

MAVERICK MARKETING AND COMMUNICATIONS - STANDARD TERMS FOR SUPPLIERS

Once these terms are first accepted by you ("Supplier") they will apply to all the Supplier's subsequent dealings with Maverick Marketing and Communications Pty Ltd ACN 097 951 794 ("Agency"), including being incorporated in all agreements (each a "Supply Agreement") under which Agency acquires goods and/or services (together, the "Product") from the Supplier. Once accepted they will supersede any previous versions of these terms. They will prevail over anything inconsistent in the Supplier's documents. If the Supplier delivers, or invoices or accepts payment for, any Product after receiving or becoming aware of these terms then it is taken to have accepted these terms (but this does not limit the other ways in which the Supplier may accept these terms).

1. Quality

1.1 The Product must: (a) correspond with any description (including performance criteria) in the Supply Agreement; (b) be of merchantable quality; (c) be fit for the purpose for which goods or services of the same kind are commonly supplied and for any other purpose which Agency makes known to the Supplier; (d) be supplied with due care and skill and in accordance with all applicable laws and Australian Standards; (e) comply with any reasonable requirements of Agency (whether specified before or after the Supply Agreement is made) as to its quality or its method of delivery; and (f) be delivered within the timeframe specified in the Supply Agreement (time being of the essence).

1.2 If before the Supply Agreement is made:

- (a) the Supplier gives Agency a sample or demonstration of the Product, then the Product must correspond with the sample or demonstration; or
- (b) the Supplier shows Agency a result achieved by the Product, then the Product must correspond in quality with a product that achieves that result.

1.3 The Supplier must at its cost obtain all licences, permits and consents necessary or desirable for it to supply the Product.

1.4 Agency's inspection, testing or acceptance of some or all of the Product does not affect Agency's rights to claim for any damage or loss suffered because of the Supplier's breach of the Supply Agreement.

2. Price

2.1 Unless the Supply Agreement expressly provides otherwise, the price of the Product is in Australian currency and is inclusive of GST and all charges for packaging, packing, insurance and delivery of the Product in accordance with the Supply Agreement.

2.2 Subject to clause 10.6, the price of the Product as specified in the Supply Agreement is fixed and firm and may not be increased without Agency's prior written consent.

3. Invoicing and Payment

3.1 Unless the Supply Agreement states that progress payments are to be made, the Supplier must invoice Agency upon the later of completion or delivery of the Product.

3.2 Agency will pay an invoice rendered to it by the Supplier under clause 3.1 before the 60th day following the receipt of the invoice.

3.3 Agency may reduce any payment due to the Supplier by any amount for which the Supplier is liable to Agency. This does not limit Agency's right to recover that amount in other ways.

4. Title and Risk

4.1 Title to and risk in the Product does not pass to Agency until Agency:

- (a) takes delivery of the Product; and
- (b) inspects and accepts the Product.

4.2 The Supplier warrants that it has complete ownership of the Product free of any liens, charges and encumbrances and will supply the Product to Agency on that basis.

5. Insurance

5.1 Unless otherwise agreed in writing by Agency, the Supplier must take out and maintain during the period of the Supply Agreement:

- (a) insurance for the Product up to the time its is delivered for an amount not less than its replacement value;
- (b) a comprehensive public and products liability policy to cover all sums which the Supplier may become legally liable to pay as compensation consequent upon:
 - (i) death of, or bodily injury (including disease or illness) to, any person; and
 - (ii) loss of, or damage to, property, happening anywhere in Australia arising out of or in connection with the Supply Agreement. The limit of liability provided by this policy for each and every event must be not less \$10 million;
- (c) all insurance required by law in connection with workers' compensation; and
- (d) other insurances, including motor vehicle third party liability insurance, required by law or reasonably required by Agency.

5.2 At Agency's request, the Supplier must:

- (a) ensure that Agency is named as a co-insured under any policy of insurance required to be taken out by the Supplier under clause 5.1(b) (at no additional cost to Agency); and
- (b) produce evidence that it is maintaining the insurance required by this clause 5.

5.3 Agency has the right (but no obligation) to take out and maintain at the Supplier's expense any policy of insurance required by this clause 5 if the Supplier fails to do so.

6. Liability

6.1 The Supplier will be liable for, and will indemnify and keep indemnified Agency and its officers, employees and agents (each an "Associate") from and against any liability and/or any loss or damage of any kind whatsoever arising directly or indirectly from:

- (a) any breach of any warranty or other term of the Supply Agreement by the Supplier;
- (b) the illness, injury or death of any of the Supplier's employees, agents or contractors arising out of or in connection with the Supply Agreement;
- (c) the illness, injury or death of any person, damage to any property or any other loss or damage of any kind whatsoever caused or contributed to by the Supplier in connection with Supply Agreement;
- (d) any negligence or wilful act or omission by the Supplier and/or any of its employees, agents or contractors in connection with the Supply Agreement;
- (e) any claim made against Agency in respect of income tax, workers compensation, annual leave, long service leave, payroll tax, superannuation or any employment entitlement to the extent that it arises in connection with any employee of the Supplier or of its agents or contractors; and
- (f) any claim that the Product, the supply or results of the Product, or Agency's use of the Product, infringes the intellectual property rights of any person, except to the extent that any liability, loss or damage is solely and directly caused by Agency's wilful misconduct or gross negligence or that of Agency's employees, agents, contractors and sub-contractors (other than the Supplier).

