

## GOODS & SERVICES – PURCHASE ORDER TERMS

“We, us or our” means Aussie Broadband Limited (ABN 29 132 090 192) or any of its Affiliates named as purchaser on the Purchase Order, and “you” or “your” means the supplier of the Goods and Services as named on the Purchase Order. All capitalised Terms have the meaning in clause 17, unless defined in the main body of these Terms.

### 1. SUPPLY

1.1 You agree to supply (and we agree to purchase) the Goods and Services set out in our Purchase Orders.

1.2 You agree that:

- (a) these Purchase Order Terms (**Terms**) apply to your supply of Goods and Services – unless you have signed a separate written supply agreement with us for those Goods or Services (in which case that supply agreement applies); and
- (b) any other terms or conditions of supply (eg limitations of liability) which appear in (or are referenced by) your quotation, proposal or other supply documentation do not apply.

1.3 Your acceptance of a Purchase Order confirms your agreement to all details of the Purchase Order (including these Terms).

### 2. PERFORMANCE STANDARDS

2.1 (**Goods**) You warrant that the Goods (on delivery and for the Warranty Period):

- (a) comply with their Specifications;
- (b) are of merchantable quality, and fit for the purpose for which the Goods are ordinarily used;
- (c) are free from defects in workmanship, design and materials; and
- (d) comply with and operate in accordance with all Applicable Laws (including relevant Australian standards).

2.2 You also warrant that the Goods:

- (a) will be appropriately packed for transport to us; and
- (b) are supplied free of all third party liens, charges, encumbrances and security interests.

2.3 (**Services**) You warrant that you will perform the Services:

- (a) in conformance with their description;
- (b) with due care and skill, in accordance with Good Industry Practice and using personnel with appropriate qualifications and technical skills;
- (c) in accordance with all Applicable Laws and KPIs;
- (d) in a prompt and timely manner; and
- (e) in compliance with our reasonable directions (including our relevant policies and procedures that we notify to you).

Each of these warranties applies as at the date of performance and for the Warranty Period for the Services.

2.4 In supplying Goods and/or Services, you must act in an ethical and socially responsible manner and adopt behaviours that are reasonably expected of companies of a similar size and nature to you.

2.5 (**Supplier inputs**) You must ensure that you have all licenses, permits and authorisations, and all systems, equipment, resources and tools necessary for you to supply the Goods and Services.

2.6 (**Aussie Broadband inputs**) Subject to clause 2.5, we will provide any inputs which are reasonably necessary (and typically supplied by the recipient of Goods and Services) to allow you to provide the

Goods and/or Services to us (eg access to our Sites), and ensure our inputs comply with all Applicable Laws.

### 3. SITE ACCESS

3.1 Where you access our Sites to provide the Goods or perform the Services, you must comply with all of our relevant policies and procedures which we notify to you, and take all measures reasonably necessary to protect people and property.

3.2 If your negligence, misconduct or failure to comply with these Terms while supplying Goods or Services at a Site causes any death, personal injury or damage to tangible property, you indemnify us for all loss, liability, damage, cost or expense that is directly incurred by us as a result. We will act reasonably to mitigate any loss or damage that we suffer.

### 4. TIMING & DELAYS

4.1 You agree to supply all Goods by the Delivery Date set out in a Purchase Order, and to perform all Services at the times and dates set out in the Purchase Order (including achieving Milestones by the Milestone Dates).

4.2 You must promptly notify us of any delays, and take all steps we reasonably require to minimise the delay.

### 5. DEFECTS

5.1 Where we notify you of Defects with Goods or Services during initial acceptance testing or the Warranty Period, you must promptly (at no cost to us) repair or replace (as we reasonably direct) any Defective Goods, and re-perform any Defective Services.

5.2 Without limiting our remedies at law, if you do not promptly repair or replace any Defective Goods or re-perform any Defective Services, we may:

in respect of Defective Goods:

- (a) return the Defective Goods to you (at your cost), or require you to collect the Defect Goods, upon which you must refund the Price of the Goods to us within 5 Business Days; or
- (b) repair the Defective Goods (or engage a third party to repair the Goods) in which case you must promptly reimburse us for our reasonable costs incurred; and/or

in respect of Defective Services:

- (c) require you to refund to us the Price of the Defective Services; or
- (d) engage a third party to rectify the Defects, and you must promptly reimburse us for our reasonable costs incurred.

