

Terms and Condition of Supply

1. Structure of Agreement

- 1.0 These terms and conditions (**T&Cs**) and any terms in the purchase order (**PO**) (together the **PO T&Cs**) apply to all orders for goods and services (**Contracted Item**) placed by Customer entity identified in the PO (**Customer**) with the supplier entity identified in the PO (**Supplier**) where there is no other existing and valid written contract signed by Customer and Supplier that would be applicable to the supply of the Contracted Items.
- 1.1 If the scope of the Contracted Items increases, and if required by the Customer, the Supplier will execute a valid written contract. If the parties subsequently execute a valid written contract for the Contracted Items, that subsequent contract will supersede and replace these T&Cs.
- 1.2 The acceptance of a PO or the supply of Contracted Items by Supplier pursuant to a PO (whichever occurs first) constitutes acceptance of these T&Cs by Supplier.
- 1.3 Unless otherwise expressly stated in these T&Cs, if there is an inconsistency between the terms in the PO and these T&Cs, these T&Cs apply. These T&Cs prevail over any terms in any quote, proposal or invoice from Supplier or any terms included on other Supplier documentation.

2. Supply of Goods

In respect of a supply of Contracted Items that are goods (**Goods**), Supplier must:

- (a) deliver the Goods to the delivery address and by the time for delivery, as stipulated in the PO, or as otherwise agreed by Customer (**Delivery Location**);
- (b) package all Goods to protect against theft or damage during transit, delivery, loading and unloading;
- (c) clearly label all packages of Goods with the address for delivery, the name of Customer officer who ordered the Goods and the PO number;
- (d) provide, with each consignment or delivery of Goods, all information (including instructions) necessary for the proper and safe handling, transport, storage, use, operation, maintenance, repair and disposal of the Goods; and
- (e) comply with any requirements specified in the PO.

3. Supply of Services

In respect of a supply of Contracted Items that are services (**Services**), Supplier must provide:

- (a) the Services in a proper, timely and efficient manner using the standard of care, skill and diligence that would reasonably be expected from an experienced provider of services that are similar to the Services;
- (b) all equipment (including all consumables and installation materials) necessary for the performance of the Services unless otherwise agreed by Customer and ensure that Supplier (including its employees, contractors and

subcontractors) holds any and all qualifications, licences, permits and approvals necessary to operate such equipment; and

- (c) the Services at the time and place nominated in the PO, or if no time or place is nominated, at the time and place requested by Customer from time to time.

4. Delivery, title and risk

- 4.0 Title to the Goods will pass from the Supplier on the earlier of delivery to the Delivery Location or when the Customer pays for those Goods.
- 4.1 The Customer bears all risk in the Goods when the Customer takes delivery of those Goods at the Delivery Location, provided however that the Supplier will be responsible for its acts and omissions.
- 4.2 If Supplier fails to deliver or provide the Contracted Items by the required delivery date, Customer may, at its election:
- (a) extend the delivery date and notify Supplier of such extended date in writing; or
 - (b) cancel the PO corresponding to the Goods on written notice to Supplier.
- 4.3 Without limiting any other clause in these T&Cs, and whether before or after delivery of a Contracted Item, Customer may reject a supplied Contracted Item if it is not in accordance with these T&Cs, including clause 9 (each a **Defective Item**) and, at Customer's election, Supplier must,
- (a) replace Defective Item with a nondefective Contracted item, or otherwise make good the damage or defect; or
 - (b) provide Customer with a full refund for those Defective Items.

5. Fees and payment

- 5.0 Unless otherwise expressly specified on the PO, all fees stated are in Australian dollars and exclusive of GST.
- 5.1 Unless otherwise specified in the PO, Supplier must only invoice Customer on the completion of the services or after the delivery of the goods in accordance with these T&Cs.
- 5.2 All invoices must: (i) be in the form of a tax invoice (as defined in the GST Act); (ii) must itemise the GST included in the Prices (iii) contain Customer's purchase order reference number; (iv) contain sufficient detail and supporting documentation to enable Customer to verify what the invoice relates to, including supporting details as Customer requires; (v) be in the format of .pdf; and (vi) be sent to the email specified in the PO (**Valid Invoice**).
- 5.3 Unless otherwise specified on the PO, Customer will pay each correct and Valid Invoice by the 45th day of the calendar month following the month the correctly rendered invoice is dated. Small Business Industry will be paid in accordance with Customer's SME payment terms.
- 5.4 Customer is entitled to withhold payment of any invoice to the extent that it relates to Goods or Services that do not meet the Customer's specifications or these T&Cs.

6. Confidentiality

6.0 Supplier must:

- (a) keep confidential, and not disclose to a third party without Customer's prior written consent or in accordance with clause 6.0(c), all information, or documents or things which are (i) by their nature confidential, (ii) is designated as confidential; or (iii) ought reasonably be considered to be confidential based on its content or manner of its disclosure (**Confidential Information**);
- (b) take, or cause to be taken, all reasonable precautions necessary to maintain confidentiality and prevent disclosure of Confidential Information; and
- (c) only disclose Confidential Information to (i) an officer, employee, adviser or agent of Supplier who has a specific need to have access to the Confidential Information for the purposes of supplying a Contracted Item and is bound by confidentiality obligations no less strict than these T&Cs, or (ii) as otherwise required by law.

