVICES TAX

- 7.1 Unless stated otherwise in the Purchase Order, the consideration for the supply of goods, services or other things under the Purchase Order has been calculated exclusive of GST.
- 7.2 If GST is imposed on a supply made pursuant to the Purchase Order, Macquarie Telecom will pay, in addition to the GST-exclusive consideration, an amount equal to the GST payable by the Supplier in respect of the supply.
- 7.3 The Supplier must ensure that any invoice or other request or demand for payment for supplies provided by it to Macquarie Telecom constitutes a tax invoice that will, where applicable, enable Macquarie Telecom to claim any tax credits for the GST in respect of supplies to which the invoice relates.
- 7.4 No amount will be due and payable by Macquarie Telecom in respect of a supply under the Purchase Order unless Macquarie Telecom has received from the party making the supply an invoice which complies with this clause.

8. ABN

In compliance with the relevant withholding tax legislation or any Australian Taxation Office Public

Ruling, Macquarie Telecom may withhold an amount of tax from any payment it makes to the Supplier for a supply, unless the Supplier provides to Macquarie Telecom an invoice or other document relating to the supply that quotes the Supplier's Australian Business Number (**ABN**) or the Supplier provides Macquarie Telecom with a written statement in a form approved by the Australian Taxation Office as to the reason for not quoting an ABN.

9. RISK AND TITLE

Risk and title in the Products (other than Products licensed under clause 10) will pass to Macquarie Telecom when the Products are delivered.

10. IPR

- 10.1 The Supplier assigns (now and in the future) all IPR to Macquarie Telecom in:
 - (a) all Services deliverables; and
 - (b) any material specifically created for Macquarie Telecom in the supply of the Products.
- 10.2 The Supplier grants Macquarie Telecom (and its contractors) an irrevocable, non-exclusive, paid up, royalty free, perpetual licence to use and copy the Products so that Macquarie Telecom (and its contractors) can make full use of them anywhere in the world for any purpose. Macquarie Telecom owns IPR in any modifications by Macquarie Telecom to the Products and/or Services deliverables.

11. WARRANTY

- 11.1 The Supplier warrants:
 - (a) that all Products:
 - (i) are new and in good condition;
 - (ii) comply with all relevant Australian standards and industry codes;
 - (iii) are free from defects in design, materials and workmanship;
 - (iv) are of good and merchantable quality and fit for their intended purposes; and
 - (v) comply with the Specifications;
 - (b) for Services, that the Supplier will:
 - (i) provide the Services with the degree of skill, care and diligence that would be expected of a skilled professional experienced in providing the same or

similar services;

- (ii) comply with all reasonable directions of Macquarie Telecom's Personnel; and
 - (iii) comply with all Macquarie Telecom policies (as notified to the Supplier by Macquarie Telecom from time to time), relevant Australian standards and industry codes; and
- (c) that the Products and Services and their use and supply will not breach any obligation of confidence or infringe any IPR rights of any person.

12. BREACH OF WARRANTY

12.1 If the Supplier becomes aware, or Macquarie Telecom notifies the Supplier, that a Product or Service fails to comply with any warranties in clause 11, the Supplier must, without prejudice to any other rights of Macquarie Telecom:

- (a) in the case of the warranties provided under clause 11.1(a), during the warranty period (or if no warranty period is specified a period of 12 months from the acceptance of the Product), fix any non-conformity; and
- (b) in the case of any other warranty, promptly (at Macquarie Telecom's option):
 - (i) remedy that failure (including by replacing the Product or resupplying Service if necessary);
 - (ii) provide to Macquarie Telecom a full refund of the price paid for the Product or Service; or
 - (iii) deduct in accordance with Macquarie Telecom's directions the price paid for the Product or Service from any other amounts owing to the Supplier.

13. SUPPORT

13.1 If specified in the Purchase Order, the Supplier must provide software support and/or hardware maintenance/support (**Support**) for the period set out in the Purchase Order (**Support Period**). The Supplier must be capable of providing Support to Macquarie Telecom for at least 12 months after the end of the Support Period.