5.3 We may set-off the above costs incurred against any amounts owing to you.

### 6. PRICE AND PAYMENT

6.1 You will invoice us for the Price of the Goods and/or Services, and we will pay the relevant Price, as set out in the Purchase Order.

6.2 If no invoicing or payment terms are set out in the Purchase Order, you will invoice us:

- (a) for Goods – on their delivery; and

- (b) for Services – on their successful completion.
- and we will pay you within 30 days of the end of the month in which the invoice is received (provided that your invoice is not disputed by us in good faith and you have not failed to supply the Goods or Services in accordance with these Terms).
- 6.3 You acknowledge that the Price is inclusive of all costs, expenses and disbursements associated with your supply of the Goods and Services, and all taxes, tariffs and duty (except for GST / VAT).
- 6.4 Each invoice must contain the level of detail reasonably necessary for us to validate the Prices charged for the Services performed and Goods supplied, and you must provide all other information reasonably requested by us.
- 6.5 **(GST)** If GST (or any other relevant VAT) is applicable to any supply made by you under or in connection with a Purchase Order, you are responsible for calculating the applicable GST / VAT amount and including it in your tax invoice. Thereafter, we are responsible for payment of the applicable GST / VAT to you.
- 6.6 Any costs to be reimbursed or indemnified exclude any amount of GST / VAT for which an input tax credit can be claimed.
- 6.7 **(Withholding Tax)** In some cases, we may be required by an Applicable Law to withhold or deduct an amount of tax from a payment due to you. Where that is the case, you acknowledge that our payment to the appropriate government authority of the withheld or deducted amount discharges our obligation to pay that amount to you (provided we provide you appropriate receipts or certificates in relation to the payment).

## 7. PASSING OF TITLE AND RISK

- 7.1 Title to the Goods passes to us on its delivery to the delivery address specified in the Purchase Order.
- 7.2 Goods are supplied on the basis of the Incoterm set out in the Purchase Order, and the risk in the Goods passes from you to us in accordance with the relevant Incoterm. If no Incoterm is specified in the Purchase Order, Goods are supplied on a Delivery Duty Paid (DDP) basis.

## 8. INTELLECTUAL PROPERTY

- 8.1 **(Pre-existing IP)** Each party at all times continues to own its IP Rights that were in existence as at the date of issue of the Purchase Order **(Pre-existing IP)**.
- 8.2 **(Goods)** As between the parties, you will continue to own the IP Rights in any the Goods you supply to us (as your Pre-existing IP).
- 8.3 **(Deliverables)** Subject to clause 8.1, you automatically assign to us (on the date of creation) all IP Rights in any Deliverables that you create for us in performing the Services.
- 8.4 To the extent any of your Pre-Existing IP:
- forms part of any Deliverables (eg format of reports), or
  - is required to use the Goods on an ongoing basis (eg technical materials, manuals, user guides, training materials),

you grant us a perpetual, royalty-free, non-exclusive, non-transferable (except to the extent the Deliverable or Goods are transferred) licence to use and modify that Pre-existing IP as part of the Deliverable or as necessary for ongoing use of the Goods.

- 8.5 **(Our Data)** You acknowledge that we own all IP Rights in all information or data which we or our third parties provide to you to perform your obligations in relation to a Purchase Order, or which is generated especially for us in performance of the Services **(Our Data)**. Nothing in a Purchase Order transfers to you any rights in Our Data. You may only use Our Data for the sole purpose of performing the Services.

- 8.6 **(Our trade marks)** You must not use our trade marks, branding or other IP Rights except as expressly permitted by in writing

- 8.7 **(IP Infringement)** The following indemnities apply in respect of violation of third party IP Rights:

- You indemnify us for any Third Party Claims against us to the extent caused by the Goods, Services or Deliverables supplied by you violating the IP Rights of a third party.
- We indemnify you for any Third Party Claims against you to the extent caused by any of Our Data which we supply to you violating the Intellectual Property Rights of a third party,

These indemnities are reduced to the extent a Third Party Claim was caused or contributed to by the indemnified party. The indemnified party must (i) give the indemnifying party prompt written notice of the claim, and (ii) allow the indemnifying party control of the defence (provided that the indemnifying party must not settle any claim in a manner that will adversely affect indemnified party).

