

Definitions

Agreement means these general terms and conditions of purchase.

Business Day means a day (not being a Saturday, Sunday or public holiday) on which Australian banks (as defined in Section 9 of the Corporations Act) are open for general banking business in the capital city of the State.

Competition and Consumer Act means that Competition and Consumer Act 2010 (Cth).

Confidential Information means any written or oral information of a technical, business or financial nature or which is taken by any provision of this Agreement to be Confidential Information, or which Olympus makes the Supplier aware is considered by Olympus to be confidential and proprietary, and includes all information that is personal information for the purposes of the Privacy Act 1988 (Cth), but does not include information which the Supplier can establish:

- (a) was in the public domain when it was given to the Supplier;
- (b) becomes, after being given to the Supplier, part of the public domain, except through disclosure contrary to this Agreement;
- (c) was in the Supplier's possession when it was given to the Supplier and had not been acquired in some other way (directly or indirectly) from Olympus; or
- (d) was lawfully received from another person who had the unrestricted legal right to disclose that information free from any obligation to keep it confidential.

Corporations Act means the Corporations Act 2001 (Cth), as amended.

GST has the meaning given to that term in the GST Law.

GST Law has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Insolvency Event means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

Offer Response means a written document provided by Olympus in response to a Supplier's Offer which includes the Service Date, Premises, confirmation of the Services to be purchased and confirmation of the price for the Services to be purchased.

Olympus means Olympus Australia Pty Ltd (ABN 90 078 493 295) and its successors and assigns.

Order means a Purchase Order or Offer Response provided by Olympus to the Supplier.

Premises means the place where the Service are to be provided as specified by Olympus.

Purchase Order means a written document provided by Olympus to the Supplier, containing the Service Date, Premises, the Services to be purchased and the price for Services to be purchased.

RFQ means a request for quotation by Olympus.

Service Date means the date that the Services are to be provided to Olympus as specified by Olympus.

Services means the services purchased by Olympus from the Supplier as specified by Olympus in the Order

Supplier's Offer has the meaning given to it in clause 2.3.

State means the state of Victoria in the Commonwealth of Australia.

1 Supply of Services

1. Olympus agrees to purchase and the Supplier agrees to supply the Services in accordance with this Agreement.
2. This Agreement shall apply to all Services supplied by the Supplier to Olympus unless otherwise agreed in writing by Olympus' purchasing manager.
3. This Agreement is deemed to be incorporated into all contracts for the purchase of Services by Olympus from the Supplier and will prevail over any inconsistent terms in any document of the Supplier unless otherwise agreed by Olympus' purchasing manager in writing.
4. If Olympus places an order with the Supplier for Services or enters into a contract with the Supplier and the Services provided to Olympus, or Olympus makes any payment, the Supplier is taken to have accepted the supply of such Services on the terms of this Agreement.
5. To the extent the Supplier's terms and conditions are supplied with the Services those terms and conditions will be of no legal effect and will not constitute part of any agreement to supply the Services.

2 Request for Quotations and Orders

1. **Purchase Orders:** Olympus may place Purchase Orders (orally or in writing) for Services. If Olympus does not receive a written notification from the Supplier that they are unable to supply the Services according to the Purchaser Order within 24 hours of receipt of the Purchaser Order, the Supplier will be deemed to have accepted the Purchaser Order.
2. **Request for Quotation:** If Olympus provides the Supplier with a RFQ, the RFQ shall not constitute an offer by Olympus and Olympus may withdraw or alter the RFQ without notice. All responses to RFQs provided by the Supplier and received by Olympus in Olympus' standard form will constitute a valid quotation and offer for the supply of the Services (**Supplier's Offer**). For the avoidance of doubt, the Supplier's Offer does not constitute an acceptance by Olympus of the Supplier's Offer.
3. **Offer Response:** The Supplier's Offer may be accepted by Olympus by providing an Offer Response to the Supplier in writing. A contract will be formed between Olympus and the Supplier upon the Supplier being provided with the Offer Responses from Olympus. The relevant Offer Response and this Agreement shall constitute the entire agreement between Olympus and the Supplier for the supply or provision of those Services. For the avoidance of doubt, no representation or statement by an employee, agent not expressly stated in an Offer Response shall be binding on Olympus.

3 Cancellation and modification of Orders

1. Orders may be modified or cancelled by Olympus at any time prior to the Service Date provided that Olympus will be liable for the Supplier's reasonable costs associated with any work in progress. Olympus may cancel any order for Services where the Supplier has failed to provide the Services in whole or part by the Service Date.

4 Price and Payment

1. Unless Olympus consents in writing, any order for Services may not be invoiced at a price higher than that set out in an Order.

