



Terms & Conditions for the Provision of Services

Definitions

Contract means the contract for the provision of Services, which consists of these Conditions and the Order.

Conditions means these Terms & Conditions for the Provision of Services.

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.

Key Personnel means the Service Provider's personnel who are specified as such in the Order.

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 Services as specified in the Order.

Linfox means Linfox Australia Pty Ltd BN 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.

Service Levels means the service levels annexed to these Conditions or the Order or any other service levels agreed in writing between the parties.

Service Provider means the person (or the person's agent) to whom the Order is addressed.

Services means the services (or any of them) specified in the Order.

Supply Date means the date and, where relevant, the time specified in the Order by or on which the Services must be provided by the Service Provider (or such other date or time as may be agreed in writing).

1. Provision of Services

The Service Provider must supply the Services to Linfox in accordance with the Contract.

2. Performance of Services

The Service Provider must:

- (a) provide the Services:
 - (i) with due care and skill;
 - (ii) in a proper and efficient manner using that standard of skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced providers of services which are similar to the Services in Australia;
 - (iii) in compliance with all Laws to which the Service Provider is legally required to comply,
- (b) act in good faith, in the best interest of Linfox and in a manner which is consistent with the maintenance of the business and goodwill of Linfox;
- (c) ensure that one or more of the Key Personnel (if any) personally perform the Services or supervise the provision of the Services; and
- (d) comply with and must cause its employees, agents and sub- contractors who are involved in the performance of the Services to comply with:
 - (i) all applicable Laws including those relating to the provision of the Services; and
 - (ii) all directions as to safety or safe practices, and any other reasonable directions relating to the provision of the Services issued by or on behalf of Linfox.

3. Service Levels

The Service Provider must provide the Services to a standard which satisfies or exceeds the Service Levels.

4. Failure to meet Service Levels

- (a) Without limiting any other clause of this Agreement or any other remedy Linfox may have, if the Service Provider fails to provide or perform any of the Services in a manner which satisfies or exceeds the applicable Service Levels, Linfox may by notice in writing to the Service Provider, require the Service Provider, at the Service Provider's own expense to:
 - (i) remedy any default if the default is capable of being remedied; or
 - (ii) re-perform the Service if the Service is capable of being re-performed; within the time specified in the notice (which must be reasonable).
- (b) If the default referred to in clause 4(a) is not capable of being remedied or the Service is not capable of being re-performed or the Service Provider fails within the time specified in any notice served by Linfox under clause 4(a) to remedy the default or re-perform the Service, Linfox may either:
 - (a) remedy that default or re-perform that Service itself; or
 - (b) have it remedied or re-performed by a third party,and in either case, the Service Provider must pay the reasonable costs so incurred by Linfox.

5. Warranties

The Service Provider warrants that:

- (a) the provision of Services to Linfox by the Service Provider will not infringe any right of any third party (including without limitation any Intellectual Property Rights) or applicable law, statute, regulation, code or rule;
- (b) it and its directors, officers, employees, agents and contractors (Representatives) who will provide the Services have the requisite knowledge, skill and expertise to provide the Services in accordance with the Service Levels; and
- (c) where Linfox makes known to the Service Provider any particular purpose for which the Services are required or the result that Linfox desires the Services to achieve, the provision of the Services will be performed in such a way as to achieve that result.

The warranties set out in clause 5 are in addition to any other warranties and guarantees contained in the Order or implied by Law or provided by the Service Provider or any third party.

6. Price

The Price for the Services is fixed.

7. Invoice, Payment and Audit

- (a) Unless the Service Provider has signed the RCTI Schedule, the Service Provider must submit an invoice rendered in accordance with clause 7(b) to Linfox within 5 business days after provision of the Services.
- (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 Service Provider'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 7(d) and 7(e), Linfox will pay, by electronic funds transfer, the invoiced amount to the Service Provider 30 days after the end of the month in which Linfox receives a correctly rendered invoice that complies with clause 7(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 Service Provider has provided the information referred to in clause 7(b)(v).
- (e) Linfox reserves the right to set off any amount owing under any Order against any amount due from the Service Provider 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 Service Provider shall retain all relevant documents relating to the provision of the Services for at least 3 years after the date of invoice. Linfox may conduct quality system audits or audits of the Service Provider to ensure its obligations are complied with in full and the Service Provider must provide reasonable assistance to Linfox in this regard.
- (h) Linfox' payment for the Services will not affect the rights of Linfox or relieve the Service

Provider of any of its obligations under this Contract.

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 Services are not provided by the Supply Date, (or if no Supply 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 the Services;
 - (ii) terminate all or any part of the Contract; or
 - (iii) require the Service Provider to provide the Services by the most expeditious means available and any additional charges in excess of those that would usually apply will be at the Service Provider's expense.

9. Insurance

- (a) The Service Provider 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 Service Provider may become liable to Linfox in connection with the provision of the Services, including:
 - (i) professional indemnity insurance but only to the extent the Service Provider is providing professional services relating to the Services on a claims made basis with an indemnity limit of not less than \$10 million per event; and
 - (ii) public liability insurance on an occurrence basis with an indemnity limit of not less than \$20 million per event;and the Service Provider must maintain any professional indemnity insurance for at least 6 years after the Supply Date.
- (b) On request, the Service Provider must provide Linfox with evidence of the currency of any insurance it is required to obtain under this clause 9.

