



## Terms & Conditions for the Supply of Goods & Materials

### Definitions:

**Contract** means the contract for the supply of Goods, which consists of these Conditions and the Order.

**Conditions** mean these Terms & Conditions for the Supply of Goods.

**Delivery Address** means the address specified in the Purchase Order:

- (a) to which the Goods are to be delivered; or
- (b) at which Linfox or its nominated freight provider will pick up the Goods,

**Delivery Date** means the date and, where relevant, the time specified in the Purchase Order by or on which delivery of the Goods must be effected by the Vendor (or such other date or time as may be agreed in writing).

**Goods** means the goods or materials (or any of them) specified in the Order.

**Intellectual Property Rights** includes all present and future copyright, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, confidential information (including trade secrets and know how) registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields whether registered or not and whether capable of registration or not.

**Law** as at a particular date includes any act, statute, subordinate legislation, by-law, regulation, rule, order, ordinance, decree, proclamation, ruling, determination, judgement, rule of common law, or equity in effect as at that date.

**Order** means the Purchase Order in which these Conditions are referenced.

**Price** means the price for the Goods as specified in the Order.

**Linfox** means Linfox Australia Pty Ltd, ABN 47 004 718 647, each of its related bodies corporate (as defined in the Corporations Act 2001) and the employees, agents and sub-contractors of any of them.

**Quality Agreement** (if applicable) means the quality agreement entered in to between the Service Provider and Linfox.

**RCTI Schedule** (if applicable) means the schedule attached to these Conditions which sets out the terms on which an RCTI will be issued and paid.

**Specification** means the specifications attached to the Order, or where no such specifications are attached to the Order, as otherwise provided to the Vendor by Linfox in writing.

**Vendor** means the person (or the person's agent) to whom the Order is addressed.

### 1. Supply of Goods

- (a) The Vendor must supply the Goods to Linfox in accordance with the Specification and otherwise in accordance with the Contract.
- (b) The Vendor must deliver the Goods to the Delivery Address by the Delivery Date.
- (c) Delivery will not be taken to have occurred until the Goods have been receipted into store by Linfox.
- (d) The Vendor will, using stencils or metal tags, clearly label the Goods with the Order number, Delivery Address, contents, weight and reference to the Contract with Linfox under which the Goods are being supplied.

### 2. Acceptance of Order

- (a) The Order is binding on the Vendor.
- (b) Linfox may cancel the Order at any time prior to 24 hours before the Delivery Date.

### 3. Price

The Price is fixed and includes all costs relating to packaging transport, insurance, loading, unloading and storage costs and any other costs incurred by the Vendor prior to delivery of the Goods to the Delivery Address.

### 4. Invoice, Payment and Audit

- (a) Unless the Vendor has signed the RCTI Schedule, the Vendor must submit an invoice rendered in accordance with clause 4(b) to Linfox within 5 Business Days after delivery of the Goods.
- (b) The invoice must:
  - (i) be rendered in respect of the Order only;
  - (ii) specify the Order number and Linfox' contact name;
  - (iii) specify the Vendor's bank details;
  - (iv) be sent to the invoicing address indicated on the Order; and
  - (v) include such detail and be supported by such documentary evidence as Linfox reasonably requires to validate the invoice.
- (c) Subject to clauses 4(d) and 4(e), Linfox will pay, by electronic funds transfer, the invoiced amount to the Vendor 30 days after the end of the month in which Linfox receives a correctly rendered invoice that complies with clause 4(b) (or such other payment terms as specified on the Order).
- (d) If Linfox disputes an invoice in whole or in part, Linfox will not be required to pay the disputed portion until Vendor has provided the information referred to in clause 4(b)(v).
- (e) Linfox reserves the right to set off any amount owing under any Order against any amount due from the Vendor to Linfox for any reason whatsoever.
- (f) Linfox may dispute the detail of any invoice and require the correction of any error, notwithstanding that it has paid any invoice.
- (g) The Vendor shall retain all relevant documents relating to the supply of the Goods for at least 3 years after the date of invoice. Linfox may conduct quality system audits or audits of the Vendor to ensure its obligations are complied with in full and the Vendor must provide reasonable assistance to Linfox in this regard.

