

TERMS AND CONDITIONS OF PURCHASE (MINOR GOODS OR SERVICES) – TRIVANTAGE GROUP OF COMPANIES

The following terms and conditions govern all Purchase Orders placed by Trivantage and will be incorporated into each Contract entered into between Trivantage and the Supplier.

1. Definitions and Interpretation.

In these terms and conditions:

- (a) “**Goods**” means the goods (if any) to be supplied to Trivantage by the Supplier;
- (b) “**Price**” means the price of the Goods or Services specified in the Purchase Order;
- (c) “**Purchase Order**” means a purchase order issued by Trivantage to the Supplier for the supply of Goods or Services;
- (d) “**Services**” means the services (if any) to be provided to Trivantage by the Supplier;
- (e) “**Supplier**” means the supplier of Goods and/or provider of the Services identified in the Purchase Order;
- (f) “**Related Body Corporate**” has the same meaning as in the *Corporations Act 2001* (Cth);
- (g) “**Trivantage**” means the member of Trivantage Group who issues the Purchase Order; and
- (h) “**Trivantage Group**” means Trivantage Group Pty Ltd ACN 132 756 551 and each of its Related Bodies Corporate.

2. Purchase Order.

- (a) Trivantage may submit a Purchase Order if it wishes to acquire Goods or Services.
- (b) The Supplier may accept a Purchase Order by: (i) giving Trivantage written notice that it accepts the Purchase Order; or (ii) commencing delivery of the Goods or performance of the Services identified in the Purchase Order.

3. Delivery of Goods, Title and Risk.

- (a) The Supplier must deliver the Goods by the delivery time (or earlier with Trivantage’s written consent) and at the delivery location specified by Trivantage in the relevant Purchase Order.
- (b) Each delivery must be accompanied by a delivery note, including the Purchase Order number, the date and location of the delivery and the contents of the delivery.
- (c) Title to the Goods will pass from the Supplier to Trivantage upon payment to the Supplier of the Price for the Goods. Risk in the Goods will pass from the Supplier to Trivantage upon the unloading of the Goods following delivery at the delivery location.
- (d) Trivantage may reject the Goods if Trivantage (acting reasonably) considers the Goods do not comply with the Purchase Order. Where Goods are rejected, the Supplier must repair or replace the Goods at the Supplier’s expense or refund the Price paid for the Goods.

4. Performance of Services.

The Supplier must perform the Services by the date specified in the Purchase Order and in accordance with the Contract, including specifications or instructions provided by Trivantage.

5. Price, Payment and Invoices.

- (a) Unless specified otherwise, the Price includes: (i) in relation to Goods, all freight costs, charges for packing, insurance, packaging and all other charges payable in connection with the Goods;

- (ii) in relation to Services, all costs and expenses associated with the provision of the Services; and (iii) all taxes (except GST), duties, imposts and levies payable by law.
- (b) The Supplier must issue a valid tax invoice to Trivantage in the form required by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth). All invoices must (i) include the Purchase Order number; (ii) include a description of the Goods and/or Services provided; and (iii) be dated the date the invoice is sent to Trivantage.
- (c) Subject to the satisfactory performance of the Contract by the Supplier, Trivantage will pay the amount due under the invoice by the time specified in the Contract (**Payment Date**). If no date is specified, the Payment Date will be 60 days from the date of receipt of the invoice.
- (d) Unless otherwise specified, amounts payable under the Contract excludes GST.
- (e) Trivantage must pay GST to the Supplier, subject to the Supplier issuing a valid tax invoice.