## 9. LIABILITY & INSURANCE

- 9.1 **(Liability Cap)** Subject to clause 9.2, each party's liability to the other in any 12 month period, whether in contract, tort (including negligence) or otherwise, will be capped at:

- for supply of Goods – 1.5 x the Price paid or payable for the Goods to which the liability relates;
- for supply of Services – the Price paid or payable for the Services in the 12 months prior to the cause of action arising,

provided that in no case will the liability cap be lower than \$100,000.

- 9.2 **(Exceptions to Liability Cap)** The liability cap in clause 9.1 does not apply to:

- death, personal injury or tangible property damage;
- breach of clauses 8 (IP Rights) or 10 (Confidentiality & Security);
- the indemnities for Third Party Claims in clause 8.7; or
- fraud or intentional misconduct.

- 9.3 **(Consequential Loss):** Neither party shall be liable to the other for any Consequential Loss suffered or incurred by the other, except to the extent it arises from a party's misuse of the other's IP Rights or Confidential Information.

- 9.4 **(Mitigation)** Each party agrees to act reasonably to mitigate any loss or liability which it might suffer or incur in relation to a Purchase Order.

- 9.5 **(Insurance)** Except where otherwise agreed with you in writing, you must hold the following insurances:

• Public & Products liability insurance	\$5 million per claim and \$10 million in annual aggregate
• Professional Indemnity (advisory services only)	\$5 million per claim and in annual aggregate
• Workers Compensation	As required by law

- 9.6 You must provide a certificate of currency for those insurances on request by us.

## 10. CONFIDENTIALITY & PRIVACY

- 10.1 **(Confidentiality)** Each party must:

- keep all Confidential Information of the other party strictly confidential and not disclose it to any third party without the other party's prior written consent;
- only disclose Confidential Information of the other party to its personnel who need to know for the purposes of

providing or receiving the Services, and who have expressly agreed to keep that information confidential;

- (c) take reasonable security measures (as assessed against industry standards) to prevent an unauthorised third party accessing the other's Confidential Information; and
- (d) on request by the other party, promptly return to the other party or permanently delete or destroy, as the other party directs, all copies or records of the other party's Confidential Information in its possession or control

10.2 The confidentiality obligations in this clause do not apply to information that is required to be disclosed by law or the rules of a publicly recognised stock exchange, provided that a party must (to the extent permitted by law) notify the other in advance of any disclosure obligation to give the other an opportunity to object to or limit such disclosure.

10.3 **(Privacy)** To the extent you are provided with or access any Personal Information in providing the Services, you must:

- (a) comply with all relevant Privacy Laws;
- (b) use or collect the Personal Information for the sole purpose of providing the Services;
- (c) not transfer our Personal Information outside Australia (without our prior written consent); and
- (d) comply with our reasonable directions in relation to the Personal Information – including destroying or permanently de-identifying the Personal Information if that information is no longer needed to provide the Services.

10.4 If you become aware or reasonably suspect that there has been unauthorised access to (or unauthorised disclosure of) our Confidential Information or Personal Information (**Data Breach**), then you must:

- (a) promptly (within 48 hours) notify us of the Data Breach;
- (b) take all steps reasonably necessary to investigate and resolve the Data Breach; and
- (c) provide us with all information and co-operation we reasonably require in relation to the Data Breach, including as necessary for us to comply with our obligations under Privacy Laws in relation to the Data Breach.

## 11. DISPUTE RESOLUTION

11.1 Subject to clause 11.3, a party may not commence nor initiate any court proceedings arising out of a Purchase Order until that party first sends a notice to the other party (a '**Notice**') setting out a summary of the dispute and relevant facts. Once a Notice has been served under this clause, a senior manager of each party must attempt to resolve the dispute in good faith.

11.2 If the dispute is not resolved within 30 days of the Notice, either party may commence or initiate legal proceedings.

11.3 Clause 11.1 does not apply where a party seeks urgent court intervention (injunctive relief) or terminates a Purchase Order lawfully in accordance with its terms.