6.1 Upon request by Customer, Supplier must immediately return to Customer, or destroy or delete as Customer directs, all material in hard copy or electronic form that is, contains, is based on, utilises or otherwise relates to Confidential Information, provided that this obligation does not apply to any Confidential Information required to be retained by law.

7. Intellectual Property

All intellectual property rights (**IPR**) created during the course of the performance of Contracted Items vests in Customer on and from creation (**Developed IPR**). Supplier grants to Customer Group an irrevocable, non-exclusive, transferable, perpetual and royalty-free licence to use, copy, modify and adapt all IPR (other than Developed IPR) which is incorporated into the Contracted Items to use the Contracted Items and enjoy the full benefit of the Contracted Items.

8. Privacy

- (a) Supplier will comply with the Privacy Laws in connection with the PO and any of Customer's security, privacy and access policies, instructions and requirements in respect of Personal Information collected, accessed or generated by or on behalf of Supplier in connection with the PO.
- (b) In this clause: (i) **Privacy Laws** means *Privacy Act 1988* (Cth) and all data protection and privacy laws applicable to the collection, access or generation of Personal Information by or on behalf of Supplier in connection with the PO; and (ii) **Personal Information** has the meaning given to that term in the *Privacy Act 1988* (Cth).

9. Warranties and representations

9.0 Supplier represents and warrants that:

- (a) it has and its personnel have all qualifications, expertise, rights, title, licences, authorisations, consents and other approvals necessary to supply the Contracted Items in accordance with these T&Cs;

- (b) Contracted Items will comply with Customer's specifications;
- (c) it has the right to transfer title in Goods to Customer free from all encumbrances;
- (d) Goods are new and unused, of merchantable quality, fit for the purpose for which they are intended and are free from faulty materials, workmanship, design, manufacture or any other defects.

9.1 Supplier must ensure that Customer obtains the benefit of any warranties relating to a good provided by the manufacturer of the good or any other third party.

10. Supplier indemnity

Supplier indemnifies Customer against all claims, penalties, loss or damage suffered or incurred by Customer or its personnel, arising out of or in connection with:

- (a) personal injury or death caused by Supplier's negligent act or omission; or
- (b) Contracted Items infringing third party rights (including intellectual property rights).

11. Termination

- (a) Either party may immediately terminate a PO by notice in writing to the other party if the other party commits a material breach of these T&Cs, and such breach is incapable of remedy, or such breach is capable of remedy but the breaching party fails to remedy that breach within 15 days of written notice to do so.
- (b) Unless otherwise agreed by Customer in writing, Customer may terminate a PO for any reason on 1 months' written notice to Supplier.

12. Insurance

Supplier will effect and maintain appropriate insurance (including where appropriate, public liability, product liability, work cover, professional indemnity and Cyber insurance) to cover the risk for the supply of the Contracted Items that represents a standard of good practice expected of a competent and prudent supplier of such items. Supplier must provide a certificate of currency for these insurances to Customer on request.

13. Compliance with Law and Policies

13.0 Supplier must, in the supply of the Contracted Items, ensure the Contracted Items comply with all applicable laws and relevant Australian standards and industry codes.

13.1 Supplier must comply with, and must ensure that each of its employees, contractors and subcontractors complies at all times with the supplier commitments available at <https://www.virginaustralia.com/content/dam/vaa/docs/supplier-commitments.pdf> and the supplier code of conduct available at <https://www.virginaustralia.com/content/dam/vaa/docs/va-group-supplier-code-of-conduct.pdf> and all Customer policies notified to Supplier, in the supply of the Contracted Items.

- 13.2 The Supplier must perform its obligations in a safe manner and comply with the work, health and safety laws and regulations and the obligations set out in the Supplier Commitments

14. Benefit of Agreement

Supplier acknowledges and agrees that:

- (a) Customer enters into this agreement on its own behalf and on trust for Virgin Australia Airlines Pty Ltd and its related bodies corporate, and Virgin Australia International Airlines Pty Ltd and its related bodies corporate (**Group Members**);
- (b) loss suffered or incurred by, and which may be recovered by, Customer under or in connection with any breach of, or indemnity under, this agreement includes any loss suffered or incurred by Customer and any Group Member; and
- (c) any claim by Supplier under or in connection with this agreement must be made solely against Customer and not against any other Group Member and any claim against Supplier must be made by Customer and not by any other Group Member.

15. General

- 15.0 These T&Cs are governed by the law in force in Queensland, Australia. Each party irrevocably submits to the exclusive jurisdiction of courts in Queensland, Australia.

- 15.1 Supplier's appointment is non-exclusive and there is no guaranteed minimum fee or volume of Contracted Items.
- 15.2 Supplier must not subcontract its obligations or assign its rights or obligations under these T&Cs without Customer's prior written consent (not to be unreasonably withheld or delayed). Supplier remains liable for all acts or omissions of subcontractors as if they were the acts or omissions of Supplier.
- 15.3 Clauses 6, 7, 10, 11, 14 and 15 survive expiry or termination of these T&Cs.
- 15.4 Supplier must not advertise or issue any information, or make public comment concerning the PO or Customer's business or activities (including referring to Customer as a client of Supplier) without Customer's prior written consent.
- 15.5 These T&Cs replace all previous agreements between the parties concerning its subject matter and contains the entire agreement between the parties. As above, in clause 1.1, if the parties subsequently execute a valid and written contract for the Contracted Items, that subsequent contract will supersede and replace these T&Cs.
- 15.6 Specifying anything in this agreement after the words 'include' or 'for example' or similar expressions does not limit what else is included.