

Subject to (and without derogating from) the terms of any contract which may be entered into between Purchasing Index and (the Customer) in relation to the supply by Purchasing Index of particular goods or services to the Customer, these terms and conditions (Terms and Conditions) apply to any supply of goods and services by Purchasing Index to the Customer. Unless Purchasing Index vary these Terms and Conditions in writing to the Customer, these Terms and Conditions apply in every contract for the supply of goods and services made between Purchasing Index as supplier and the Customer as buyer, including without limitation, pre-configuration, installation, technical or professional services, maintenance tasks on existing infrastructure, structured services delivery unrelated to product supply and any terms and conditions contained in any order, offer, acceptance or other document and all representations, statements, terms, conditions, guarantees and warranties (whether implied by statute or otherwise) not embodied in these Terms and Conditions are expressly excluded to the fullest extent permitted by law.

1. DEFINITIONS In these Terms and Conditions:

"Purchasing Index" means Purchasing Index Pty Ltd (ABN: 70 090 834 727)

"Customer" means the party named as such in the Acceptance Form;

"Quotation" means the quotation or proposal provided to the Customer which specifies specific requirements for goods and/or services to be supplied by Purchasing Index to the Customer, including any specific inclusions or exclusions, and which must be accepted by the Customer prior to the commencement of the supply of the Services;

"Rates" means the rates specified in the Quotation in relation to the supply of the Services; and,

"Services" means any goods and/or services supplied by Purchasing Index to the Customer as set out in the Quotation.

2. SERVICES

Subject to these Terms and Conditions, Purchasing Index will supply to the Customer the Services, at the rates specified in the Quotation. Purchasing Index will use reasonable endeavours to provide the Services within the agreed timeframes, but time will not be of the essence, and Purchasing Index will not be liable for any loss or damages suffered by the Customer arising out of, or in relation to, a delay in delivery by Purchasing Index.

3. PRICE EXCEPTIONS

Regular Working Hours

The Rates, unless otherwise specified, are based upon the provision of the Services during regular working hours (8:30am to 5:00pm ACST) on regular working days (Monday to Friday). Purchasing Index reserves the right to charge additional fees in respect of provision of Services outside of these times.

Proximity

Purchasing Index reserves the right to charge the Customer for any travelling time and expenses incurred in providing Services.

Customer Interference

Purchasing Index reserves the right to charge the Customer for any extra costs incurred by Purchasing Index caused by the Customer's instructions, lack of instructions, interruptions, mistakes, work for which Purchasing Index was/is not responsible (variations) or a change to/in the Customer's environment.

Systems recovery

In the event of any unforeseen failure of Customer environment, recovery and rework tasks will be conducted as additional "time and materials" at Purchasing Index standard rates.

4. USE OF SUB-CONTRACTORS

Purchasing Index may assign and/or subcontract its rights and obligations under these Terms and Conditions without notice at any time. The Customer may not assign or otherwise dispose of its rights and obligations under these Terms and Conditions without prior written consent from Purchasing Index.

5. EACH PARTY'S OBLIGATIONS

The Customer will have sufficient measures in place to ensure continued operation or recovery of systems in the event of a failure.

Purchasing Index will:

a) use reasonable measures to ensure that the integrity of systems being accessed, modified or interacted with are maintained during delivery of the Services.

b) exercise reasonable best practice when accessing the Customer's premises and/or systems when providing the Services.

6. PAYMENT

Purchasing Index will invoice the Customer in respect of all Services provided in accordance with these Terms and Conditions. The Customer will pay such invoices within 30 days of the invoice date. Any amounts due by the Customer to Purchasing Index which have been outstanding for a period in excess of 30 days may, at Purchasing Index' option, be subject to additional interest charges of 18% annually, calculated weekly from the invoice due date.

No refunds or credits are given for unused prepaid Services. Prepaid services expire after 12 months.

7. TAXES

Unless stated otherwise, if a Taxable Supply is made under these Terms and Conditions the party which made the supply (the "Supplying Party") may in addition to the amount payable under these Terms and Conditions recover from the other party (the "Receiving Party") an additional amount on account of GST, calculated by multiplying the amount payable by the GST Rate.

Where a Taxable Supply is made under these Terms and Conditions the Supplying Party shall issue to the Receiving Party a Tax Invoice or an Adjustment Note, as applicable, in accordance with the GST Law.

In these Terms and Conditions, "GST", "GST Law", "GST Rate", "Taxable Supply", "Tax Invoice" and "Adjustment Note" have the meanings given in section 195-1 of A New Tax System (Goods and Services Tax) Act 1999 (Cth).

8. LIMITATION OF LIABILITY OF Purchasing Index

To the fullest extent permitted by law, Purchasing Index excludes all warranties, guarantees and conditions, whether arising in contract, negligence or otherwise arising out of or in connection with the supply of the Services.