6. **Warranties and Remedies**

- (a) The Supplier warrants that for a period of [24] months from the date of delivery of the Goods or provision of the Services (**Warranty Period**), the Goods and/or Services subject to a Purchase Order will (i) be free from defects in design, performance, materials and workmanship; (ii) conform to all specifications contained in the Contract; (iii) be fit for the purposes made known to the Supplier by Trivantage; (iv) be manufactured or performed in a proper and workmanlike manner; (v) not infringe any third party intellectual property rights; (vi) be free from all mortgages, charges, encumbrances, liens and other third party rights or claims; and (viii) comply with all applicable laws (collectively, **Warranties**).
- (b) If the Supplier breaches any of the Warranties during the Warranty Period, the Supplier must, at Trivantage's option (where appropriate): (i) repair the Goods; (ii) replace the Goods; (iii) re-perform the Services; or (iv) refund Trivantage the Price paid in respect of the relevant Goods or Services within such period as Trivantage reasonably directs.
- (c) If the Supplier fails to rectify a breach of warranty in accordance with this clause, Trivantage may, without prejudice to any other remedy available to it, immediately terminate the Contract.

7. **Insurance**

- (a) Without limiting the Supplier's liability under the Contract, the Supplier must effect and maintain, with a reputable insurer: (i) public and product liability insurance of not less than \$20 m per event; and (ii) if professional services are being provided, professional indemnity insurance of not less than \$10 m per event, (collectively, **Insurances**).
- (b) Upon Trivantage's request, the Supplier must provide evidence with respect to the Insurances.

8. **Indemnity**

The Supplier agrees to indemnify Trivantage and its officers, employees, agents and customers (**Personnel**) against all loss, damage, claim, expense or liability incurred in connection with:

- (a) a breach of Contract by the Supplier or its Personnel;
- (b) damage to or destruction of property or injury to or death of any person to the extent caused by any negligent or unlawful act or omission or wilful misconduct of the Supplier or its Personnel;
- (c) infringement of any intellectual property rights relating to the Goods or Services; and

(d) Trivantage's inability to meet its obligations to a third party as a result of the Supplier failing to perform its obligations under the Contract, except to the extent the claim arises as a result of the negligent or unlawful act or omission or wilful misconduct of Trivantage or its Personnel or a breach of Contract by Trivantage.

9. Intellectual Property.

- (a) Nothing in the Contract affects the ownership of any intellectual property owned by a party prior to entering into the Contract.
- (b) All intellectual property rights that arise in relation to the design or manufacture of the Goods or the performance of the Services belong to Trivantage (**Trivantage IP**). The Supplier must do all things necessary to give effect to this clause 9(b).

10. Termination

- (a) In addition to any other right of termination in these terms and conditions: (i) if the Supplier breaches the Contract, Trivantage may terminate the Contract immediately by notice to the Supplier if the Supplier breaches the Contract and fails to remedy the breach within 7 days of receiving written notice from Trivantage requiring the Supplier to do so; (ii) the Supplier may terminate the Contract immediately by notice to Trivantage, if Trivantage breaches the Contract and fails to remedy the breach within 14 days of receiving written notice from the Supplier requiring Trivantage to do so.
- (b) Trivantage may terminate the Contract, in whole or in part, at any time by written notice to the Supplier, in which case, Trivantage must pay the Supplier for Goods supplied and Services performed prior to the time of termination, and for any other direct costs resulting from the termination which the Supplier is unable to avoid or mitigate, provided that Trivantage's liability (inclusive of any amounts paid or payable for Goods or Services which have not been terminated) is capped at the contract price.

11. Miscellaneous

- (c) Except as may otherwise be expressly agreed in writing by the parties, these terms and conditions, together with the Purchase Order and any other document expressly incorporated into the Purchase Order, constitute the entire agreement between Trivantage and the Supplier with respect to any Purchase Order (**Contract**) and will prevail over any terms and conditions of the Supplier.
- (d) The Contract is governed by the law of the State of Victoria. The courts of the State of Victoria have non-exclusive jurisdiction in connection with the Contract.
- (e) The Supplier must not permit or allow any person to exercise any of the Supplier's rights or perform any of the Supplier's obligations under the Contract without the prior written consent of Trivantage, which consent must not be unreasonably withheld. If any person is appointed by the Supplier in accordance with this clause, whether by subcontract or otherwise, the Supplier is liable for all acts and omissions of such person.