10. Indemnity

- The Service Provider 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 Service Provider or any of the Service Provider's employees, agents, officers or contractors;
 - (b) a breach of the Contract by the Service Provider; and
 - (c) any warranty given by the Service Provider under the Contract being incorrect or misleading in any way;
- except to the extent the loss, damage, claim, action, cost or expense was directly caused by the negligent

act or omission of Linfox or a wilful act or omission of Linfox.

11. GST

- (a) Words and expressions used which are defined in the *A New Tax System (Services and Services Tax) Act 1999* have the same meaning when used in the Contract.
- (b) All prices referred to in the Order are inclusive of GST unless it is specifically noted otherwise. If the prices referred to in the Order are specifically noted to be 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 Service Provider 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.

12. Intellectual Property and Confidentiality

- (a) All Intellectual Property Rights in any plans, drawings, process information, patterns, designs or data supplied by Linfox to the Service Provider in connection with the Order (**Materials**) will remain the property of Linfox.
- (b) Any invention or improvement made by the Service Provider to any Materials (**Improvement**) will be the property of Linfox and will immediately vest in Linfox at no charge on its creation.
- (c) All Intellectual Property Rights in any plans drawing, process information, patterns, designs or data created by the Service Provider made or conceived by the Service Provider, alone or jointly with others, in the course of or as a result of the performance of the Order (**Contract Intellectual Property**) will immediately vest in Linfox at no charge on its creation.
- (d) The Service Provider shall disclose promptly to Linfox any Contract Intellectual Property or Improvements made or conceived by it, alone or jointly with others, in the course of or as a result of information that Linfox supplies to the Service Provider.
- (e) The Service Provider shall, if requested by Linfox, assign to Linfox or its nominee, the Service Provider's entire right, title and interest in and to any or all Contract Intellectual Property and 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 Contract Intellectual Property and Improvements.

13. Confidential Information

- (a) The Service Provider will keep confidential the Contract Intellectual Property and any information derived from the Materials or otherwise communicated to the Service Provider, 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 Service Provider must store all Confidential Information in a way that minimises the risk of unauthorised access.

- (c) The Service Provider must return any Confidential Information to Linfox, on request.
- (d) The Service Provider's obligations under this clause 13 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 Service Provider can demonstrate by evidence in writing was in the Service Provider's possession as at the date of this Agreement;
 - (iii) subsequently comes into the possession of the Service Provider through a third party who does not owe any obligation of confidence to Linfox in respect of that information; or
 - (iv) the Service Provider is required by law to disclose.

14. Termination

- (a) Linfox may terminate this Contract with immediate effect by sending the Service Provider a written notice of that fact if, prior to Linfox being reasonably satisfied that the provision of the Services has been completed:
 - (i) the Service Provider enters or threatens to enter into bankruptcy, liquidation or any other form of insolvency, administration, management or receivership or the Service Provider enters into any scheme or arrangement with its creditors (or circumstances exist such that it is reasonable for Linfox to conclude that Service Provider may do so);
 - (ii) the Service Provider fails to remedy to Linfox' satisfaction, any breach of this Contract within 14 days after the date on which Linfox issues the Service Provider a written notice requiring the Service Provider to remedy the breach;
 - (iii) there is a change in the identity of the person who Controls the Service Provider from that which was in effect on the date the parties entered into this Contract;
 - (iv) any of the Key Personnel cease to be employed by the Service Provider;
 - (v) breaches the Quality Agreement;
 - (vi) the Service Provider breaches any environmental Law or standard (whether capable of remedy or not); or
 - (vii) the Service Provider breaches any of its obligations under clauses 12 or 15 of this Agreement.

Except as set out in clause 14(b), the Service Provider will not be entitled to any compensation or payment as a consequence of such termination. In this clause 14(a), "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.

- (b) Linfox may terminate this Contract at any time by providing 2 weeks written notice to the Service Provider. In the event Linfox terminates this Agreement pursuant to this clause 14(b) and subject to the Service Provider using all reasonable endeavours to mitigate its loss, Linfox agrees to reimburse the Service Provider its reasonable and properly incurred abortive costs directly related to the termination of this Contract.

- (c) 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
- (d) 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.
- (e) If, without due cause, the Service Provider 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 Service Provider.

15. Ethics

- (a) The Service Provider 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 and the Linfox Supplier Code of Conduct, copies of which are available at www.linfox.com.
- (b) The Service Provider must read and comply with Linfox's policy on modern slavery (as modified from time to time), a copy of which is available at www.linfox.com. The Service Provider 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 Service Provider 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.

16. 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.

17. 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.

18. 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.

19. 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 Service Provider must not sub-contract any of its obligations in relation to the provision of the Services without the prior written consent of Linfox (which may be given or withheld in its absolute discretion).
- (c) The Service Provider 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 Service Provider itself.
- (d) If Linfox consents to any sub-contract, the Service Provider will send, if requested, copies of each assignment, transfer or sub-contract to Linfox immediately after they are issued.

20. 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.

21. 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.