

**FLOWMATRIX PTY LTD - TERMS & CONDITIONS****1. INTERPRETATION**

**1.1** In these terms and conditions:

- a) "GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth), as amended where the Company is FlowMatrix Pty Ltd.
- b) "Agreement" means the entire agreement between the Company and the Purchaser to provide Goods and Services to the Purchaser pursuant to a Quotation subject to these Terms and Conditions of Trade ("Terms").
- c) "Company" means FlowMatrix Pty. Ltd
- d) "Credit Agreement" means the credit application, guarantee and terms and conditions of credit of the Company as amended from time to time applicable to the Customer upon being granted credit by the Company;
- e) "Goods" means the products supplied by the Company to the Purchaser as outlined in the Quotation;
- f) "GST" means the Goods and Services Tax as defined in the Act;
- g) "Normal Working Hours" means Monday to Friday from 07:00 to 17:00 excluding public holidays;
- h) "Purchaser" means the purchaser of the Goods and/or Services;
- i) "Quotation" means any quotation or tender document given by the Company to the Purchaser;
- j) "Rates Schedule" means the schedule of rates and charges and terms of rates and charges provided to the Customer from the Company from time to time, which rates and charges may be subject to change without notice;
- k) "Services" means the services supplied by the Company to the Purchaser as outlined in the Quotation.

**2. TERMS**

**2.1** Prices and terms are subject to alteration without notice and unless otherwise specified are exclusive of GST and any GST payable must be paid by the Purchaser to the Company in the same manner and at the same time as the consideration for the supply is required to be paid by the Purchaser under these Terms.

**2.2** This Agreement commences on the date the Purchaser accepts the Quotation in writing.

**3. PRECEDENCE**

**3.1** These Terms, the Quotation, the Rates Schedule, the Credit Application and any other written instruction or authority provided by the Company to proceed constitutes the entire agreement between the Purchaser and the Company, and:

- a) Subject to clause 3.1 (b), the Agreement supersedes all prior or contemporaneous oral or written communications, proposals, terms and representations to the extent permitted by law and prevails

over any conflicting or additional terms of any quote, order, acknowledgment, or similar communication between the parties during the term of the Agreement;

- b) No modification to the Agreement will be binding, unless in writing and signed by a duly authorised representative of each party.

#### **4. QUOTATIONS AND ORDERS**

- a) **4.1** Any Quotation will remain valid for a period of thirty (30) days from the date on which it was made.
- 4.2** Prices in the Quotation:-
  - a) are subject to the Company's Rates Schedule current at the date of the Quotation unless otherwise varied in writing;
  - b) Are based on rates of labour, cost of materials, services and currency exchange rates current at the date of the Quotation;
  - c) Are based on rates of Customs Duty, Primage, Freight Exchange, GST and Sales Tax current at the date of the Quotation;
  - d) The Purchaser acknowledges and agrees that the prices or estimates in the Quotation may vary after the date of the Quotation and that it will pay for all additional incidental or ancillary charges, rates and disbursements as reasonably required by the Company or any third party. The Company will promptly notify the Purchaser of any such variation in writing.

#### **5. CREDIT INFORMATION**

- 5.1** The Purchaser irrevocably authorises the Company, its servants and agents to make such enquiries as it deems necessary to investigate the credit worthiness of the Purchaser from time to time including the making of enquiries with persons nominated as trade references, the bankers of the Purchaser, any other credit provider or a credit reporting agency (hereinafter called "the information sources"). The Purchaser authorises the information sources to disclose to the Company such information concerning the Purchaser which is within their possession and which is required by the Company to the fullest extent permitted by the relevant privacy laws of the territory.
- 5.2** The Purchaser agrees that the information provided on any credit application signed by the Purchaser concerning the Purchaser may be disclosed by the Company to a credit reporting agency or any other interested person to the fullest extent permitted by the relevant privacy laws of the territory.

