

## 1. Terms and Conditions

**Agreement** means the agreement between Macquarie Telecom Pty Limited ABN 21 082 930 916 of Level 15, 2 Market Street, Sydney, NSW 2000 and Supplier comprising these terms and may include a SOW.

**Documentation** means the documentation specified in the SOW or necessary to make full use of the Products or Services.

**GST** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and related Acts (the "GST Legislation").

**IPR** means intellectual property rights.

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

- a. a receiver and/or manager is appointed to any of its assets and property;
- b. a liquidator is appointed voluntarily or otherwise);
- c. passing a resolution for winding-up (except for restructuring purposes);
- 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.

**Liability** means all claims, actions, proceedings, losses, damages, penalties, costs, expenses (including legal fees on an indemnity basis) and other liabilities, whether arising in contract, tort (including negligence), equity, or under statute.

**Macquarie Telecom Contact** means the person identified in the SOW or as otherwise advised by Macquarie Telecom from time to time.

**Personnel** means the officers, employees, agents and contractors of a party.

**Products** means the goods specified in the SOW, Documentation or purchase order.

**Statement of Work or SOW** means any SOW attached to these terms, and any annexures.

**Services** means those set out in the SOW, Documentation or purchase order.

**Software** means any software specified in the SOW, Documentation or purchase order or any software supplied as part of the Services.

**Specifications** means (in order of priority):

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

**Supplier** means the entity identified in the purchase order.

**Valid Invoice** means one which:

- a. complies with the GST Legislation so as to enable Macquarie Telecom to claim any applicable tax credits;
- b. quotes the Supplier's Australian Business Number (**ABN**),
- c. clearly identifies the Products and Services to which it relates, and correctly calculates the charges for such items.

## 2. Contract Formation

If Macquarie Telecom sends this Agreement to the Supplier electronically, it becomes binding when the Supplier confirms acceptance of the Agreement or commences delivery of any of the Products or Services, whichever occurs first.

## 3. Delivery

The Supplier must deliver the Products and Services to the address and on any dates set out in the SOW, Documentation or as agreed in writing between the parties,

and obtain the name and signature of the person who receives the Products or Services.

## 4. Acceptance

4.1. Macquarie Telecom may test the Products within one month of delivery to determine compliance 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 Agreement or require the Supplier to promptly modify the Products so that they comply with the Specifications.

4.3. Signing for delivery or paying of an invoice does not mean Macquarie Telecom accepts a Product.

## 5. Price

Unless stated and agreed otherwise in the SOW or Documentation, all prices are:

- a. fixed and include all levies, duties, taxes (except GST), insurance, packaging and delivery costs; and
- b. in Australian dollars.

## 6. Payment

6.1. The Supplier must invoice Macquarie Telecom monthly in arrears. Each invoice must itemise the GST included in the prices, and be addressed to the Macquarie Telecom Contact at the address specified in the SOW or Documentation.

6.2. Macquarie Telecom will pay each Valid Invoice (less any amounts due to Macquarie Telecom from the Supplier) within 30 days of receipt, by EFT to the account nominated by the Supplier.

## 7. Goods and Services Tax

7.1. Unless otherwise agreed in the SOW or Documentation, the charges for the supply of Products and Services exclude GST.

7.2. If GST is imposed on a supply made under the SOW, Documentation or purchase order, Macquarie Telecom will pay subject to receiving a Valid Invoice, in addition to the charges, an amount equal to the GST payable by the Supplier in respect of the supply.

## 8. ABN

Macquarie Telecom may withhold tax from any payment it makes to the Supplier for a supply, unless the Supplier's invoice for that supply quotes the Supplier's 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 will retain IPR in any of its proprietary Software, and grants Macquarie Telecom (and its Personnel) a perpetual, non-exclusive, royalty free licence to use, copy and modify such Software, anywhere in the world for any purpose.

10.2. Subject to clause 10.1, the Supplier will assign to Macquarie Telecom all present and future IPR in:

- a. all Service deliverables; and
- b. any material, including Software, specifically created for Macquarie Telecom in the supply of the Products or Services.

