



KINETIC IT PURCHASE ORDER TERMS AND CONDITIONS FOR GOODS AND SERVICES

[KINETIC IT LEGAL PRECEDENT ID 2021.14]

1. APPLICATION

- a. These Kinetic IT Purchase Order Terms and Conditions (Standard Terms) apply to any contract formed when Kinetic IT issues a Purchase Order to the Supplier and the Purchase Order refers to the incorporation of the "Kinetic IT Purchase Order Terms and Conditions for Goods and Services".
- b. If the Supplier commences the supply of Goods or Services in response to a Purchase Order as described in clause a1a, it will be deemed to have accepted these Standard Terms in the absence of express agreement between the parties to the contrary.
- c. The Standard Terms prevail over the Supplier's terms and conditions of sale or any other documents provided by the Supplier.

2. DEFINITIONS AND INTERPRETATION

2.1 DEFINITIONS

In these Standard Terms, unless the context dictates otherwise:

Agreement means the Purchase Order and these Standard Terms.

Business Day means 9.00am to 5.00pm on a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice or other communication is received.

Claim means a demand, action or proceeding of any nature whether actual or threatened.

Confidential Information means any and all information, data, specifications, drawing, reports, accounts or other documents as supplied or made available by or on behalf by Kinetic IT to the Supplier or brought into existence by either Kinetic IT or the Supplier, in or under for the purpose of the Agreement.

Delivery Date means the delivery date specified in the Purchase Order (if any), or as otherwise agreed by the Parties in writing.

Goods means any material, plant, item or equipment specified in the Purchase Order.

Government Agency means:

- a. a government department or other body;
- b. a governmental, semi-governmental or judicial person including a statutory corporation; or
- c. a person (whether autonomous or not) who is charged with the administration of the law.

GST means goods and services tax as imposed by the GST law.

GST Law includes *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and all associated legislation.

Intellectual Property means all present and future rights conferred by statute, common law or equity in or in relation to any copyright,

trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions, confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not registrable, registered or patentable.

Kinetic IT means Kinetic IT Pty Ltd (ABN 97 072 941 943) of Ground Floor, 30 The Esplanade, Perth in the State of Western Australia.

Loss includes any loss, damage, liability, cost or expense (including any legal cost and expense) on a full indemnity basis however it arises and whether it is present or future, fixed or unascertained, actual or contingent, direct or indirect

Modern Slavery Law means any law in the Commonwealth of Australia or any State or Territory of Australia and any other applicable law pertaining to exploitative practices including slavery, servitude, forced labour, human trafficking, debt bondage, child labour and other slavery like practices.

Modern Slavery Statement means Kinetic IT's Modern Slavery Statement, which can be found on Kinetic IT website (<https://kineticit.com.au/wp-content/uploads/2021/04/Kinetic-IT-Modern-Slavery-Statement-FY2020.pdf>).

Party or Parties means either Kinetic IT or the Supplier, or Kinetic IT and the Supplier, as the context dictates.

Personal Information means personal information as defined in the Privacy Act and any other information which is regarded as personal information or personal data under Privacy Laws.

Price means the price payable for the Goods or Services as set out in the Purchase Order.

Privacy Act means *Privacy Act 1988* (Cth).

Privacy Law means any applicable legislation (whether Australian or otherwise, and including binding codes of practice) relating to privacy or any Personal Information (including the collection, storage, handling, use or processing of Personal Information), including:

- a. Privacy Act; and
- b. the EU General Data Protection Regulation 2016/679.

Purchase Order means any authorised purchase order issued by Kinetic IT in writing, regardless of form or format.

Services means any services, tasks or works specified in the Purchase Order and includes any incidental services, tasks or works necessary for the performance of the Agreement.

Standard Terms has the meaning set out in clause 1a.

Warranty Period means, in relation to:

- a. Goods – a period of 12 months commencing on the date delivery occurs in accordance with clause c; and
- b. Services – a period of 12 months from the date that the Services are completed to Kinetic IT's satisfaction,

unless stipulated otherwise in the Purchase Order.

2.2 INTERPRETATION

In these Standard Terms:





- a. unless the contact dictates otherwise headings are for convenience only and do not affect interpretation; and
- b. unless the context indicates a contrary intention:
 - i. an obligation or liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
 - ii. "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - iii. a reference to a party includes a party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;
 - iv. a reference to a document (including these Standard Terms) is to that document as varied, novated, ratified or replaced from time to time;
 - v. a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
 - vi. a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
 - vii. if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
 - viii. "includes" in any form is not a word of limitation.