## 12. TERMINATION

12.1 A party may terminate a Purchase Order on written notice if the other party:

- (a) breaches a term of the Purchase Order which is not capable of remedy or, where the breach is capable of remedy, fails to remedy the breach within 10 Business Days of the other party's written notice of the breach;
- (b) is in persistent breach of any requirements of the Purchase Order (including a failure by you to meet the KPIs in any 3 months of a 6 month period); or
- (c) to the extent permitted by law, becomes bankrupt or insolvent, or subject to any form of insolvency administration

12.2 For Services, the Purchase Order will continue for the relevant duration set out in the Purchase Order (unless terminated earlier in accordance with these Terms).

12.3 On termination or expiry of a Purchase Order, each party must return the Confidential Information of the other, and you must co-operate with us as reasonably necessary to transition-out the Services.

## 13. FORCE MAJEURE

13.1 Neither party shall be liable for non-performance or delays in relation to its obligations under the Purchase Order to the extent caused by a Force Majeure Event.

13.2 A party that is seeking to rely on a Force Majeure Event must notify the other party promptly on occurrence of the Force Majeure Event, and must use all reasonable endeavours to promptly overcome the Force Majeure Event.

13.3 If the Force Majeure Event continues for a period of 30 days or more, the party not relying on the force majeure event may terminate the Purchase Order.

## 14. RECORDS

14.1 You must maintain accurate and complete records in relation to all relevant matters associated with your performance of the Purchase Order (including all amounts invoiced and paid), and your compliance with all material obligations of the Purchase Order (**Records**). These Records must be maintained for the duration of a Purchase Order and for a minimum of two (2) years after. On request, you must allow us (or our third party auditor) access to such Records (on a confidential basis).

## 15. MODERN SLAVERY

15.1 You must at all times ensure that (a) you have used your best endeavours to ensure no Modern Slavery is in any way involved (either directly or indirectly) in supply of the Services, and (b) you comply with all laws relating to Modern Slavery in the countries in which your business operates. You must maintain policies and procedures that are designed to ensure compliance with the above (by you and your sub contractors).

## 16. GENERAL

16.1 (**Relationship**) The relationship between the parties is that of principal and contractor. Nothing in a Purchase Order will be construed as constituting a partnership or joint venture between the parties. Nor shall a Purchase Order be construed as creating a relationship of employer and employee between us and any of your employees, directors or other personnel.

16.2 (**Non-exclusivity**) To avoid doubt, nothing in a Purchase Order confers on you any exclusive rights of supply or prohibits us from sourcing any other goods or services from any alternative supplier.

16.3 (**Assignment**) Neither party may assign, novate or otherwise transfer a Purchase Order without prior written consent from the other (which will not be unreasonably withheld).

16.4 (**Subcontracting**) You must not delegate or subcontract any of its rights or obligations hereunder to a third party without our prior written consent (not to be unreasonably withheld). You will be responsible for all acts and omissions of your subcontractor as if they were your own acts and omissions.

16.5 (**Waiver**) The failure of a party to require performance of any obligation under a Purchase Order is not a waiver of that party's right under the Purchase Order.

16.6 (**Enforcement**) If any part of a Purchase Order is illegal or unenforceable, it will be severed from these Conditions and the remaining terms and conditions will continue in full force and effect.

16.7 (**Interpretation**) To the extent permitted by law, nothing in a Purchase Order is to be interpreted against a party solely on the ground that the party put forward or drafted that document. In these Terms: (a) a reference to a statute includes subordinate regulations and any statute passed as a replacement (b) the singular includes the

plural and vice versa; and (c) "includes" and "including" are examples only (and not words of limitation).

- 16.8 (**Laws**) Each Purchase Order will be governed by and construed according to the law of the State of Victoria, Australia and the parties submit to the exclusive jurisdiction of the courts of Victoria.
- 16.9 (**UN Convention on Contracts**) To avoid doubt, the parties agree that the United Nations Convention on Contracts will not apply to a Purchase Order.
- 16.10 (**Survival**) Any obligations in this agreement which by their nature are continuing, will survive termination or expiration of the Purchase Order (eg obligations of confidentiality, indemnity, limitation of liability).
- 16.11 (**Notices**) Any notices given under these Terms must be provided to each party using the contact details provided in the Purchase Order. Notices will be deemed given and received as follows: (a) if it is delivered, when it has been left at the addressee's address; (b) if it is sent by mail within the same country, three (3) business days after it is posted, and if sent by mail to or from a place outside the country of the recipient, seven (7) business days after posting; or (c) if it is sent in electronic form, when the email message enters the addressee's information system (the email message will be deemed to have not entered the addressee's information system if an error or out of office message is received and if it's not sent to the correct personnel).