2. Unless Olympus consents in writing, any order for the provision of Services may not be invoiced at a price higher than that set out in an Order.
3. Save in the event of breach by the Supplier of this Agreement or the delivery of inadequate Services by the Supplier, payment for Services shall be made by Olympus to the Supplier no later than 30 days from the Service Date unless specified otherwise by Olympus.
4. In the event that the Supplier breaches this Agreement, the Supplier must refund to Olympus any monies paid pursuant to this Agreement within 30 days of a notification of breach.

5 GST

1. Unless otherwise stated, the price for the Services is GST exclusive.
2. In addition to the price for the Services, Olympus must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this Agreement.
3. Olympus must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as Olympus pays the price (or the corresponding first part of it if the Supplier agrees to Olympus paying the price by instalments).

6 Delivery of Services

1. The Supplier must deliver the Services to Olympus on the Service Date and in accordance with the delivery terms specified in the Order.
2. The costs of attending the Premises in order to provide the Services will be at the Supplier's cost unless otherwise stated in the Order.
3. If the Supplier does not supply the Services at the Premises on the Service Date, Olympus may, in addition to any other remedy:
 - (a) obtain those Services from another source;
 - (b) refuse to accept the late delivery of those Services, and will not be liable for any payment for those Services; or
 - (c) treat such default as a repudiation by the Supplier and accept such repudiation and terminate the agreement for the supply of those Services by notice in writing whereupon Olympus' obligations to the Supplier shall terminate absolutely.

7 Warranties

1. The Supplier acknowledges that where the supply of Services are "consumer" supplies, under applicable State, Territory and Commonwealth law(s) (including, without limitation, the *Competition and Consumer Act 2010 (Cth)*) certain statutory express and implied guarantees and warranties will be implied into this Agreement (**Non-Excluded Guarantees**).
2. The Supplier acknowledges that nothing in this Agreement purports to modify or exclude the Non-Excluded Guarantees.
3. In addition to the Non-Excluded Guarantees, the Supplier hereby agrees that the Services will be provided:
 - (a) in compliance with any applicable laws;
 - (b) to the same standard to which a prudent and experienced provider would normally provide the Services;
 - (c) diligently, competently, with care and skill and in a proper and professional manner; and
 - (d) in compliance with Olympus' reasonable directions, standards, policies, procedures and methodologies notified to the Supplier by Olympus from time to time.

8 Supplier liability

1. Subject to clause 7 and to the extent permitted by law, the liability of the Supplier and its employees or agents for a breach of any warranty or liability implied by this Agreement, is limited, at Olympus' option, to the supplying of the Services again or the payment of the cost of having the Services supplied again.
2. Notwithstanding clause 8.1, the Supplier is liable for all liabilities and losses incurred by Olympus (and users of Services) in connection with a demand, action, arbitration or other proceeding, arising directly or indirectly as a result of or in connection with:
 - (a) a breach by the Supplier of any representation or warranty or guarantee provided in this Agreement or implied by law; or
 - (b) a breach or non-performance of any obligation of the Supplier under this Agreement, whether express or implied.
3. The Supplier is liable for all legal costs and other expenses, on a full indemnity basis, incurred by Olympus in connection with matters referred to in clause 8.2.
4. The provider of the warranties under this Agreement is the Supplier.
5. Other than as expressly provided for in this clause 8 and subject to the limitations in clause 7, Olympus, its contractors and/or agents will not be liable for any loss or damage (including consequential loss or damage, which includes without limitation, loss of profit and loss of revenue) suffered in connection with the Services except in circumstances where such loss or damage is due to the gross negligence of Olympus, its contractors and/or agents.

9 Supplier Indemnity

1. Subject to clauses 7 and 8, the Supplier indemnifies Olympus from every liability, loss, damage, cost or expense directly or indirectly incurred or suffered by Olympus that is caused by or contributed to by any of the following:
 - (a) Olympus' compliance with any of the Supplier's instructions about the Services or any goods the subject of the Services;
 - (b) the Supplier's or its employees' failure (or any third party associated with its failure) to:
 - (i) adequately provide safety information relating to the Services;
 - (ii) comply with any laws relevant to providing the Services;
 - (iii) take any reasonable precaution to detect any matters to which Olympus may become liable in any way (for example, under the Competition and Consumer Act); and
 - (iv) provide correct information to Olympus;
 - (c) any negligence or breach of duty by the Supplier or any breach by any third party of this Agreement;
 - (d) any workmanship or procedure performed by the Supplier or a third party in connection with the Services; and
 - (e) any misuse, neglect or alteration by the Supplier, its agents, its employees or any third party or the property of Olympus in connection with supplying the Services.

