

SCREEN QUEENSLAND PURCHASE ORDER TERMS AND CONDITIONS

1 Agreement

- 1.1 The following documents form the entire agreement between the parties in relation to the supply of the Goods and/or Services (**Agreement**):
- the Order (including any special conditions);
 - these terms and conditions; and
 - Other Documents (as applicable).
- 1.2 By signing the Order or commencing the supply of the Goods and/or Services, the Supplier irrevocably accepts that the Agreement will apply to the supply of the Goods and/or Services. No terms or conditions proposed the Supplier apply to the supply of the Goods and/or Services (including, without limitation, terms stated by the Supplier in accepting or acknowledging an Order.
- 1.3 If there is any inconsistency, discrepancy or ambiguity between the documents listed in clause 1.1, it will be resolved by giving precedence to the document highest in the list except to the extent otherwise determined by Screen Queensland.
- 1.4 To the extent permitted by law, any statement, representation or promise made in any document, negotiation or discussion has no effect except to the extent expressly set out or incorporated by reference into the Agreement.

2 Quality of Goods and Standard of Service

- 2.1 The Supplier must supply the Goods and/or Services to Screen Queensland in accordance with the Agreement.
- 2.2 The Supplier must ensure that the Goods:
- match their description and quantity in the Order and comply with any specifications or plans supplied by Screen Queensland for the supply of the Goods;
 - are fit for the purpose for which goods of the same kind are commonly supplied and for any other purpose which Screen Queensland makes known to the Supplier;
 - correspond with any sample which the Supplier provided to, or showed, Screen Queensland prior to this Agreement;
 - be new, of merchantable quality and free from defects in materials and workmanship; and
 - be free from all liens, charges and encumbrances of any kind.
- 2.3 The Supplier must ensure that the Services:
- match their description in the Order;
 - are fit for the purposes for which services of the same kind are commonly supplied and for any other purpose made known to the Supplier;
 - are provided in a thorough and professional manner in accordance with relevant professional principles and standards and to best commercial practice;
 - are completed with due care and skill, to the best of its knowledge and experience and in accordance with relevant Quality Assurance Standards.
- 2.4 Without limiting clauses 2.2 and 2.3, the Supplier acknowledges and agrees that:
- it will supply the Goods and Services expeditiously and without delay;
 - it must at its own cost supply all labour, tools, equipment and materials necessary for the supply of the Goods and/or Services;
 - minimum order requirements will not be applicable unless specified in an Order;
 - if the product brands described in an Order cannot be supplied, alternative product brands must be approved by Screen Queensland before they are acceptable;
 - the Goods and/or Services will be performed by appropriately qualified and trained officers, employees or agents;
 - it will comply with any laws, regulations, licences, permits, approvals or Australian Standards applicable to the Goods and/or Services; and

- it will obtain at its cost any requisite approvals, licenses or permits.

3 Delivery and Completion

- 3.1 The Supplier must deliver the Goods to the Site between the hours of 8.30am and 4.00pm by the Required Date, unless otherwise directed by Screen Queensland in writing. Delivery will have occurred only when the Supplier has delivered the Goods to the Site and (unless otherwise specified in the Order) unloaded the Goods at the part of the Site designated by Screen Queensland.
- 3.2 The Supplier must ensure that:
- the Goods are delivered with detailed delivery receipt detailing the Order number and description of contents and invoice, detailing item, quantity, Unit Price and Total Price;
 - an employee of Screen Queensland signs the Supplier's delivery receipt upon delivery. The Supplier acknowledges that if the Goods are delivered and no signature has been obtained the Goods may be considered undelivered and in that case Screen Queensland will not be responsible for such Goods;
 - the Goods are supplied in one delivery unless otherwise agreed;
 - the Goods are provided Free In Store unless otherwise specified in the Order;
 - any item subject to shelf life control will be freshly manufactured and clearly identified on delivery with details of date of manufacture, shelf life conditions, requirements and shelf life period;
 - in the case of food delivery, delivery is made in appropriately licensed registered and hygienic food transportation vehicles; and
 - all Goods are packed and protected in a way to ensure that they are not damaged during delivery to and unloading and storage at the Site.
- 3.3 The Supplier must complete the Services by the Required Date.
- 3.4 Time is of the essence in the supply of the Goods and/or Services. If the Supplier fails to supply the Goods and/or Services by the Required Date, Screen Queensland may:
- immediately cancel the whole or any part of an Order and the Supplier will not be entitled to any claim against Screen Queensland;
 - return the Goods to the Supplier at the Supplier's expense;
 - seek damages as a result of the Supplier's late delivery; and/or
 - order the Goods from a third party and seek damages for any loss suffered by the Screen Queensland.
- 3.5 Where no Required Date is specified in an Order, the Supplier must notify Screen Queensland of the Required Date upon receipt of Order.