#### **6. TERMS OF PAYMENT**

- 6.1** Unless otherwise provided by the Company in writing, all invoices are due and payable in full within fourteen (14) days from the date of the invoice to which the Goods and/or Services relate if a credit trading terms have been granted to the purchaser or otherwise upon delivery of the Goods or completion of the Services.
- 6.2** Any agreement by the Company to extend the terms of credit or other indulgence granted to the Purchaser shall not affect the Purchaser's liability to account to the Company as aforesaid.
- 6.3** If the Purchaser defaults in making payment in accordance with these Terms, the Company may in its absolute discretion and without notice:

- a) Charge the Purchaser compound interest calculated on that portion of the Purchaser's account overdue at 3 percent above the penalty rate fixed under the Penalty Interest Rates Act 1983 (Victoria), Australia, from time to time, calculated and payable daily from the due date until the date on which the invoice is paid in full; and
- b) Require the Purchaser to reimburse the Company for all collection costs including (but not limited to) legal costs incurred by the Company, calculated on a solicitor and client basis, as a consequence of the Company instructing its solicitor to provide advice to it in connection with the default and/or to institute such recovery process as the Company in its absolute discretion decides and any other costs, expenses, losses or damages arising out of a breach of the Agreement.

- 6.4** The Purchaser agrees at the request of the Company to procure its directors to sign a guarantee and indemnity of the Purchaser's obligations to pay any amount due and payable to the Company, if and when required.
- 6.5** Any credit account approved by the Company for the Purchaser related to trading between the Company and the Purchaser is granted by the Company on the basis of its reliance on information supplied by and representations made on behalf of the Purchaser and, in particular, on the information disclosed by the Purchaser in relation to the ownership of the Purchaser as set out in the application for that account.
- 6.6** If the Purchaser is a company or trustee it shall inform the Company of any prospective or actual changes to the ownership of the Purchaser whether total or partial by forwarding a notice in writing of that change to the Company immediately upon becoming aware of same.
- 6.7** Until such notice as required in clause 6.6 is received by the Company the Purchaser, and if the Purchaser is a trustee each of the trustees, shall hold the Company indemnified against all losses, unpaid accounts, interest, damages, costs, charges, fees and expenses of whatsoever nature incurred or suffered by the Company in trading with any person, company or other entity (including a trust) which may have purchased the Purchaser's business or any interest therein or any of the shares in the Purchaser and used the Purchaser's previously approved credit account for trading.
- 6.8** The Purchaser authorises the Company to lodge a caveat over any real property owned or partly owned by the Purchaser in respect of, and to secure any monies that are owed by the Purchaser to the Company.
- 6.9** Any credit facility granted by the Company to the Purchaser shall continue until terminated by the Company at its sole discretion. Termination by the Company of any credit facility shall be either oral or in writing.

## **7. RATES AND CHARGES**

- 7.1** The Purchaser agrees to be bound by the Company's prescribed rates and charges as set out in the Rates Schedule from time to time or as otherwise agreed between the Purchaser and the Company in writing.

## **8. PUBLICITY & INTELLECTUAL PROPERTY**

- 8.1** The Purchaser acknowledges that any intellectual property in the Goods or outcomes from the Services is owned by the Company upon creation.

**8.2** The Purchaser agrees not to disclose to others any proprietary or confidential information acquired hereunder including the terms of the Agreement except as authorised in writing by the Company or as required by law.

## **9. DELIVERY AND CANCELLATION**

**9.1** The Company will make all reasonable efforts to deliver the Goods and/or Services by the agreed delivery date but will not be liable in any way should delivery not be made on this date.

**9.2** A Quotation shall only be cancelled or varied with the written agreement of both parties.

**9.3** Any agreement to cancel or vary a Quotation pursuant to clause 9.2 shall be subject to the Company being compensated for all work done and materials used prior to the cancellation or variation.

## **10. WITHHOLDING SUPPLY**

**10.1** The Company reserves the right, irrespective of whether or not any Quotation has been accepted, to withhold supply of Goods and/or Services to the Purchaser where the Company has determined, in its absolute discretion, that credit should no longer be extended to the Purchaser and the Company will not be liable for any loss or damage resulting directly or indirectly from such action.

