



TERMS & CONDITIONS

1. Purchase of goods / Receipt of services

- (a) Titomic Ltd (ACN 602 793 644) (**Titomic**) purchases goods and/or services subject to these terms and conditions, unless otherwise agreed in writing (**Conditions**).
- (b) When Titomic places an order to purchase goods and/or services and that order is accepted by the Supplier (**Order**), the Supplier agrees and acknowledges that these Conditions will be binding on both the Supplier and Titomic for the purposes of the purchase of the goods and/or receipt of services.
- (c) Offers, estimates or quotations (**Quotations**) given by the Supplier are, except to the extent otherwise stated in such document, subject to these Conditions.
- (d) Any Quotation from the Supplier:
 - (i) will bind the Supplier or form part of a contract with Titomic; and
 - (ii) may not be subject to alteration at any time prior to the Supplier accepting an Order from Titomic, unless such alteration is agreed to by both parties in writing.
- (e) The entire agreement (**Agreement**) between Titomic and the Supplier for the purchase or supply of the goods and/or services is:
 - (i) these Conditions;
 - (ii) the Order;
 - (iii) any other terms and conditions which are imposed by Law and which cannot be excluded; and
 - (iv) any variation agreed to by both parties in writing.
- (f) These Conditions shall apply to all Agreements to the exclusion of any terms and conditions or any other materials which the Supplier may purport to apply, or which are endorsed upon any correspondence or documents issued by the Supplier irrespective of their date of communication to Titomic, except to the extent that the Supplier's terms and conditions are agreed to in writing and signed by Titomic.
- (g) Titomic may vary or amend these Conditions by written notice to the Supplier at any time. Any variations or amendments will apply to quotes or Orders placed after the date of written notice.

2. Orders

- (a) Information provided by the Supplier in respect of goods and/or services (including price lists) constitute an offer to sell.
- (b) An Order or offer to purchase is an offer to purchase goods and/or services at the price set by Titomic as at the date of the Agreement (including delivery and other applicable charges).
- (c) The Supplier must not reject any Order (in whole or in part) without providing a reasonable reason in writing to Titomic.



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- (d) An Offer is accepted by the Supplier when the Supplier accepts, in writing or electronic means, an Offer from Titomic or provides Titomic with the goods or services.
- (e) An Order placed by Titomic will form part of an Agreement when it has been received and accepted by the Supplier. Acceptance by the Supplier of any Order issued by Titomic may be in writing or by the Supplier delivering to Titomic the goods or services which are the subject of an Order. Any terms and conditions contained in any Order or other document issued by the Supplier will not form part of the Agreement unless they are expressly signed and accepted by Titomic's authorised representative.

3. Specifications

- (a) The Supplier may only change the specifications of goods and/or services in a Quotation from time to time to the extent that these are necessary for safety, performance or engineering requirements.
- (b) The Supplier must notify Titomic in writing if it makes such changes under clause 3(a).

4. Price

- (a) Unless otherwise notified by the Supplier in writing, all prices for goods and/or services:
 - (i) are in Australian dollars; and
 - (ii) include delivery and other applicable charges and expenses including custom duty, taxation, bank charges and packing costs.
- (b) Unless otherwise agreed in writing and subject to clause 5, the price payable for the goods and/or services is the price set under a valid and binding Quotation (including delivery and other applicable charges).
- (c) If the Supplier requests any variation to the Agreement, the Supplier may not increase the price to account for the variation, including any relevant increase in exchange rates, costs of labour, parts, materials and other inputs, including, without limitation, energy and other overheads, unless otherwise agreed in writing by Titomic.

5. Payment

- (a) Titomic must pay the price (including delivery and other applicable charges) for the goods and/or services in accordance with the payment terms specified on the invoice provided by the Supplier. The Supplier may not pass onto Titomic all costs associated with particular forms of payment (including surcharges pursuant to the *Competition and Consumer Amendment (Payment Surcharges) Act 2016*), unless otherwise agreed in writing by Titomic. Where a payment is due on a weekend or public holiday in Victoria, payment is required by the following Business Day.
- (b) Payment must be made on or before the 30th day from the Delivery Date.
- (c) Titomic may deduct or set-off from any moneys due to the Supplier under this Agreement.