10 Confidentiality

- The Supplier must:
 - keep the Confidential Information private and secret;
 - not access, use or reproduce Confidential Information for any purpose other than in connection with the Services supplied to Olympus by the Supplier, nor assist or permit any other person to do so;
 - not disclose Confidential Information except as permitted under this Agreement; and
 - take all steps reasonably necessary to safeguard the Confidential Information from unauthorised access, use or disclosure.
- The Supplier may disclose Confidential Information:
 - to their representatives on a need to know basis provided that the Supplier ensures that their representatives do not use, reproduce or disclose the Confidential Information other than in accordance with this Agreement and the Supplier accepts liability for any failure of their representatives to do so;
 - if disclosure is required by law or the rules of any stock exchange, provided that the Supplier first notifies Olympus of the required disclosure (where practicable); or
 - with Olympus' prior written consent.

11 Insurance

- The Supplier must maintain insurance coverage for providing the Services for the minimum amounts in relation to the following areas:
- Public Liability Insurance to \$10,000,000;
 - Workers Compensation to the minimum amount required by the law;
 - Professional Indemnity to the minimum amount required by the law; and
 - any other insurance as nominated by Olympus from time to time.

12 Default and termination

- Event of Default:** Any of the following events or conditions shall constitute an event of default by the Supplier under this Agreement:
 - the Supplier becomes affected by one or more Insolvency Event;
 - the Supplier violates any term of this Agreement and fails to correct such violation within 14 days after written notice from Olympus; and
 - the Supplier consolidates with or merges with or into any entity, or sells or otherwise transfers a majority of its assets or stock to any entity, or incurs a substantial amount of indebtedness other than in the ordinary course of its business, unless in each case and before the event in question, the Supplier's obligations are assumed or guaranteed in a manner satisfactory to Olympus (in Olympus' sole and absolute discretion).
- Upon the occurrence of an event of default by the Supplier described in clause 12.1, in addition to any other remedies Olympus has under this agreement, the Supplier agrees that Olympus may terminate this Agreement without prior notice.
- Without prejudice to any other rights or remedies of Olympus, the Supplier shall pay to Olympus on demand any costs and expenses incurred by Olympus in relation to a default and/or termination of this Agreement.
- The Supplier has no right to terminate this Agreement.
- Termination of this Agreement shall be without prejudice to the rights and obligations of the parties accrued up to the date of termination.

13 Severability

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

14 Assignment

- The Supplier may not sub-contract, assign, transfer or otherwise deal with its rights, interests or obligations under this Agreement without Olympus' prior written consent.
- In the event that Olympus grants its prior written consent for the Supplier to sub-contract, assign, transfer or otherwise deal with its rights or obligations under this Agreement in accordance with clause 14.1, the Supplier must ensure that the third party assignee supplies the Services to Olympus in accordance with the terms of this Agreement. The Supplier acknowledges and agrees that any sub-contracting, assignment or transfer of its rights, interests or obligations permitted under this clause 14 does not discharge the Supplier from its obligations and/or liabilities under this Agreement.
- Olympus may assign, transfer, novate or otherwise deal with its rights, interests and obligations under this Agreement, or any document entered into pursuant to it without the consent of, or notice to, the Supplier.

15 Variation

Olympus is entitled to vary this Agreement in respect of future orders for Services at any time by providing the Supplier with 10 Business Days prior written notice.

16 Entire agreement

These terms, the Supplier's Offer and the Offer Response (as applicable) constitute the entire agreement between the Company and the Customer concerning the subject matter and supersede all prior representations, contracts, statements and understandings, whether verbal or in writing. All other terms and conditions are excluded to the fullest extent permitted by law including any terms and conditions which the Customer may from time to time seek to impose.

17 Further assurance

Each party will promptly execute all documents and do all things that another party from time to time reasonably requires of it to effect, perfect or complete the terms and conditions of this Agreement and any transaction contemplated by it.

18 Non-exclusive

Olympus reserves the rights to acquire the Goods from a third party or parties at any time.

19 Survival

Clauses 7, 8, 9, 10, 12, 13, 15, 16, 17, 18, 21 and 20 continue despite the termination of this Agreement.

20 Relationship

Unless this Agreement expressly provides otherwise, nothing in this Agreement may be construed as creating a relationship of partnership, joint venture, employment agreement, relationship of principal and agent or of trustee and beneficiary. For the avoidance of doubt, the Supplier acknowledges and agrees that nothing in this Agreement grants the Supplier with the right or authority to enter into any agreement or arrangement on Olympus' behalf and that the Supplier must not represent or hold itself out to a third party to have such authority.

21 Waiver

- A single or partial exercise or waiver of a right relating to this agreement will not prevent any other exercise of that right or the exercise of any other right.
- A party will not be liable for any loss, cost or expense of any other party caused or contributed to by any waiver, exercise, attempted exercise or failure to exercise, or any delay in the exercise of, a right.

22 Governing law

- These terms will be governed by and construed in accordance with the laws in force in Victoria, Australia.
- Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria, Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with these terms, and waives any right it might have to claim that those courts are an inconvenient forum.