### 5. Quality and Compliance With Laws and Safety

- (a) The Vendor warrants that:
  - (i) the Goods conform in all respects with the Specification;
  - (ii) the Goods will be free from all defects in material and workmanship and all defects due to design or performance;
  - (iii) the Goods are of merchantable quality and are fit for the purpose stated in the Specification (or, if no purpose is stated, the purpose for which the Goods would ordinarily be used);
  - (iv) the Goods are free from all liens and encumbrances and the Vendor has good marketable title to deal in the Goods;
  - (v) the Goods do not infringe any right of a third party, including Intellectual Property Rights and the use by Linfox of the Goods will not infringe those rights;
  - (vi) if it is certified to ISO9001 or ISO9002, that the Order has been fulfilled in accordance with the terms of that certification.
- (b) If the Vendor is in breach of any of the warranties set out in clause 5(a) then, without limitation to any other remedy which Linfox may have as a result of those circumstances, Vendor will perform, at no extra cost to Linfox, any work required to rectify the breach.
- (c) If the Goods are defective or in any way fail to comply with clause 5(a), within three years from the date they are supplied or placed into operation (as evidenced by final payment of the invoice relating to the Goods) then without limitation to any other remedy which Linfox may have as a result of those circumstances, the Vendor shall promptly collect and replace or repair the defective Goods and pay all freight and the cost of collection and safe disposal of the Goods and any other costs that Linfox suffers as a result of the defect or non-conformance.
- (d) Linfox' inspection of or payment for the Goods will not effect the rights of Linfox under this clause 5 or otherwise or relieve the Vendor of any of its obligations under this Order.
- (e) The warranties set out in clause 5.1 are in addition to any other warranties and guarantees contained in the Order or implied by Law or provided by the Vendor or any third party.
- (f) Vendor must comply with and must cause its employees, agents and sub-contractors to comply with:
  - (i) all applicable Laws including those relating to the transport, packaging, storage and handling of the Goods;
  - (ii) all directions, including as to safety or safe practices, issued by or on behalf of Linfox; and
  - (iii) all applicable requirements contained in Linfox' Safety Rules For Contractors (where applicable).

### 6. Inspection

- (a) Linfox (or its agents) may, upon providing reasonable notice to the Vendor, enter the Vendor's premises to inspect and test any Goods and all related equipment, materials and workmanship, at any time.
- (b) The Vendor will, at no cost to Linfox, provide all necessary assistance to enable such tests and inspections to be carried out.
- (c) Linfox may witness all tests conducted by Vendor on the Goods. The Vendor shall notify Linfox within a reasonable time or as is provided in the Specification of the commencement of such tests.
- (d) If Linfox so requires, the Vendor shall furnish certifications of inspection or the tests to Linfox.

## 7. Quantity

Any Goods delivered in excess of the quantity designated in the Order may be returned at the Vendor's expense.

## 8. Delay

- a) Time is of the essence of the Contract, however neither party shall be liable for fault or delay caused by an event beyond its reasonable control provided that;
- (i) such event could not have been foreseen or avoided with proper due diligence; and
  - (ii) the affected party notified the other of the event and its likely duration as soon as practicable.
- b) If the Goods are not delivered by the Delivery Date, (or if no Delivery Date is specified, within a reasonable time after the Order is submitted) Linfox may, without limitation to any other remedy which Linfox may have as a result of those circumstances, either:
- (i) refuse to accept the Goods;
  - (ii) terminate all or any part of the Contract; or
  - (iii) require the Vendor to deliver the Goods by the most expeditious means available and any additional charges in excess of those that would usually apply will be at the Vendor's expense.

## 9. Title and Risk

- (a) Risk in the Goods will pass to Linfox when the Goods are delivered. Title in the Goods will pass to Linfox when the Goods are delivered or when Linfox pays the Price, whichever occurs first.
- (b) Acceptance of the Goods shall not prejudice Linfox' right to:
- (i) reject defective Goods;
  - (ii) reject Goods delivered in error;
  - (iii) reject excesses; or
  - (iv) require the Vendor to repair or replace defective Goods promptly.

## 10. Insurance

- (a) The Vendor warrants that it has taken out with a reputable insurer, insurance coverage sufficient to cover any loss or costs that may be incurred and for which the Vendor may become liable to Linfox in connection with the supply of the Goods, including:
- (i) product liability insurance relating to the Goods, including product recall cover, on an occurrence basis with an indemnity limit of not less than \$20 million per event;
  - (ii) public liability insurance on an occurrence basis with an indemnity limit of not less than \$20 million per event; and
  - (iii) carriers liability insurance on an occurrence basis with an indemnity limit of not less than \$1 million per event,
- and the Vendor must maintain such insurance for at least 2 years after the date of delivery.
- (b) On request, the Vendor must provide Linfox with evidence of the currency of any insurance it is required to obtain under this clause 10.