4 Defective Goods and Services

- 4.1 If any Goods and/or Services are unsatisfactory, defective, of inferior quality or workmanship or does not comply with any requirements of the Agreement ("**Defective**"), the Supplier must do any of the following, at its cost, as determined by Screen Queensland in its absolute discretion:
- re-take possession of the Defective Goods and refund the Price for the Defective Goods to Screen Queensland;
 - deliver replacements of the Defective Goods or re-perform the Defective Services; or
 - repair the Defective Goods or remedy the Defective Services,

and reimburse Screen Queensland any damages it has suffered as a direct result of the supply of the Defective Goods and/or Services

- 4.2 The rights under clause 4.1 are in addition to any other rights of Screen Queensland under the Agreement, at law or in equity.
- 4.3 Unless otherwise stated in the Order, the Supplier warrants that for the period offered by the Supplier or a period of 12 months, whichever is longer, from the delivery of Goods or supply of the Services ("**Warranty Period**"), it will at its cost re-perform any Defective Services or repair or replace any Defective Goods. Such replacements or repairs must be carried out at the times notified by Screen Queensland and so as to minimise any inconvenience to users of the Site.
- 4.4 The Supplier must do all things to ensure that Screen Queensland has the benefit of any warranties given by any third parties in respect of the Goods and/or Services and must give Screen Queensland all documentation relating to such warranties. Such third party warranties are in addition to the warranties of the Supplier.
- 4.5 If the Supplier fails to take action as and when directed under clause 4.1, Screen Queensland may, without further notice to the Supplier, engage another to replace or repair Defective Goods or re- perform Defective Services and all costs and damages suffered by Screen Queensland in connection with the Supplier's failure shall be a debt due and payable to Screen Queensland.

5 Title and Risk

- 5.1 Risk in the Goods passes to Screen Queensland on delivery to the Site in accordance with clause 3.1.
- 5.2 Title to the Goods passes to Screen Queensland on payment or delivery (whichever occurs first) and the Supplier warrants that it is able to pass good title to the Goods to the Contractor.
- 5.3 Where part payment for any Goods is made by Screen Queensland, title to and property in the partly completed or completed Goods, meaning materials or parts to be used in this manufacture will pass to the Screen Queensland. Risk of loss will remain with the Supplier.

6 Variation

- 6.1 All variations to the Agreement must be agreed in writing by the parties in advance.

7 Price

- 7.1 Screen Queensland will, subject to the terms of this Agreement, pay the Supplier the Price specified in the Order. Unless otherwise specified in an Order, the Price is Free Into Store, fixed and inclusive of all costs relating to the supply of the Goods and/or Services in accordance with the terms of this Agreement, including insurance, transport, delivery charges, taxes, duties or other charges payable.
- 7.2 Where the Price is not specified in an Order or is variable, and the Supplier has failed to substantiate the Price, or the Price appears unreasonable to Screen Queensland, Screen Queensland may refuse to accept the supply of the Goods and/or Services, or may accept the supply and payment will only be made after confirmation of change to the Price or by agreement between the parties.

8 Invoicing and Payment

- 8.1 The Supplier may only invoice Screen Queensland at the times specified in the Order. All invoices shall be addressed to Screen Queensland, sent to the address in the Order and include the applicable Order number, a description of the Goods (including quantity) and/or Services, the Price payable for the Goods and/or Service and any other information reasonably required by Screen Queensland.
- 8.2 Screen Queensland will pay the amount of invoices issued by the Supplier under clause 8.1 within 30 days from the end of the month, except where Screen Queensland disputes the invoice, in which case:
 - (a) Screen Queensland will pay the undisputed part of the invoice (if any);
 - (b) if the resolution of the dispute determines that Screen Queensland is to pay an amount to the Supplier, Screen Queensland will pay that amount upon resolution of that dispute.
- 8.3 No interest will be payable by Screen Queensland in respect

of any invoice which is due but unpaid.

- 8.4 Screen Queensland may reduce any payment due to the Supplier under this Agreement by any amount for which the Supplier is or may be liable to Screen Queensland, including costs, charges, damages and expenses. This does not limit Screen Queensland's right to recover those amounts in other ways.

