

PURCHASE ORDER TERMS AND CONDITIONS



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 1(a), 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 INTERPRETATIONS

2.1 Definitions

In these Standard Terms, unless the context dictates otherwise:

Agreement means the agreement between the Parties comprising the Purchase Order and these Standard Terms.

Business Day(s) means a day that is not a Saturday, Sunday, public holiday or bank holiday in the Nominated Jurisdiction.

Claim means any claim, suit, action, demand or proceeding arising out of any cause of action (including breach of contract, tort (including negligence) and any other common law, equitable or statutory cause of action).

Confidential Information means information that:

- (a) relates to the business or business strategies, personnel, policies, assets or affairs of Kinetic IT or which is otherwise designated as confidential by Kinetic IT;
- (b) is made available by or on behalf of Kinetic IT to the Supplier and is obtained by or on behalf of the Supplier; and
- (c) is designated by Kinetic IT as "confidential", and is by its nature confidential or the Supplier knows, or ought to know, is confidential,

but does not include information that:

- (d) is in or enters the public domain through no fault of the Supplier or any of its officers, employees or agents;
- (e) is or was made available to the Supplier by a person (other than Kinetic IT) who is not or was not then under an obligation of confidence to Kinetic IT in relation to that information; or
- (f) is or was developed by the Supplier independently of Kinetic IT and any of its officers, employees or agents.

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 a Purchase Order.

Government Authority means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in Australia.

GST means Goods and Services Tax as defined in the GST Law and includes any additional tax, penalty, fine, interest or other charge relating to GST.

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

Intellectual Property

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 of 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/2023/02/Kinetic-IT-Modern-Slavery-Statement-for-the-2022-financial-year.pdf>).

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

Personal Information has the meaning as defined in any applicable Privacy Law.

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

Privacy Law means any applicable legislation (whether Australian or otherwise, and including binding codes of practice) regulating the handling of any Personal Information (including the collection, storage, handling, use or processing of Personal Information) including, but not limited to the *Privacy Act 1988* (Cth).

Published Date means the date this Standard Terms is published on the Kinetic IT website, being 1 December 2023.

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 a 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 1(a).

Warranty Period means, in relation to:

- (a) Goods – a period of 12 months commencing on the date delivery occurs in accordance with clause 4(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 Interpretations

In these Standard Terms, unless context states otherwise:

- (a) headings are for convenience only and do not affect interpretation;
- (b) an obligation or liability assumed by, or a right conferred on, two (2) or more persons binds or benefits them jointly and severally;
- (c) "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;
- (d) 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;
- (e) a reference to a document (including this document) is to that document as varied, novated, ratified or replaced from time to time and, for the avoidance of doubt, includes any annexes or schedules of that document;
- (f) 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;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

PURCHASE ORDER TERMS AND CONDITIONS



- (h) monetary references are references to Australian dollar currency (\$AUD); and
- (i) 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.

2.3 Non-Business Days

If the day on which a person must do something under this Contract is not a Business Day, the person must do it on or by the next Business Day.

2.4 The rule of “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 GOODS AND SERVICES

3.1 General

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.

3.2 Supply of Goods

- (a) This clause 3.2 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 3.2(f).
- (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 3.2(c) have been satisfied.

3.3 Supply of Services

- (a) This clause 3.3 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.

4. WARRANTIES AND ACKNOWLEDGMENTS

- (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 4(a) 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 4(b), Kinetic IT may rectify the defects at the cost of the Supplier.
- (d) The Supplier acknowledges and agrees that:
 - (i) Kinetic IT reserves the right to update, amend or modify these Standard Terms at any time;
 - (ii) any such changes will be effective immediately upon the Published Date; and
 - (iii) it is the responsibility of the Supplier to review the Standard Terms periodically for any changes.

5. PRICE, PAYMENT & 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 from the receipt of the invoice 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.

6. CONFIDENTIALITY & 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.

PURCHASE ORDER TERMS AND CONDITIONS



- (b) Prior to any such disclosure under clause 6(a), 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:
 - (iii) minimise the violation and any damage resulting from it; and
 - (iv) 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 of the Disclosing Party's 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 6(a) and 6(b) survive any termination or expiry of the Agreement.

7. 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.

8. 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 8(a) 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 8(a), 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.

9. MODERN SLAVERY

- (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, including but not limited to:
 - (i) excessive fees imposed on a worker for employment placements and transportation; and
 - (ii) depriving and withholding workers access of their passports or identity documents without the worker's genuine consent.
- (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 10(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 9 in its subcontractor and supply agreements.
- (e) The Supplier acknowledges that, in accordance with the Modern Slavery Laws, Kinetic IT is required to prepare the Modern Slavery Statement and the Supplier agrees to provide Kinetic IT with all reasonable assistance to enable it to prepare its Modern Slavery Statement.

10. 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 days' notice, in writing, to the Supplier.

11. GENERAL

11.1 Survival of covenants

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.

11.2 Entire Agreement

The Parties acknowledges that:

- (a) the Agreement forms the entire agreement between the Parties;
- (b) neither Party has not relied on any representations made by the other Party that have not been expressly stated in the Agreement; and
- (c) to the extent that a Party has made any representation which is not otherwise expressly stated in the Agreement, the other Party has been provided with an opportunity to independently verify the accuracy of that representation.

11.3 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.

11.4 Assignment

Neither Party will assign, attempt to novate or otherwise transfer its rights or liabilities under this Agreement without the other Party's prior written consent. The Agreement is binding on the successors and assigns of each Party.

11.5 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.

11.6 Variation

The Agreement may only be varied by written agreement of authorised representatives of the Parties.

11.7 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 enforceable unless this would materially change the intended effect of the Agreement.

11.8 Disputes

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.

11.9 Insurance

The Supplier must at all times maintain insurances required by law and, if requested by Kinetic IT, provide Kinetic IT with certificates of currency.

11.10 Governing law

- (a) The Agreement and any dispute arising out of or in connection with the subject matter of the Agreement is governed by the laws the State of Western Australia.
- (b) Each Party submits to the non-exclusive jurisdiction of the courts of the State of Western Australia and courts of appeal from them, in respect of any proceedings arising out of or in connection with the subject matter of the Agreement.
- (c) Each Party irrevocably waives any right it has to object to any legal process being brought in those courts including any claim that the process has been brought in an inconvenient forum or that those courts do not have jurisdiction.

11.11 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.

11.12 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.

11.13 Giving effect to this Agreement

Each Party, its employees and agents must do anything (including execute any document) that the other Party may reasonably require to give full effect to the Agreement.

11.14 Cost of Agreement

Each Party must pay its own expenses incurred in negotiating, executing, stamping and registering the Agreement.

11.15 Exercise of rights

- (a) The exercise of a right partially or on one occasion does not prevent any further exercise of that right in accordance with the terms of the Agreement.
- (b) Neither a forbearance to exercise a right nor a delay in the exercise of a right operates as an election between rights or a variation of the terms of this Agreement.

11.16 Counterparts

This Agreement may be executed in counterparts, all of which taken together will constitute one and the same Agreement, provided that this Agreement will be of no force and effect until the counterparts are exchanged.

11.17 Electronic signature

The Parties agree and consent to the use of electronic signing method for all Purchase Order intend that their respective electronic signatures have the same effect as wet ink signatures.