## **11. PURCHASER LIABILITY AND DEFAULT**

**11.1** If the Purchaser shall:

- a) Fail to make any payment due under the Agreement or commit any other breach of any of the Purchaser's obligations under the Agreement; or
- b) Suffer any execution;
- c) Commit an act of bankruptcy;
- d) Make any composition or arrangement with creditors;
- e) Stop payment or cease or threaten to cease to carry on its business or pay its debts as and when they fall due; or
- f) being a company, pass a resolution for winding up except for the purposes of a solvent reconstruction or have a receiver appointed over any of its property, or an administrator appointed, or have a winding up petition presented against it.
- g) The Company may at its option treat the Agreement as terminated and any amounts owing to the Company then unpaid whether or not due under the terms of this Agreement (including any amount arising from any outstanding but unfilled orders as at the date of termination) shall forthwith become due and payable and such termination shall be without prejudice to any claim or rights the Company may possess.

## **12. RETURN POLICY FOR GOODS**

**12.1** No Goods manufactured and supplied in accordance with the Purchaser's custom requirements will be acceptable for return and credit.

**12.2** No Standard Stock Line Items will be accepted for return and credit after 3 months from the date of invoice.

**12.3** Nothing in this clause affects any statutory obligations of the Company in relation to the Goods (or corresponding rights of the Purchaser), that may not lawfully be excluded.

### **13. DISPUTE RESOLUTION**

**13.1** If a dispute arises in any way out of this Agreement, or its breach, termination, validity or the Goods and/or Services the subject of this Agreement, the parties agree to endeavour to settle the dispute by mediation before having recourse to litigation, other than for disputes involving the payment for Goods and Services by the Purchaser.

**13.2** Any costs incurred in relation to the mediation of a dispute are to be shared equally between the Company and the Purchaser.

**13.3** Nothing in this Agreement prevents either party from seeking urgent interlocutory intervention.

### **14. FORCE MAJEURE**

**14.1** The Company will not be liable in damages or otherwise for any failure to provide the Goods and/or Services which is caused, whether wholly or partially, by an event beyond its reasonable control including (but not limited to) Act of God, force majeure, war, fire, explosion, acts of terrorism, rioting, burglary, theft, civil disturbances, restrictions by governments (local, municipal, State or Federal) or other competent authority, general economic trends, strikes or lockouts (whether at the Company's premises or not), accidents either at the Company's premises or when in transit to or from those premises, failure by subcontractors and the late arrival of inventory or other material.

### **15. RESERVATION OF TITLE AND RISK**

**15.1** Title to the Goods will not pass from the Company to the Purchaser until the Company receives payment in full for all Goods and for all money owing by the Purchaser to the Company on any account whatsoever and until such time if the Company is FlowMatrix Pty Ltd then the Company shall have a "security interest"

**15.2** Notwithstanding clause 15.1, risk in the Goods shall pass to the Purchaser upon the sooner of happening of the delivery to the delivery destination or upon the loading of the Goods on an third party vehicle or the Purchaser's vehicle for delivery to the delivery destination.

**15.3** Until title to the Goods passes to the Purchaser in accordance with clause 15.1 the Purchaser holds the Goods as bailee and fiduciary agent of the Company.

**15.4** The Purchaser must keep the goods insured and in a safe and marketable condition and the Purchaser must store the Goods separately in a manner that clearly identifies them as the property of the Company.

**15.5** The Purchaser may, notwithstanding the provision of Clause 15.3 and 15.4, sell the Goods in the ordinary course of business to a third party.

### **16. LIEN AND SET OFF**

**16.1** Without prejudice to any other remedies the Company may have it shall in respect of unpaid debts due to it from the Purchaser have a lien on all goods or property of the Purchaser in it's possession (whether worked on or not) and it shall be entitled and is hereby authorised on the expiration of seven (7) days notice in writing to the Purchaser to dispose of such goods or property as the Company thinks fit and to

apply any proceeds received towards such debts or set off against any liability of the Company to the Purchaser whether actual or contingent, primary or collateral, joint and several and whether expressed as a liability to pay money or a liability to delivery or transfer Goods.