- d. Title to, risk and property in the Goods passes to Kinetic IT on delivery of the Goods.
- e. The Supplier warrants it has good title to the Goods and the Goods are free from any encumbrance or charge.
- f. Goods must be packed with a suitable amount of packaging to ensure safe delivery and must be accompanied with a delivery docket or packing note that quotes the Purchase Order number, quantity supplied and description of the Goods.
- g. Unless stated otherwise in the Purchase Order, Kinetic IT is not required to pay for Goods until the requirements of clause 4c have been satisfied.

2.3 CONTRA PROFERENTEM

This document is not to be interpreted against the interests of a Party merely because that Party proposed this document or some provision of it or because that Party relies on a provision of this document to protect itself.

3. SUPPLY OF GOOD AND SERVICES

The Supplier agrees to supply the Goods and/or Services and Kinetic IT agrees to purchase the Goods and/or Services on the terms set out in the Agreement.

4. SUPPLY OF GOODS

- a. This clause 4 applies to the extent that the Purchase Order requires the provision of Goods.
- b. The Supplier must deliver the Goods on or before the Delivery Date (save that delivery prior to the Delivery Date must be by agreement with Kinetic IT).
- c. Unless specified otherwise in the Purchase Order, delivery occurs after the Goods have been:
 - i. off-loaded at the delivery address specified in the Purchase Order;
 - ii. inspected by Kinetic IT; and
 - iii. accepted by Kinetic IT as being in accordance with these Standard Terms, including without limitation in accordance with the requirements of clause 4f.

5. SUPPLY OF SERVICES

- a. This clause 5 applies to the extent that the Purchase Order requires the provision of Services.
- b. The Supplier must:
 - i. comply with all instructions and requirements of Kinetic IT;
 - ii. provide at its own cost all supervision, labour, materials, plant, transport, tools and equipment required for the performance of the Services;
 - iii. hold and keep current, all licences, permits, consents, assurances, authorisations and approvals necessary for or essential to the carrying out of the Services;
 - iv. comply with all applicable laws;
 - v. take all reasonable precautions to ensure the safety of the general public and the safety of its personnel when performing the Services;
 - vi. upon request of Kinetic IT, obtain (at the Supplier's expense) and provide an Australia-wide police clearance in respect of any of its personnel who are, or are likely to, attend any Kinetic IT premise for the purposes of providing the Services; and
 - vii. exercise due care, skill and judgment in accordance with applicable professional standards, principles and industry practices.

6. WARRANTIES

- a. The Supplier warrants that the Goods and Services:
 - i. are of merchantable quality and fit for their purpose;
 - ii. conform with the description and the specifications in the Purchase Order;
 - iii. throughout the Warranty Period, will operate in accordance with the specifications and otherwise in accordance with the operation of similar products; and
 - iv. are new unless otherwise agreed in writing.
- b. If any Goods or Services are found to be defective or otherwise do not comply with clauses 6a.i to a.iv and Kinetic IT notifies the Supplier of the defect during the Warranty Period, the Supplier must, at its own cost, promptly replace the Goods or rectify the defective Services.
- c. If the Supplier fails to rectify a defect in accordance with clause 6b, Kinetic IT may rectify the defects at the cost of the Supplier.



7. PRICE, PAYMENT AND GST

- a. Except as specified other in a Purchase Order, the Price is exclusive of taxes, duties and charges imposed or levied in Australia or overseas in connection with the Agreement.
- b. An invoice cannot be issued until after the delivery of the Goods.
- c. Unless specified otherwise in the Purchase Order, Kinetic IT must pay the price specified in the Purchase Order by electronic funds transfer within 30 days of the end of the month in which the invoice is issued by the Supplier.
- d. Unless otherwise stated, all amounts payable under the Agreement are expressed to be exclusive of, but subject to, GST and both Parties acknowledge that where GST is applied to any payment the amount payable shall be increased by multiplying the GST exclusive amount by the then applicable rate of GST.
- e. The Supplier shall provide Kinetic IT with a valid GST invoice.