10.3. Macquarie Telecom owns the IPR in any modifications it makes to any Software deliverable.

## 11. Warranty

11.1. The Supplier warrants:

- a. that all Products:
  - i. are new and in good condition, unless otherwise agreed in the SOW or Documentation;
  - 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. that, in respect of Services, 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 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.
- c. that the Products and Services and their use and supply will not breach any obligation of confidence or infringe any IPR of any person.

## **12. Breach of Warranty**

If the Supplier becomes aware, or Macquarie Telecom notifies the Supplier, of a breach of any warranty in clause 11, the Supplier must:

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

## **13. Indemnity**

The Supplier indemnifies Macquarie Telecom and its Personnel against any Liability they incur (including in connection with a third party claim brought or threatened against them) which arises in connection with:

- a. breach of confidentiality or IPR through use or supply of the Products or Services;
- b. any act or omission of the Supplier resulting in or contributing to:
  - i. personal injury or death; or
  - ii. loss of or damage to Macquarie Telecom's or a third party's physical property.

## **14. Insurances**

- 14.1 The Supplier must effect and maintain:
- a. all insurances required by Law (including for workers' compensation); and
  - b. if requested by Macquarie Telecom, insurance against all risks, including public and product liability and professional indemnity insurance.
- 14.2 The Supplier must provide Macquarie Telecom with certificates of currency for all insurances referred to in clause 14.1.

## **15. Novation and Subcontracting**

The Supplier must not novate or subcontract any of its obligations under the Agreement without Macquarie Telecom's prior written consent.

## **16. Termination**

- 16.1 Macquarie Telecom may terminate the Agreement:
- a. at any time on at least 30 days' notice; or
  - b. immediately on notice to the Supplier if the Supplier:

- i. breaches the Agreement and fails to rectify the breach within 7 days of notification by Macquarie Telecom; or
- ii. suffers an Insolvency Event.

- 16.2 Macquarie Telecom will pay Supplier for any Services delivered up to the time of termination under clause 16.1 (a), but will not be liable for any other amounts resulting from termination of the Agreement or reduction of Products or Services.

## **17. Entire Agreement**

This Agreement is the complete agreement between Macquarie Telecom and the Supplier in relation to the Products and Services. No purchase order, confirmation, shipment, delivery document, shrink-wrap licence or representation will vary these terms or the SOW. In the event of ambiguity, conflict or inconsistency between these Terms and Conditions and a SOW or purchase order, these Terms and Conditions will prevail.

## **18. Confidentiality**

- 18.1 Any information that Macquarie Telecom provides to the Supplier and designates as confidential, or which the Supplier ought to be aware is confidential, including personal information of Macquarie Telecom's Personnel or customers, will be confidential information of Macquarie Telecom 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 receiving it from Macquarie Telecom.
- 18.2 The Supplier must keep Macquarie Telecom's confidential information secure, and not disclose it to any person without Macquarie Telecom's consent (except Supplier's Personnel who need to know it to perform the Services).
- 18.3 When the Agreement ends, or on Macquarie Telecom's request, the Supplier must promptly return all copies of Macquarie Telecom's confidential information, in which case any right to use, copy or disclose that information ceases.
- 18.4 The Supplier must not send or make available any confidential information of Macquarie Telecom to any person or entity located outside Australia.
- 18.5 The Supplier may not make any public statement about the Services or this Agreement without Macquarie Telecom's prior written consent.

## **19. Privacy**

- 19.1 The Supplier must not use personal information provided by Macquarie Telecom except to the extent necessary to provide the Services.
- 19.2 Where, in connection with the Services there has been (or there is a risk of) an incident that meets the definition of an eligible data breach under the Privacy Act including where Macquarie Telecom have instructed the Supplier that this clause applies, the Supplier must provide Macquarie Telecom immediately upon Macquarie Telecom's request with all the information relevant to any potential notification and Macquarie Telecom will make or arrange to be made any notification which it believes is necessary. To the extent permitted under the Privacy Act, the Supplier must not make a notification in connection with the Services unless the Supplier has received Macquarie Telecom's approval to the content and timing of the notification.

## **20. Compliance with Law**

The Supplier must comply with all relevant laws in the performance of the Services, including all applicable privacy legislation.

## **21. Applicable Law**

The laws of New South Wales apply to this Agreement and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.