6.2 Each indemnity survives termination of the Supply Agreement. It is not necessary for Agency to incur expense or make payment before enforcing a right of indemnity.

7. Intellectual Property

7.1 As between Agency and the Supplier, Agency retains the intellectual property rights (which in this clause and clause 6.1(f) includes the protected rights attaching to inventions, patents, registered designs, trademarks, copyright, circuit layouts and confidential information) in plans, designs,

drawings, artwork, written works, engineering information, data, specifications, reports, accounts, photographs, film, recordings, software, digital files and without limitation and any other creative or technical works (together, "Materials") that Agency provides to the Supplier for the purpose of performing the Supply Agreement. The Supplier must not reproduce, use or otherwise deal with these Materials, nor allow any other person to do so, for any purpose other than performing the Supply Agreement.

7.2 In return for the price paid by Agency under the Supply Agreement, the Supplier assigns (and must ensure that its sub-contractors assign) to Agency all intellectual property rights in any Materials created by the Supplier or by its subcontractors for the purpose of the Supply Agreement.

8. Data Privacy and Security

The Supplier warrants that it has a privacy policy regarding the collection, use, and disclosure of personal data in the Supplier's possession, custody, or control, or otherwise held or processed on its behalf and, in connection with this Supply Agreement, it must comply with that policy and with all applicable laws regarding the collection, use, storage, transfer, or disposal of personal data.

9. Confidentiality

The Supplier acknowledges that information disclosed to it by Agency under or in connection with the Supply Agreement is proprietary, confidential or a trade secret of Agency. Except as contemplated in the Supply Agreement, the Supplier must not and must not permit any of its officers, employees, agents, contractors or related companies to use or to disclose to any person any such information without the prior written consent of Agency. This clause does not apply to any information which is generally available to the public (other than as a result of wrongful disclosure by the Supplier) or information that is required to be disclosed by any law.

10. Termination

9.1 The Supplier may not terminate all or part of the Supply Agreement unless Agency first agrees in writing. Agency may terminate the Supply Agreement by giving notice to the Supplier if the Supplier: fails to comply with any of its obligations under the Supply Agreement; is in liquidation or provisional liquidation or under administration; has a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property; is taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand; is unable to pay its debts or otherwise insolvent; dies; ceases to be of full legal capacity or otherwise becomes incapable of managing its own affairs for any reason; takes any step that could result in the Supplier becoming an insolvent under administration (as defined in section 9 of the Corporations Act); enters into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or is affected by any analogous event.

9.2 In addition to its rights under clause 10.1, Agency may terminate the Supply Agreement at any time by giving 3 days' notice to the Supplier.

9.3 When the Supplier receives a notice of termination from Agency, it must:

- (a) stop work to the extent required by the notice;
- (b) use best endeavours to minimise the cost of termination to Agency; and
- (c) where the notice is given under clause 10.2, send Agency a written claim under clause 10.4 ("Written Claim") within 30 days after the notice.

9.4 The Supplier's Written Claim must:

- (a) set out all its costs incurred to date in relation to the Supply Agreement;
- (b) set out all its costs and cost savings that result from the termination of the Supply Agreement; and
- (c) specify an adjusted price for the supply of the Product under the Supply Agreement which must not:
 - (i) be greater than the price originally specified in the Supply Agreement; or
 - (ii) include any amount for anticipated profit, unperformed work or consequential loss or damage.

9.5 Agency has the right to audit the adjusted price specified in the Written Claim.

9.6 The adjusted price specified in the Written Claim will apply under the Supply Agreement if:

- (a) Agency is satisfied that it is fair and reasonable and on the basis described in clause 10.4; and
- (b) the termination of the Supply Agreement is not a result of any default or action on the Supplier's part, or on the part of its employees, agents or contractors (including, without limitation, any of the events specified in clause 10.1).

11. General

10.1 A notice, consent or other communication under these terms is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or fax. If it is sent by mail, it is taken to have been received 3 working days after it is posted. If it is sent by fax, it is taken to have been received when the addressee actually receives it in full and in legible form. A party's address and fax number are those set out in the letterhead on correspondence last sent to the other party.

10.2 The Supply Agreement is governed by the law in force in New South Wales. The parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts.

10.3 A right of Agency may only be waived in writing, signed by Agency. No other conduct of Agency (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right. A waiver of a right by Agency on one or more occasions does not operate as a waiver of that right if it arises again. The exercise of a right by Agency does not prevent any further exercise of that right or of any other right.

10.4 A variation of the Supply Agreement will not take effect unless it is agreed by Agency in writing.

10.5 Any provision of the Supply Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make the Supply Agreement enforceable, unless this would materially change the intended effect of the Supply Agreement.

10.6 No party may assign its rights or obligations under the Supply Agreement without the written consent of the other party.

10.7 The Supplier may not sub-contract its obligations under the Supply Agreement unless Agency consents to such arrangement. Sub-contracting does not relieve the Supplier from any liability or obligation under the Supply Agreement.

10.8 The Supplier is an independent contractor. Nothing constitutes the Supplier or any of its staff an employee, agent, partner or joint-venturer of Agency.

10.9 Where a provision of these terms purports to protect or give rights to an Associate then Agency takes the benefit of that provision on behalf of and as trustee for that Associate.