## 11. Indemnity

The Vendor must indemnify and keep indemnified Linfox against any loss, damage, claim, action, cost or expense (including, without limitation, legal expense) which Linfox suffers in connection with:

- (a) any negligent act or failure to act by the Vendor or any of the Vendor's employees, agents, officers or contractors;
  - (b) a breach of the Contract by the Vendor;
  - (c) any warranty given by the Vendor under the Contract being incorrect or misleading in any way; and
  - (d) any product liability claim or product recall relating to the Goods.
- ## 12. GST
- (a) Words and expressions used which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning when used in the Contract.
- (b) All prices referred to in the Order are exclusive of GST unless it is specifically noted otherwise. If the prices referred to in the Order are exclusive of GST, an amount equal to the GST payable on the taxable supply will be paid by Linfox. Linfox will not be obliged to make a payment on account of GST until the Vendor has issued a tax invoice to Linfox for the supply to which the payment relates.
- (c) If payment made by one party to the other is a reimbursement or indemnification of a cost, expense, loss or liability incurred by that party then the payment will be reduced by an amount for which that party is entitled to a tax input credit.

## 13. Packaging, Storage, and Hazardous Goods

- (a) The Goods must be packed in accordance with any relevant Laws and any packaging requirements or Specifications notified to the Vendor by Linfox.
- (b) All Goods that are hazardous goods must be marked by the Vendor with the appropriate international danger symbol(s) and display the name of the material in English. Goods classified as "Dangerous

Goods" in accordance with the Australian Dangerous Goods (ADG) Code must be packaged and marked in accordance with that Code and relevant approvals. Delivery and other documents must include disclosure of the hazard(s) and name of the material in English.

Goods that are hazardous must be accompanied by emergency material in English in the form of written instructions, labels or markings and Material Safety Data Sheets.

- (c) All information held by or reasonably available to the Vendor regarding any potential hazards or special requirements known or believed to exist in the transport, packaging, storage, handling or use of the Goods must be provided to Linfox prior to delivery of the Goods at the Delivery Address.
- (d) Where required by Linfox or at Law, the Vendor shall provide all necessary Certificates of Conformance, Certificates of Analysis and Test Certificates together with the Goods delivered pursuant to the Order.

## 14. Intellectual Property and Confidentiality

- (a) All Intellectual Property Rights in the Specifications or in any plans, drawings, process information, patterns, designs or data ('**Materials**') supplied by Linfox to the Vendor in connection with the Order will remain the property of Linfox.
- (b) Any invention or improvement made by the Vendor to any Materials ('**Improvement**') will be the property of Linfox and will immediately vest in Linfox at no charge on its creation.
- (c) The Vendor shall disclose promptly to Linfox any Improvements made or conceived by it, alone or jointly with others, in the course of or as a result of the performance of the Order, or as a result of information that Linfox supplies to the Vendor.
- (d) The Vendor shall, if requested by Linfox, assign to Linfox or its nominee, the Vendor's entire right, title and interest in and to any or all Improvements at no additional charge to Linfox and execute such documents as may be required to enable Linfox or its nominee to obtain patents in Australia or overseas covering such Improvements.
- (e) The Vendor will keep confidential any information derived from the Materials or otherwise communicated to the Vendor, including the contents of the Contract ('**Confidential Information**'). The Vendor may not publish or disclose any Confidential Information to any third party, or use it except for the purpose of implementing the Order. The Vendor must return any Confidential Information to Linfox, on request.

## 15. Confidential Information

- (a) The Vendor will keep confidential the Contract Intellectual Property and any information derived from the Materials or otherwise communicated to the Vendor, including the contents of the Contract ("**Confidential Information**") and will not use Confidential Information except as necessary for the purposes of the Contract.
- (b) The Vendor must store all Confidential Information in a way that minimises the risk of unauthorised access.
- (c) The Vendor must return any Confidential Information to Linfox, on request.
- (d) The Vendor's obligations under this clause 15 do not apply to any information which:
- (i) is in the public domain (other than because of a breach of any obligation of confidence owed to Linfox); or
  - (ii) the Vendor can demonstrate by evidence in writing was in the Vendor's possession as at the date of this Agreement;
  - (iii) subsequently comes into the possession of the Vendor through a third party who does not owe any obligation of confidence to Linfox in respect of that information; or
  - (iv) the Vendor is required by law to disclose.