## **17. EXCLUSIONS AND LIMITATIONS**

**17.1** The Company excludes all statutory or implied conditions and warranties to the maximum extent permitted by law.

**17.2** If any law, implies in this Agreement any term, condition or warranty and that law avoids or prohibits provisions in an agreement excluding or modifying the application of or exercise of, or liability under, that term, condition or warranty, that term, condition or warranty shall be deemed to be included in this Agreement provided that the liability of the Company for a breach of the applicable term, condition or warranty (other than where such limitation is excluded by law) is limited to, at the option of the Company, any one or more of the following:

**a)** If the breach relates to Goods:

- i. The replacement of the goods or the supply of equivalent goods, the repair of the goods;
- ii. The payment of the cost of replacing the goods or of acquiring equivalent goods; or
- iii. The payment of the cost of having the goods repaired; and

**b)** If the breach relates to Services:

- i. Supplying the services again or paying the costs of having the services provided again.

**17.3** The Purchaser acknowledges that the Purchaser does not rely, and that it is unreasonable for the Purchaser to rely, on the skill and judgment of the Company as to whether the Goods and/or Services supplied are reasonably fit for any purpose for which they are being acquired, and that the sale is not a sale of goods by description or sample.

**17.4** To the maximum extent permitted by law, the Company excludes its liability (including, but not limited to, liability in tort, contract and for breach of statute) to the Purchaser or any other person for:

- a)** any loss or damage consequential or otherwise (whether contractual, tortious, statutory or otherwise) for any special, incidental, indirect or consequential damages or injury including, but not limited to, any loss of profits, contracts, or revenue arising out of or in connection with the provision of the Goods, Services and/or any other goods or services under this Agreement and whether as a result of any breach, default, negligence or otherwise by the Company suffered or incurred by the Purchaser or any other person in relation to the Goods and/or Services; and
- b)** In particular, but without limiting clause 17.4a, any loss or damage consequential or otherwise suffered or incurred by the Purchaser or any other person caused by or resulting directly from any failure, defect or deficiency of any kind of or in the Goods and/or Services.

## **18. CLAIMS**

**18.1** Any claims by the Purchaser in relation to the Goods or Services must be made within fourteen (14) days of delivery of the Goods or provision of Services, as the case maybe.

**18.2** Any other claims for adjustment to any invoice for any reason whatsoever must be made in writing within fourteen (14) date of said invoice.

**18.3** Nothing in this clause affects any statutory obligations of the Company (and corresponding rights of the Purchaser), which may not lawfully be excluded.

## **19. PRIVACY**

**19.1** The Purchaser acknowledges and consents to the use by the Company and its employees, officers and agents for the purpose of supply of Goods or Services to the Customer hereunder and for the purposes of assessing and approving any credit application of the Customer of the Customer's and any guarantor's personal information in respect of but not limited to any application for credit, credit history, and in respect of obtaining reports in relation to same or for general marketing purposes and otherwise in accordance with the Company's privacy policy from time to time, which is available upon request. Other than in the circumstances allowed under the relevant privacy laws of the territory or its privacy policy, the Company will not disclose such personal information to other parties. The Customer may contact the Company's Privacy Officer at any time to access or change any personal information provided to the Company.

## **20. JURISDICTION**

**20.1** All contracts between the Company and the Purchaser shall be subject to the laws of the State of Victoria and Purchaser agrees to submit to the non-exclusive jurisdiction of the Courts of Victoria and the Federal Court of Australia.

## **21 SEVERANCE**

**21.1** If any provision of this Agreement does not comply with any law, then the provision must be read down so as to give it as much effect as possible. If it is not possible to give the provision any effect at all, then it must be treated as severable from the rest of this Agreement.