



GENERAL TERMS

&

CONDITIONS

FIB070105-002

GENERAL TERMS & CONDITIONS

AIM

The aim of this form is to set out the General Terms and Conditions as set down by

FIBIC Pty Ltd ABN 51 122 761 148

The Supplier Must Do This:

1. Services.

- 1.1 Provide the services in the FIBIC customer service order with due skill and care to a professional standard and any other standard specified by FIBIC

2. Deliverables.

- 2.1 Provide the Deliverables (including reports and documentation) in accordance with the customer service order
- 2.2 Promptly notify FIBIC if unable to provide all or part of the deliverables by the relevant delivery date

3. Products.

- 3.1 Deliver the products in the customerservice order to FIBIC free from all encumbrances and meet any standard specified in the order

4. Invoice.

- 4.1 Submit a correctly rendered invoice to FIBIC Pty Ltd that
 - a) Is correctly addressed and calculated in accordance with the contract
 - b) Relates only to the deliverables that have been accepted by FIBIC
 - c) Is for the amount which, together with all previously correctly rendered Tax invoices, does not exceed the contract price
 - d) Includes any purchase order number, the name and phone number of the contract manager and identification if the supplier is a small business and
 - e) Is a valid invoice in accordance with the GST Act1999.

5. Insurance.

- 5.1 Hold and maintain each of the following insurance.
 - a) Public liability insurance with an indemnity of at least \$20 million in respect of each claim for the period of the contract
 - b) Workers compensation insurance in accordance with applicable legislation and

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- 5.2 If the services are advisory or design in nature as identified in the customer order, hold and maintain professional indemnity insurance of \$5 million for all claims made by the customer during the contract period and for at four years after the end of the customer contract and
- 5.3 If requested, provide a certificate of currency or evidence of adequate self -insurance for each of the above insurances to the satisfaction of FIBIC.

6. Indemnity and Liability.

- 6.1 Indemnify FIBIC, its officers, employees and contractors against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis) compensation or expense arising out of and in any way in connection with:
 - a) A default or any unlawful, malicious or negligent act or omission on the suppliers part, its officers, employees, agents or subcontractors or
 - b) Any action claim, dispute, suit or proceeding brought by a third party in respect of any use, infringement of the third parties intellectual property rights or moral rights, that are enforceable in Australia subject to:
- 6.2 Liability being reduced to the extent that any unlawful, malicious or negligent act or omission of FIBIC or their officers, employees or contractors contributed to the loss, damage, cost, compensation or expense:
- 6.3 Supplier and FIBIC using reasonable efforts to mitigate any loss

7. Approvals.

- 7.1 At its own cost, obtain and maintain any licenses and/or other approvals required for the lawful provision of the deliverables.

8. Suppliers Warranties.

- 8.1 The service during warranty period be performed in accordance with the requirements of the contract specifications set out in the customer service order and in any other documentation, in all material respects and with due care and skills
- 8.2 All information provided to the FIBIC is correct
- 8.3 The deliverables provided under this contract are compatible with and will work with the FIBIC's existing systems and processes as set out in the contract specification

9. Security and Safety.

- 9.1 Comply with any security and safety requirements as specified in the customer service order or of which the supplier is or should reasonably be aware. The supplier must ensure that its officers, employees, agents and sub-contractors are aware of, and comply with, such security and safety requirements.

10. Specified Personnel.

10.1 Ensure that the specified personnel set out in the customer order provide the deliverables and are not replaced without the prior written consent of the customer, at the customer's request, and at no additional cost to the customer, the supplier must promptly replace any specified personnel that the customer reasonably considers should be replaced with personnel acceptable to the customer.

11. Subcontracting.

11.1 Make available to the customer the details of all subcontractors engaged to provide the deliverables under the contract. Subcontracting the whole or part of the supplier's obligations under the contract will not relieve the supplier from any obligations under the contract.

11.2 Ensure that any subcontract imposes on the subcontractor the same obligations that the supplier has under the contract (including this requirement in relation to Subcontracts)

12. Performance by Supplier.

12.1 Allow FIBIC to conduct service and performance reviews of its performance of the contract. Take responsibility for the acts and omissions of its employees, agents and subcontractors as if they were its own acts and omissions.

12.2 Promptly provide to FIBIC such supporting documentation and other evidence reasonably required by FIBIC to substantiate performance of the contract.

13. Assignment.

13.1 Not assign any of their rights under the contract without the prior consent of the FIBIC.

14. Privacy.

14.1 Collect, use, access, retain and disclose personal information in connection with the contract in accordance with the requirements of the Privacy and Personal information Act 1998 (NSW)

General:

15. Price.

17.1 The contract price is the maximum price payable for the deliverables and inclusive of all Taxes, duties (including any customs duty) and government charges imposed or levied in Australia or overseas.

17.2 FIBIC is not required to pay any amount in excess of the contract Price including, without limitation, the cost of any packaging, marking, handling, freight and delivery, insurance and any other applicable charges and costs.

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16. Acceptance.

18.1 Where acceptance testing of a deliverable is specified in the customer service order, the acceptance criteria, acceptance test data, time table for acceptance testing and acceptance, the party responsible for the supply of any equipment needed for acceptance testing and other details of acceptance testing must be agreed in the customer service order within 15 business days prior to the date when FIBIC requires acceptance testing to commence.