8. CONFIDENTIALITY AND PRIVACY

- a. The Supplier must maintain Confidential Information as confidential and not disclose to any third party any information or documentation identified by Kinetic IT as Confidential Information or which the Supplier should reasonably have known was Confidential Information, unless:
 - i. the Supplier has received written consent from Kinetic IT; or
 - ii. as required by law.
- b. Prior to any such disclosure under clause 8aa.i or a.ii, the Supplier must promptly notify Kinetic IT in writing of the disclosure which must include:
 - i. details of the Confidential Information to be disclosed; and
 - ii. reason(s) for the disclosure.
- c. In respect of any Personal Information the Supplier receives from Kinetic IT, the Supplier must comply with all applicable Privacy Laws and with any guidelines, directions or policies issued by a Government Agency relating to the collection, use, disclosure, security and storage of Personal Information.
- d. In the event of any unauthorised disclosure, loss of, or inability to account for any Confidential Information of Personal information of Kinetic IT occurs, the Supplier must:
 - i. promptly notify Kinetic IT; and
 - ii. cooperate with Kinetic IT, including taking any such actions necessary or reasonably requested by Kinetic IT to:
 - A. minimise the violation and any damage resulting from it; and
 - B. to prevent a recurrence of the violation.
- e. On termination of the Agreement or upon written notice, the Supplier must return or destroy any and all Confidential Information and Personal Information in its possession or control.
- f. If required by Kinetic IT, the Supplier must enter into a separate Confidentiality Agreement with Kinetic IT prior to commencing the supply of any goods or performance of any services.

- g. The obligations set out in clauses 8a and 8c survive any termination or expiry of the Agreement.

9. INTELLECTUAL PROPERTY

- a. All Intellectual Property produced under the Agreement shall vest in Kinetic IT immediately upon creation.
- b. Nothing in the Agreement gives the Supplier any interest in any Intellectual Property of Kinetic IT at any time arising out of or in connection with the Agreement.
- c. The Agreement has no effect on the ownership of the Parties' pre-existing Intellectual Property. For avoidance of any doubt, the ownership of a Party's Intellectual Property already in existence prior to the Parties entering the Agreement remains with that Party.
- d. The Supplier grants to Kinetic IT an irrevocable, perpetual, worldwide and royalty free licence to use any Intellectual Property not vested Kinetic IT, that is necessary for Kinetic IT to have the benefit of the goods or services under the Agreement.

10. INDEMNITIES AND LIABILITY

- a. The Supplier indemnifies Kinetic IT in respect of any Loss suffered or incurred by Kinetic IT arising from or in connection with the Agreement.
- b. The indemnity in clause 10a does not apply to the extent that the Loss was caused by Kinetic IT's negligent act or omission.
- c. Without limiting the generality of clause 10a, the Supplier indemnifies Kinetic IT and each of its employees, agents and contractors and must pay on demand, the amount of all Losses incurred by any of them as such expenses are incurred, in connection with any proceedings brought by a third party against Kinetic IT alleging that Kinetic IT's use of the Goods or Services constitutes an infringement of intellectual property rights.
- d. To the extent permitted by law, in no circumstances is Kinetic IT liable, whether in contract, tort (including negligence or breach of statutory duty) or otherwise, and whatever the cause, to the Supplier for any indirect or consequential Loss, even if the Supplier had advised Kinetic IT of the possibility of such Loss, or for loss of business profits, data loss, revenue, opportunity, goodwill or anticipatory profits, or loss arising from business interruption or arising out of the performance of this Contract by Kinetic IT, its servants or agents..
- e. To the extent permitted by law, the operation of applicable proportionate liability legislation is excluded and, without limiting the foregoing, the Supplier will not seek to apply such legislation to any claim by Kinetic IT against the Supplier.

11. KINETIC IT BUSINESS ETHICS

- a. The Supplier represents and warrants that, in connection with the subject matter of the Agreement, neither it nor any of its officers, directors, employees, affiliates or agents have engaged in or allowed, and none of the foregoing will engage in or allow, any conduct that would constitute a violation of a Modern Slavery Law.



- b. The Supplier will notify Kinetic IT immediately of any actual or suspected breach of a Modern Slavery Law.
- c. Kinetic IT may terminate the Agreement under clause a.ii if the Supplier commits a violation of a Modern Slavery Law.
- d. The Supplier acknowledges and agrees that, in accordance with the Modern Slavery Statement, Kinetic IT is required to prepare a modern slavery statement and the Supplier agrees to provide Kinetic IT with all reasonable assistance to enable it to prepare the modern slavery statement including providing confirmation that it has:
 - i. investigated the risk of modern slavery in its supply chain and operations and taken steps to address any identified risk;
 - ii. notified Kinetic IT of any confirmed instance of modern slavery in its operations or supply chain;
 - iii. the necessary process, procedures and compliance systems in place to identify and manage modern slavery risk; and
 - iv. included similar clauses to this clause **Error! Reference source not found.** in its subcontractor and supply agreements.