## 17. DEFINITIONS

**Affiliate** means a Related Body Corporate as defined in the Corporations Act 2001 (Cth).

**Applicable Law** means any legislation or other law, regulation, code of practice, guideline or standard relevant to the Goods or Services (including directions by a relevant regulator or industry body).

**Business Day** means Monday to Friday, excluding public holidays, in Victoria, Australia.

**Confidential Information** means any information of a party that is by its nature confidential. This includes (without limitation) information concerning a party's business and financial affairs, strategies, products, services, pricing, customers, business plans, systems, security, intellectual property, trade secrets. However it will not include information that:

- (a) is already known to the other party when disclosed;
- (b) becomes publicly available other than through a breach of the other party's confidentiality obligations; or
- (c) has been independently developed by the other party without reference to the Confidential Information, and by persons who have not had access to the Confidential Information.

**Consequential Loss** means a party's loss of profit, revenue or goodwill, and any loss that cannot fairly and reasonably be considered to arise naturally or directly from the relevant breach or event.

**Defect** or **Defective** means a failure of the Goods or Services to comply with the warranties in clause 2.

**Deliverables** means any deliverable or output that you create for us in performing the Services.

**Delivery Date** means the date for delivery of the Goods to the Site as per the Purchase Order.

**Force Majeure Event** means any event or circumstance which is beyond a party's reasonable control and which could not have been prevented by prudent business practices (including acts of war, terrorism, epidemic, natural disasters, industry-wide industrial action and international trade embargoes). Covid-19 will only be considered a Force Majeure Event to the extent there is a material detrimental change of any Covid-19 related circumstance that existed at the date of acceptance of the Purchase Order, and that material change impacts a party's performance of its obligations.

**Goods** means the Goods specified in the Purchase Order.

**Good Industry Practice** means the exercise of skill, care, judgement, methods, processes, efficiency, foresight and timeliness which would reasonably be expected from a skilled and experienced provider of the Services (in the relevant industry).

**GST** has the meaning in the A New Tax System (Products and Services Tax) Act 1999 (Cth).

**IP Rights** means all rights (whether created before, on or after the date of this agreement and whether registered or unregistered) in respect of copyright, trade marks, patents, designs, protection of confidential information, circuit layouts, inventions, know-how, product or business concepts and any other identifiable result of intellectual endeavour, whether arising under statute or otherwise.

**KPIs** means each of the key performance indicators set out or referenced in a Purchase Order.

**Milestone** means the key outcomes of the Services as set out or referenced in a Purchase Order.

**Milestone Date** means the date for achieving the relevant Milestone, as set out or referenced in a Purchase Order.

**Modern Slavery** means any form of coercion, threats, force or deception used to exploit any person, and undermine or deprive them of freedom. It will include (without limitation) any form of human trafficking, slavery, servitude, child labour, forced marriage, debt bondage or deceptive recruiting for labour or service.

**Personal Information** has the meaning given by the relevant Privacy Laws.

**Privacy Laws** means all laws and regulations relating to privacy and the protection or processing of Personal Information processed under or in connection with this agreement, including, the Privacy Act 1988 (Cth) and Australian Privacy Principles.

**Price** means the price for the Goods and/or Services set out in the Purchase Order.

**Purchase Order** means a purchase order for Goods and Services issued by us, and includes these Terms.

**Services** means the services set out in the Purchase Order.

**Site** means any of our premises, locations, or sites at which you are to deliver the Goods or perform the Services.

**Specifications** means the technical, functional and other specifications associated with the Goods as set out in your standard documentation, or which are otherwise included or referenced in a Purchase Order.

**Terms** has the meaning in clause 1.2(a).

**Third Party Claim** means any claim, suit, action or demand by a third party (including an insurer, regulator or any other person), and will include all liability, cost, damage, expense, fine or penalty directly incurred by, or awarded against, an indemnified party in relation to the Third Party Claim.

**VAT** means any value added tax (which in Australia is GST).

**Warranty Period** means the warranty period for the Goods and / or Services as set out or referenced in the Purchase Order. If no warranty period is specified, a warranty period of 12 months applies. The Warranty Period commences on delivery of the Goods, and on completion of the Services.