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6. GST

- (a) Unless otherwise stated, all amounts payable for the goods are exclusive of any goods and services tax (**GST**).
- (b) Titomic need not pay the GST amount in respect of a taxable supply made under or in connection with a contract or this Agreement until the Supplier has given Titomic a valid tax invoice in respect of that taxable supply.

7. Delivery

- (a) In the case of supply of goods by the Supplier, delivery shall be:
 - (i) in the case of non-export, Delivered at Place (DAP) (Incoterms 2020) at a place nominated by Titomic, or
 - (ii) in the case of export, Delivered Duty Paid (DDP) (Incoterms 2020) to the named place of destination nominated by Titomic,

unless the parties agree in writing to alternative delivery arrangements. The risk in the goods and all insurance responsibility for theft, damage or otherwise will remain with the Supplier until delivery has occurred.

- (b) In the case of supply of services, delivery shall be deemed to have occurred on completion by the Supplier of the agreed services.
- (c) The Supplier is bound by the completion or delivery dates specified in a Quotation (**Delivery Date**) and must effect delivery on the Delivery Date.
- (d) The Supplier acknowledges that the Delivery Date is binding and failure to deliver by that time will constitute a breach of these Conditions, unless the Supplier immediately gives written notice to Titomic specifying all causes of such delay and a probable date for delivery and this is accepted by Titomic.
- (e) The Supplier shall be liable for any loss or damage howsoever arising as a result or consequence of any delay in delivery. Titomic shall be relieved of any obligation to accept or pay for goods or services by reason of any delay in delivery. In addition, Titomic may at its option, cancel part or all the affected Order without liability or other ramification, and without prejudice to any other rights Titomic may have against the Supplier in this Agreement.
- (f) If, at Titomic's request, delivery of any goods is delayed after notification by the Supplier to Titomic that the goods are ready for delivery, Titomic agrees to pay any reasonable storage costs incurred or to be incurred by the Supplier and will pay the Supplier for the full value of the completed goods.
- (g) The Supplier must deliver all goods the subject of an Order at the same time. However, where this is not possible, in order to minimise any detriment that may be caused to Titomic, the Supplier must deliver goods to Titomic by instalments within 5 Business Days.
- (h) If the Supplier fails to deliver in accordance with clause 7(g) by reason of:



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- (i) inability to obtain supplies of the goods (where it is not the manufacturer) or materials or parts from approved sources;
- (ii) import or export restrictions;
- (iii) any strike or combination of worker, shortage of labour or lockout; or
- (iv) any other event or circumstance beyond the reasonable control of the Supplier,

the Supplier may not cancel any Order or any unfulfilled part of an Order or extend the time for its performance or completion by the time lost because of the event preventing or delaying delivery, unless the Supplier has immediately given written notice to Titomic of this delay and Titomic agrees to this cancellation or extension of time. The Supplier shall be liable for the delay in delivery of the goods or services as a result of any of the clauses set out in this clause 7, unless otherwise agreed in writing by both Titomic and the Supplier.

8. Defective goods

- (a) If Titomic claims that the goods were defective, short delivered or are otherwise not the goods specified in the Order, Titomic must notify the Supplier in writing within ten (10) days of delivery.
- (b) The Supplier shall remain liable for any loss, deterioration or damage caused to the goods until the passing of risk in the goods to Titomic in accordance with clause 9.

9. Title to goods

Ownership in the goods and title passes to Titomic upon payment in full for the goods.

10. Recalls

The Supplier must not initiate any recall of a product or agree to implement a recall of a product unless required by Law and provided that Titomic authorises the specific terms of the recall in writing in advance.

11. Certificates

In the absence of manifest error:

- (a) the written records of the Supplier in relation to a delivery of goods will be conclusive evidence of the type and quantity of goods delivered and the date and time of delivery; and
- (b) certification from the Supplier's authorised representative will be conclusive evidence of the amount owed for the goods.

12. Warranties and liability

- (a) Pursuant to clause 7, the Supplier must use reasonable endeavours to meet the Delivery Date and will be liable for any loss or damage suffered by Titomic or by any third party as a result of the Supplier's failure to meet the Delivery Date.



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- (b) The Supplier gives express warranty in relation to the goods and/or services. This include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or any contractual remedy for their failure. All conditions and warranties, whether express or implied by Law or otherwise, which may be binding on the Supplier are included in this Agreement.