14. INDEMNITY

The Supplier indemnifies Macquarie Telecom against

all losses and damages (on a full indemnity basis and whether incurred by or awarded against Macquarie Telecom) that Macquarie Telecom may sustain or incur as a result, whether directly or indirectly, of:

- (a) a claim that the Products or Services or their use or supply breaches any obligation of confidence or infringes the IPR of any person;
- (b) a claim, demand, suit, action or proceeding by a third party arising from an act or omission of the Supplier in connection with the Purchase Order whether negligent or not; or
- (c) without limiting clause 14(b), any act of omission of the Supplier in connection with the Purchase Order resulting in or contributing to:
 - (i) claims by any third party against Macquarie Telecom in respect of personal injury or death; or
 - (ii) loss of or damage to Macquarie Telecom's or a third party's physical property.

15. INSURANCE

15.1 The Supplier must effect and maintain all insurances as required by Law (including without limitation, relevant workers' compensation insurance).

15.2 The Supplier must if requested by Macquarie Telecom:

- (a) at its sole expense, effect proper insurance against all risks, including without limitation, public and product liability and professional indemnity insurance; and
- (b) provide Macquarie Telecom with evidence of the currency and validity of any such insurances.

16. ASSIGNMENT AND SUBCONTRACTING

16.1 The Supplier must not assign part or all of the Purchase Order.

16.2 The Supplier must not use any subcontractors for supply of the Products or Services without Macquarie Telecom's prior written consent. If the Supplier uses a subcontractor, the Supplier remains liable for the subcontractor's acts or omissions.

17. TERMINATION

17.1 Macquarie Telecom may reduce the quantity of any Product or Service by notifying the Supplier before the relevant delivery date or if the Supplier fails to supply a

Product or Service on the delivery date.

- 17.2 Macquarie Telecom may terminate the Purchase Order:
- (a) at any time on at least 14 days notice (without liability); or
 - (b) immediately by giving written notice to the Supplier if:
 - (i) the Supplier commits a breach of the Purchase Order which is not rectified within 7 days of notification by Macquarie Telecom; or
 - (ii) the Supplier is subject to an Insolvency Event.
- 17.3 Macquarie Telecom will not be liable for any amounts or expenses for a terminated Purchase Order or reduced quantity of Product or Service.

18. ENTIRE AGREEMENT

The Purchase Order is the complete agreement between Macquarie Telecom and the Supplier in relation to the Products and Services. No confirmation, shipment, delivery document, shrink-wrap licence or representation will vary the Purchase Order.

19. CONFIDENTIALITY

- 19.1 Any information supplied to the Supplier by Macquarie Telecom relating to the Purchase Order (whether in writing or otherwise) and treated by Macquarie Telecom as confidential will be Macquarie Telecom's confidential information unless it is:
- (a) public knowledge at the time of its supply to the Supplier; or
 - (b) in the Supplier's lawful possession prior to its supply to the Supplier.
- 19.2 The Supplier must keep Macquarie Telecom's confidential information confidential, safe and secure, not disclose it to any person (except Personnel of the Supplier who have a need to know) and return it when it has performed all of the work under the Purchase Order or the Purchase Order terminates or expires. The Supplier may not make any public statement about the Purchase Order unless it has first obtained written consent from Macquarie Telecom.

20. PRIVACY

- 20.1 The Supplier must not, directly or indirectly use personal information except to the extent necessary to provide the Services. The Supplier must comply with the *Privacy Act 1988* (Cth), all other applicable privacy

legislation, all guidelines issued by the Office of Federal Privacy Commissioner and similar regulatory bodies, and all reasonable directions of Macquarie Telecom.

- 20.2 On termination or expiry of the Purchase Order, the Supplier must promptly return to Macquarie Telecom or, if requested by Macquarie Telecom, destroy all copies of the personal information, in which case any right to use, copy or disclose that personal information ceases.

21. COMPLIANCE WITH LAW

The Supplier must comply with all relevant legislation and regulations in the performance of the Purchase Order.

22. APPLICABLE LAW

- 22.1 The laws of New South Wales apply to the Purchase Order and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.