- f. **(Relationship of Parties)** The Supplier is an independent contractor without authority to bind Kinetic IT by contract or otherwise and nothing in the Agreement is to be treated as creating an employer/employee relationship, agency arrangement, partnership or joint venture between the Supplier and Kinetic IT or any of Kinetic IT's personnel.
- g. **(Insurances)** The Supplier must at all times maintain insurances required by law and, if requested by Kinetic IT, provide Kinetic IT with certificates of currency.
- h. **(Waiver)** A right or remedy may only be waived in writing (signed by the Party giving the waiver) and a waiver of a right or remedy (either wholly or in part) on one or more occasions does not operate as a waiver of that right or remedy or as an estoppel precluding enforcement of that right or remedy if it arises again.
- i. **(Severance)** If any provision of the Agreement is invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of enforcement without regard to the invalid provisions shall be and continue to be valid and unless this would materially change the intended effect of the Agreement.
- j. **(Jurisdiction)** The Agreement is governed by the laws of Western Australia. The parties submit to the jurisdiction of the courts of Western Australia and each party waives any right it may have to claim those courts are an inconvenient forum.
- k. **(Liability for expenses)** Each party must pay its own expenses incurred in negotiating, executing, stamping and registering the Agreement.
- l. **(Dispute Resolution)** Neither Party will bring any court proceedings relating to the Agreement (except urgent interlocutory proceedings) without first making a bona fide attempt to resolve the dispute by negotiation.
- m. **(Variation)** The Agreement may only be varied by written agreement of authorised representatives of the parties.
- n. **(No Reliance)** The Supplier warrants that it has not relied on any representations made by Kinetic IT that have not been expressly stated in the Agreement. To the extent Kinetic IT has made any representation which is not otherwise expressly stated in the Agreement, the Customer acknowledges that it has been provided with an opportunity to independently verify the accuracy of that representation.
- o. **(Exclusion of implied conditions and warranties)** To the full extent permitted by law, all conditions and warranties which would otherwise be implied in the Agreement (by statute, general law, customs or otherwise) are expressly excluded. For the avoidance of doubt, the Agreement does not purport to limit or exclude any consumer guarantees implied by applicable legislation.
- p. **(Giving effect to Agreement)** Each Party must do anything (including execute any document) and must ensure that its employees and agents do anything (including execute any document), that the other Party may reasonably require to give full effect to the Agreement.
- q. **(Transfer or Assignment)** Neither Party can transfer, assign, mortgage, charge or encumber all or any part of the Agreement without the prior written approval of the other party (such approval not to be unreasonably withheld).
- r. **(Counterpart Execution)** The Agreement may be executed in any number of counterparts. All executed counterparts constitute one document.

12. TERMINATION

- a. Without prejudice to any right Kinetic IT may have to recover damages or any other rights at law, Kinetic IT may terminate the Agreement with immediate effect by written notice to the Supplier if:
 - i. the Supplier is in breach of any term of the Agreement and such breach is not rectified within 10 Business Days of notification by Kinetic IT;
 - ii. the Supplier commits a material breach of its obligations under the Agreement that is not capable of remedy; or
 - iii. subject to any statutory stay period, the Supplier becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration.
- b. Kinetic IT may terminate or suspend its obligations under the Agreement at any time for its own convenience, without incurring any liability to Kinetic IT, by giving no less than 30 Business Days' notice, in writing, to the Supplier

13. GENERAL

- c. **(Entire Agreement)** The Agreement contains the entire Agreement between the Parties in respect of the Services. Any previous understanding, agreement, representations or warranty is superseded by the Agreement and for avoidance of any doubt, ceases to be valid nor applicable.
- d. **(Survival)** Any clauses in these Standard Terms that, by their nature are intended to survive termination or expiry of the Agreement survive termination or expiry of the Agreement.
- e. **(Operation of Indemnities)** Each indemnity in the Agreement survives termination or expiry of the Agreement and a Party may recover a payment under an indemnity in the Agreement before it makes the payment in respect of which the indemnity is given.