13. Indemnity

- (a) The Supplier indemnifies Titomic and agrees to keep Titomic indemnified, against all loss, liability, costs (including legal costs) and expenses arising directly or indirectly as a result of or in connection with the supply of goods and/or services. This includes:
 - (i) any failure of the product to comply with the Supplier's warranty under clause 12;
 - (ii) liability under the Australian Consumer Law; and
 - (iii) any breach by the Supplier of any terms of this Condition.
- (b) For the avoidance of doubt the indemnity further includes any liability for legal costs and disbursements on and, without limitation, any indirect or consequential expense, loss or damage, loss of profits, revenue, use, expectation or opportunity, wasted expenditure, lost production or similar losses suffered by Titomic under or in connection with this Agreement.

14. Default

- (a) The Supplier will be in default if the Supplier breaches these Conditions.
- (b) Without limiting clause 14(a), the Supplier breaches these Conditions if:
 - (i) complete delivery for the goods and/or services is not made by the Delivery Date;
 - (ii) the Supplier attempts to assign or transfer the benefit of these Conditions without obtaining the consent of Titomic;
 - (iii) if the Supplier is an individual and declares or commits an act of bankruptcy or enters into an arrangement or composition with its creditors; or
 - (iv) if the Supplier is a corporation and suffers the appointment of controller, administrator, receiver or liquidator, has winding up proceedings initiated against it or ceases or threatens to cease carrying on business.
- (c) If the Supplier is in default under this clause 14, Titomic may:
 - (i) be reimbursed for and recover from the Supplier, all costs and expenses incurred by Titomic in seeking to collect debts, including without limitation, the costs of any collection agents and legal costs (on a solicitor and client basis);
 - (ii) demand immediate delivery for all other goods and/or services supplied by the Supplier, notwithstanding that the delivery of those goods and/or services would not otherwise have been then due and deliverable;



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- (iii) terminate or suspend placement of any Order for goods and/or services; and/or
- (iv) terminate any contract with the Supplier and cease purchasing from the Supplier the goods and/or services.
- (d) Titomic is not obliged to notify the Supplier before exercising a right under clause 14(c) and these rights will be in addition to any other rights that Titomic may have.

15. Termination

- (a) Titomic may terminate or suspend the Agreement (or any part thereof, including any Order or part of any Order) if the Supplier is in breach of:
 - (i) the Agreement, and the Supplier remains in breach after receiving 7 days' notice from Titomic of such breach and the opportunity to rectify the breach; or
 - (ii) in the event a default is triggered under clause 14.
- (b) Titomic may, without liability to the Supplier and in addition to its rights pursuant to clause 14(a), immediately terminate or suspend the Agreement and any outstanding Orders if the Supplier or any of its employees or representatives:
 - (i) are charged with any criminal offence in relation to bribery or corruption; or
 - (ii) act in a manner which, in Titomic's reasonable opinion, could bring Titomic into disrepute; or
 - (iii) act dishonestly, fraudulently or illegally.

16. Force majeure

If a party is prevented from or delayed in complying with an obligation (other than to pay money) under these Conditions by an event beyond its reasonable control, performance by it of that obligation is suspended during the time, but only to the extent that, compliance is prevented or delayed.

17. Intellectual property

- (a) Upon delivery of the goods and/or services, all intellectual property rights in or relating to goods or services supplied by the Supplier, including in relation to the development, manufacture, use, operation, repair or maintenance of the goods, and in or in relation to any company-licensed, commissioned or created tooling, materials, drawings, samples, reports, work results and other documents, immediately vests in and shall remain the sole and exclusive property of Titomic.
- (b) Titomic is not liable for any Claims arising from an actual or alleged infringement of a third party's intellectual property rights:
 - (i) where such claim arises due to the Supplier agreeing to supply the goods or services in accordance with the Supplier's specifications or using the Supplier's materials; and
 - (ii) where the goods or work results produced by the Supplier in providing the services are used in a way which could not have been foreseen by Titomic.



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- (c) If Titomic purchases any goods or services in accordance with the Supplier's specifications or using the Supplier's materials, the Supplier shall indemnify Titomic from and against all actions, Claims, demands, costs, expenses and liabilities arising in connection with any alleged or actual infringement of the intellectual property rights of a third party.
- (d) The Supplier shall not use any trademark owned or licensed by Titomic, or any substantially identical or misleadingly similar words, in a company name, business name, domain name or email address.