18.2 FIBIC may accept or reject the relevant deliverables within 2 business days after the delivery of the deliverables to the delivery location or within such other period agreed by FIBIC and the supplier in writing. If FIBIC does not notify the supplier of acceptance or rejection within the two business day period (or agreed period) FIBIC will be taken to have accepted the deliverables on the expiry of the 2 Business day period (or other agreed period), FIBIC may reject the deliverables where the deliverables do not comply with requirements of the contract

17. Title and Risk.

19.1 Title to the deliverables transfers to the FIBIC upon its acceptance by FIBIC.

19.2 The risk of any of any loss or damage to the deliverables remains with the supplier until there delivery to FIBIC at the delivery location.

18. Intellectual Property.

20.1 The supplier retains intellectual property rights in any existing material of theirs. FIBIC retains intellectual property rights in any existing material of the customer.

19. Termination or Reduction in Scope for Convenience by Customer.

21.1 FIBIC may in its absolute discretion at any time terminate the contract, in whole or in part, by notifying the supplier in writing. If FIBIC issues such a notice, the supplier must cease all work in accordance with the notice comply with any directions given by FIBIC and mitigate all loss, costs and expenses in connection to the termination.

20. Termination by the Supplier.

22.1 The Supplier may terminate the contract by providing FIBIC with notice in writing if FIBIC has committed a fundamental breach of his contract and the customer has not rectified that fundamental breach within 28 days.

21. Dispute Resolution.

23.1 For any dispute under this contract:

- a) both contract managers will try in good faith to settle the dispute by negotiation

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- b) if unresolved, the contract manager claiming that there is a dispute will give the other contract manager a notice setting out the details of the dispute
- c) within 5 business days, each contract manager will nominate a senior representative not having prior direct involvement in the dispute
- d) the senior representatives will try in good faith to settle the dispute by negotiation and
- e) failing settlement within a further 10 business days, parties will be required to commence alternative dispute resolution through the office of the NSW small business commissioner
- f) the dispute should not be subject to proceeding before court until the small business commissioner has certified in writing that the parties' participation in the dispute resolution process has not resolved the dispute.

22. Waiver.

24.1 If a party does not exercise (or delays in exercising) any of its rights, the failure or delay does not operate as a waiver of those rights.

23. Variation.

25.1 no agreement or understanding varying or extending the contract, including in particular the scope of the deliverables, the cost, the schedule of timing or change to the PIPP, is legally binding on either party unless in writing (includes an exchange of emails confirming the agreed variation).

24. Notices.

26.1 any notice or communication under the contract will be effective if it is in writing, from one contract manager and delivered to the other contract manager at the postal address, or email address or facsimile number set out in these Terms & conditions.

25. Applicable law.

27.1 The terms & conditions are governed by the laws of New South Wales, Queensland, Victoria, South Australia, Tasmania, Western Australia and Northern Territory and apply to the contract.

26. Entire Contract.

28.1 The contract represents the parties' entire agreement in relation to the subject matter of the Contract and excludes any prior representations, communications, contracts, statements and understanding, whether oral or in writing which are superseded and of no effect.

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27. Definitions.

“Acceptance testing” means any acceptance test that the deliverable is required to undergo in accordance with the agreed criteria between the supplier and the customer.

“Business Days” means any day that is not Saturday, Sunday or public holiday in New South Wales.

“Confidential Information” means information that is by its nature confidential or is communicated by the disclosing party to the confidant as confidential.

“Consequential Loss” means any loss recoverable at law (a) other than a loss, damage or expense that would be suffered or incurred by any person in a similar situation to the person suffering or incurring the loss, damage or expense (b) which is loss of profits, loss of revenue, loss of business opportunities, loss of anticipated savings and damage to good will (c) and any cost or expense incurred in connection with either (a) or (b)

“Contract” means the legal binding agreement between the customer and the supplier for the provision by the supplier of services, products or deliverables as set out in the customer order.

“Contract Price” means the price inclusive of GST, payable in Australian Dollars, by FIBIC for the service, Product or deliverable under this contract.

“Contract Manager” means FIBIC’s authorised manager of this contract and the supplier’s authorised manager of the contract.

“Contract Specification” means all the technical or descriptive specifications or functional, operational, performance or other characteristics required of the deliverable to be provided by the supplier under the contract as specified in the customer order and if no specification are specified in the customer order, the user documentation that is provide with the deliverable.

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“Customer” means FIBIC Pty Ltd ABN: 51 122 761 148 specified in the customer order that enters into the contract with the supplier, but does not include FIBIC’s personnel.

“Customer service Order” means the order placed by the FIBIC Pty Ltd ABN: 510122 761 148 for the provision of goods and services.

“Deliverable” means any product, service that forms part of the contract.

“Fundamental Breach” means a breach of the contract by FIBIC Pty Ltd which prevents the supplier from carrying out its obligations under the contract.

“Intellectual Property Rights” means all intellectual property rights including copyright, patent, trademark, design, registered design, trademarks or other protected rights, existing worldwide, and any licence, consent, application or right, to keep confidential information confidential, moral rights as defined in the Copyright ACT 1968, business names, company names or domain names.

“Notice in Writing” means a notice in writing (but not by email) authorised by the supplier or notice in writing authorised by FIBIC Pty Ltd.

“Product” means hardware, materials, and software only.

“Service” means anything that is provided that is not a product under this contract.

“Small Business” means an enterprise that employs or contracts with an enterprise that employs less than the fulltime equivalent of 20 persons on the day that the contract is signed.

“Specified Personnel” means key personnel that are required to provide the services, Products or deliverables under this contract and are specified under the contract.

“User Documentation” means its standard of the shelf documents that describe the features and functions of a product or service and excludes any training material.

“GST ACT” means Goods and Services Tax ACT 1999

“PIPP” means Project Implementation Payment Plan

DOCUMENT CONTROL

Authorisation

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Revision History

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