## 16. Termination

- 16.1 Linfox may terminate this Contract with immediate effect by sending the Vendor a written notice of that fact if, prior to Linfox supply of the Goods:
- (a) the Vendor enters or threatens to enter into bankruptcy, liquidation or any other form of insolvency, administration, management or receivership or the Vendor enters into any scheme or arrangement with its creditors (or circumstances exist such that it is reasonable for Linfox to conclude that Vendor may do so);
  - (b) the Vendor fails to remedy to Linfox' satisfaction, any breach of this Contract within **14** days after the date on which Linfox issues the Vendor a written notice requiring the Vendor to remedy the breach;
  - (c) there is a change in the identity of the person who Controls the Vendor from that which was in effect on the date the parties entered into this Contract;
  - (d) any of the Key Personnel cease to be employed by the Vendor;
  - (e) breaches the Quality Agreement; or
  - (f) the Service provider breaches any environmental Law or standard (whether capable of remedy or not); or
  - (g) the Service Provider breaches any of its obligations under clauses 14, 15 or 17 of this Agreement.

The Vendor will not be entitled to any compensation or payment as a consequence of such termination. In this clause 16.1, "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract or otherwise.

- 16.2 Linfox may terminate this Contract at any time by providing 2 weeks written notice to the Vendor.
- 16.3 Termination of this Contract will not affect the rights, powers, remedies, obligations, duties and liabilities of either party under this Contract which have accrued prior to the termination date and which continue to be enforceable
- 16.4 The provisions of this Contract which deal with intellectual property, confidentiality, warranties and indemnities survive the termination or expiry of this Contract and may be enforced at any time.

#### **17. Ethics**

- (a) The Vendor shall deal with Linfox in an entirely ethical and honest manner consistent with Linfox's policies on ethics and conflict of interest, including The Linfox Way, copies of which are available on request.
- (b) The Vendor must read and comply with Linfox's policy on modern slavery (as modified from time to time), a copy of which is available on request. The Vendor acknowledges that Linfox has corporate reporting requirements with regard to modern slavery and will provide any information reasonably requested by Linfox in support of such compliance. Further, at the reasonable request of Linfox, the Vendor will provide, in writing, the steps it has taken to comply with its obligations relating to the prevention of human trafficking, slavery, servitude, forced labour, child labour and other practices that constitute modern slavery.

#### **18. Non-waiver**

A waiver of a breach of any of the provisions of the Contract shall not be construed as a waiver of any subsequent breach of such provision or of any other term or condition of the Contract.

#### **19. Remedies**

The rights and remedies of Linfox set forth in the Contract are in addition to all other rights and remedies available to Linfox at Law.

#### **20. Entire Agreement**

The Contract constitutes the entire agreement between the parties and overrides and excludes all previous negotiations, requests for quotation and any other terms, oral or written, proposed by either party and not included herein. No amendment to the Contract will be effective unless agreed in writing and specifically expressed to amend this Contract.

#### **21. Assignment and Sub-contracting**

- (a) A party may not dispose of the Contract or any right under it, without the prior written consent of the other party.
- (b) The Vendor must not sub-contract any of its obligations in relation to the supply of the Goods without the prior written consent of Linfox (which may be given or withheld in its absolute discretion).
- (c) The Vendor will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under the Contract and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Vendor itself.
- (d) If Linfox consents to any sub-contract, the Vendor will send, if requested, copies of each assignment, transfer or sub-contract to Linfox immediately after they are issued.
- (e) If, without due cause, the Vendor fails to pay any sub-contractor then, if that failure to pay has or may have a material impact on Linfox, Linfox may pay that sub-contractor directly and deduct such amounts from payment due to the Vendor.

#### **22. Conflict**

If any of these Conditions are inconsistent with any terms and conditions set out in the Order, these Conditions shall, to the extent of such inconsistency, prevail. If there is any inconsistency between any attachments and schedules to these Conditions, the decision of Linfox as to how the conflict is resolved shall be final and binding.

#### **23. Governing Law**

The Contract is governed by the Laws of the State of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of that State.