18. Confidentiality of company information

- (a) Each party agrees to keep confidential the other party's financial, technological (including designs, drawings, specifications, technical handbooks), strategic, financial and business information, disclosed in the course of, or arising from the Agreement (**Information**).
- (b) All Information owned by Titomic or which may be generated by Titomic in the course of fulfilling the Agreement remains or shall become the property of Titomic and may only be used by the Supplier where agreed to by Titomic in fulfilling its rights and obligations under the Agreement. Otherwise, no Information may be disclosed to any third party without Titomic's prior written consent.
- (c) Each party agrees to effect and maintain adequate security measures to safeguard the other party's Information from access or use by any unauthorised person and not to disclose any terms of the Agreement or Information except where disclosure is necessary to comply with that contract or any other agreement between the parties, or if the disclosure is required by Law.
- (d) Either party must, on becoming aware of any breach of confidentiality, immediately inform the other party, investigate the breach and report to the other party as to the outcome of the investigation.

19. Warranty

The Supplier must, and warrants that it will:

- (a) comply with all applicable Laws in relation to the conduct of its business including Laws relating to bribery and corruption;
- (b) ensure that its actions or omissions do not cause Titomic to be in breach of any applicable Laws; and
- (c) immediately notify Titomic of any breach of this clause.

20. Miscellaneous

- (a) If a provision in these Conditions is unenforceable, illegal or void then it is severed, and the remaining Conditions continue to operate.
- (b) The Supplier must not assign or otherwise deal with these Conditions without the consent of Titomic, which may be given or withheld at Titomic's absolute discretion.



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- (c) All of the rights and obligations of each party under these Conditions which by their nature or context must survive termination and/or expiry, will survive the termination and/or expiry of these Conditions.
- (d) A notice to be given by a party to the other party under the Agreement must be in writing, directed to the party's address as specified in the Agreement (or to such other address notified in writing by the receiving party); and left at or sent by prepaid registered post or electronic mail to the party's nominated representative. A notice will be deemed to be given:
 - (i) on the day of delivery;
 - (ii) 48 hours after an electronic mail has been sent from the senders account;
 - (iii) 3 Business Days after the date of posting by prepaid registered post if the Supplier is located in Australia; or
 - (iv) 10 days after the date of posting by prepaid registered post if the Supplier is located outside Australia, as the case may be.

21. Governing law

- (a) The Agreement shall be deemed to have been entered into in the State of Victoria, Australia and shall be construed, enforced and performed in accordance with the laws of that state. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.
- (b) The United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention) does not apply to the Agreement.

22. Definition and interpretation

22.1 Definition

In this Agreement:

Agreement has the meaning given to it under clause 1(e);

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Victoria;

Claim includes a claim, notice, demand, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this Agreement or otherwise;

Conditions have the meaning given to it under clause 1(a);

Delivery Date has the meaning given to it under clause 7(c);

GST has the meaning given to it in the GST Act;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;



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Law means:

- (a) principles of law or equity established by decisions of courts;
- (b) statutes, regulations or by-laws of the Commonwealth of Australia, or any State or Territory of the Commonwealth of Australia or a Government Agency; and
- (c) requirements and approvals (including conditions) of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia or a Government Agency that have the force of law;

Order has the meaning given to it under clause 1(b);

Quotation has the meaning given to it under clause 1(c).

22.2 Interpretation

In this Agreement, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) headings are used for convenience only and do not affect the interpretation of this Agreement;
- (d) other grammatical forms of a defined word or expression have a corresponding meaning;
- (e) a reference to a document is to that document as amended, novated, supplemented, extended or restated from time to time;
- (f) a reference to a party is to a party to this Agreement and includes that party's executors, administrators, successors, permitted assigns and permitted substitutes;
- (g) "person" includes a natural person, partnership, body corporate, association, joint venture, governmental or local authority, and any other body or entity whether incorporated or not;
- (h) "month" means calendar month and "year" means 12 consecutive months;
- (i) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) is to that statute as amended, consolidated, re-enacted or replaced from time to time;
- (j) "include", "for example" and any similar expressions are not used, and must not be interpreted, as words of limitation;
- (k) money amounts are stated in Australian currency unless otherwise specified;
- (l) a reference to a time of day is to that time in Victoria;
- (m) any provision in this Agreement which is in favour of more than one person benefits all of them jointly and each of them severally; and



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- (n) any provision in this Agreement which binds more than one person binds all of them jointly and each of them severally.