To the extent that any warranty, guarantee or condition cannot be excluded, the liability of Purchasing Index for breach of any such guarantee, condition or warranty shall be limited, at the option of Purchasing Index, to any one or more of the following:

a) in the case of provision of goods;

- i. the replacement of the goods or the supply of equivalent goods;
- ii. the repair of such goods;
- iii. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- iv. the payment of the cost of having the goods repaired; and

b) in the case of the provision of services;

- i. the supplying of the services again; or
- ii. The payment of the cost of having the services supplied again.

Except as expressly provided to the contrary in these Terms and Conditions, Purchasing Index excludes all liability for any indirect or consequential expenses, losses, damages or costs incurred by the Customer arising in any way out of or in relation to the supply of the Services (even if due to the negligence of Purchasing Index). Any Purchasing Index liability that may arise under these Terms and Conditions is limited to the maximum extent permitted by law.

Neither party will bring an action against the other relating to the Services more than 2 years after the supply of the Services, excluding an action seeking payment for the Services.

9. INDEMNITY

The Customer hereby indemnifies and holds Purchasing Index harmless against any and all damages, losses, claims, liabilities, demands, charges, suits, penalties, costs and expenses (including legal costs) incurred or suffered by Purchasing Index arising directly or indirectly as a result of, any breach of any provision of these Terms and Conditions, any injury or death to any person negligent act or omission, or willful misconduct of the Customer.

10. INTELLECTUAL PROPERTY

The intellectual property rights in all intellectual property owned by Purchasing Index at the commencement of the application of these Terms and Conditions remain the property of Purchasing Index. The intellectual property rights in all intellectual property developed by Purchasing Index, in providing the Services to the Customer shall become and remain the property of Purchasing Index, of which Purchasing Index will license non-exclusive, non-transferrable rights to the Customer.

All intellectual property rights in data, information, materials utilized by Purchasing Index in providing the Services, including, without limitation, all software, tools, know-how, methodologies, equipment or processes, shall remain Purchasing Index' sole and exclusive property.

Before commencement of delivery of the Services, the Customer is responsible for identifying in writing any instances where the Intellectual Property terms are not compatible with the Customer requirements. In such cases, Purchasing Index shall be responsible for ensuring that no charged work related to that component of the project is undertaken until any issues that have been raised are resolved. Purchasing Index will attempt to resolve such matters within a reasonable time frame and in good faith.

The Customer warrants to Purchasing Index that it has all intellectual property rights necessary to enable Purchasing Index to carry out the Services. The Customer will indemnify Purchasing Index from and against any and all damages, losses, claims, liabilities, demands, charges, suits, penalties, costs and expenses (including legal costs) which Purchasing Index may sustain, or to which any of Purchasing Index may be subjected, arising out of or relating to any breach of this warranty.

11. CONFIDENTIAL INFORMATION & PRIVACY

Both parties acknowledge that they may obtain access to confidential and proprietary information belonging to the other in the course of the provision of the Services. The parties agree not to disclose such confidential information to any person except where:

- (a) the information is in, or comes into, the public domain;
- (b) the information is required to be disclosed by law; or
- (c) the owner of the information consents to its disclosure, or disclosure is required for the provision of the Services.

12. RETENTION OF TITLE

Property and ownership in goods and/or entitlements (including software licenses or subscriptions) will remain with Purchasing Index until the Customer has made payment in full in cleared funds of the purchase price of those Services and all other amounts owing to Purchasing Index under these Terms and Conditions.

The Customer must pay any costs incurred by Purchasing Index, including legal costs on a solicitor-own client basis, arising from any disputes or negotiations with third parties claiming an interest in any Services supplied by Purchasing Index

13. DELAY AND FORCE MAJEURE

Neither party is responsible for failure to fulfil any obligations due to causes beyond its control.

14. GENERAL PROVISIONS

These Terms and Conditions and the Quotation that they support may not be changed or modified in any way except in writing signed by or on behalf of all the parties. By placing an order or request for Services, The Customer acknowledges that it has read and agrees to be bound by these Terms and Conditions.

These Terms and Conditions and the Quotation constitute the entire agreement between the parties with respect to the provision of the Services and supersede all previous agreements or understandings, representations, warranties and conditions not expressly stated herein.

If any term of these Terms and Conditions or any part thereof is or becomes or is declared illegal, invalid or unenforceable for any reason whatsoever in any jurisdiction and such term or part is severable, it is deemed deleted from these Terms and Conditions in the relevant jurisdiction.

If Purchasing Index elects not to exercise any of its rights arising as a result of a breach of these Terms and Conditions, this will not constitute a waiver of any rights of Purchasing Index relating to any subsequent or other breach.

The Terms and Conditions shall be governed by and interpreted in accordance with the laws in force in the State of South Australia. The parties submit to the exclusive jurisdiction of the Courts of the State of Victoria.

Unless otherwise specified, each party will, at its own expense and when requested by the other party, promptly do, sign and deliver everything reasonably required to give full effect to these Terms and Conditions and the transactions contemplated by these Terms and Conditions.