9 GST

- 9.1 The consideration for a Supply made under or in connection with the Agreement does not include GST. If a Supply made under or in connection with the Agreement is a Taxable Supply, then at or before the time the consideration for the Supply is payable:
 - (a) the Recipient must pay the Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under the Agreement for that Supply); and
 - (b) the Supplier must give the Recipient a Tax Invoice for the Supply.
- 9.2 If either party has the right under the Agreement to be reimbursed or indemnified by another party for a cost incurred in connection with the Agreement, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
- 9.3 Capitalised terms in this clause 9 have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

10 Indemnity

The Supplier indemnifies Screen Queensland and its officers, employees and agents from and against all liabilities, claims, actions, proceedings, costs, expenses, losses, damages and judgments (including costs and expenses incidental thereto) incurred in connection with:

- (a) the faulty supply of the Goods and/or Services;
- (b) any damage to or loss of real or personal property or personal injury, death or inconvenience to any person whomsoever arising from or in any way connected with any act or omission of the Supplier or its officers, employees or agent;
- (c) a breach of any Law or negligence by the Supplier or its Personnel in connection with the Agreement, the Goods and/or Services;
- (c) any infringement of a patent, trademark, copyright or other intellectual property rights or moral rights regardless where such action, claim or demand arises, by reason of the use of the Goods and/or Services,

except to the extent caused by the negligence, breach of contract or fault of Screen Queensland or its officers, employees or agents.

11 Liability

Screen Queensland shall not be liable to the Supplier for any indirect or consequential loss or damage, loss of profit, loss of revenue, loss of opportunity or costs of finance, whether or not such liability arises in contract, tort (including negligence), equity or statute, or any other cause of action (or by way of indemnity).

12 Insurance

The Supplier must effect and maintain the insurance policies commonly associated with providing the specified goods or services set out below at its own cost and provide Screen Queensland with evidence of such insurances whenever requested by Screen Queensland:

- (a) Public liability insurance for an amount no less than \$10 million for each and every occurrence, from the date of this Order until the expiry of the Warranty Period.
- (b) Workers' compensation insurance as required by law
- (c) Third party comprehensive motor vehicle insurance from the date of this Order until expiry of the Warranty

Period.

- (d) Insurance for the full replacement value of the Goods.
- (e) Professional indemnity insurance for not less than \$5,000,000 from the date of this Order until seven years after the expiry of the Warranty Period.

13 Risks

- 13.1 Entry to the Site by the Supplier and the Supplier's officers, employees and agents engaged to supply the Goods and/or Services is at their own risk.
- 13.2 To the extent permitted by law, Screen Queensland will not be responsible for any loss of or damage to property or for any personal injury or death to persons while on the Site.
- 13.3 When accessing the Site, the Supplier must comply with all policies and procedures relating to the Site notified to the Supplier by Screen Queensland and must use its best endeavours not to impede or interfere with other work in progress on Screen Queensland premises.

14 Suspension and Termination

- 14.1 Screen Queensland may suspend the supply of the Goods and/or Services or the performance of this Agreement for any reason in Screen Queensland's absolute discretion by written notice to the Supplier. Screen Queensland may at any time direct the Supplier to resume the performance of this Agreement and the Supplier must promptly comply at its costs.
- 14.2 Screen Queensland may terminate this Agreement for any reason in Screen Queensland's absolute discretion on seven days' written notice to the Supplier.
- 14.3 Without limiting its rights at law, Screen Queensland may terminate this Agreement or an Order in whole or in part with immediate effect in the event of any of the following:
 - (a) to the extent permitted by the *Corporations Act 2001* (Cth), an Insolvency Event occurs in respect of the Supplier;
 - (b) the Supplier's conduct is in Screen Queensland's opinion prejudicial to the interests and operations of Screen Queensland or the Supplier poses a reputational risk to Screen Queensland;
 - (c) the Supplier fails to remedy any breach of this Agreement within 14 days of being directed in writing to do so by Screen Queensland; or
 - (d) Supplier assigns or sub- contracts this agreement in whole or part without the prior written consent of the Screen Queensland.
- 14.4 If Screen Queensland terminates this Agreement under clause 14.2, the Supplier will be entitled to payment for the Goods and/or Services supplied to the date of termination provided that Screen Queensland receives title to any Goods or product of Services that are paid for in accordance with this clause. The Supplier will not be entitled to any loss or profit or other compensation.
- 14.5 If Screen Queensland terminates this Agreement under clause 14.3, the Supplier will not be entitled to any claim against Screen Queensland.

15 Screen Queensland's Property

- 15.1 All information and materials furnished by or on behalf of Screen Queensland to the Supplier under this Agreement ("**Screen Queensland Property**") is the property of the Screen Queensland and is only made available to the Supplier on the condition that:
 - (a) Screen Queensland Property is used solely for the purposes of this Agreement; and
 - (b) if requested by Screen Queensland, all Screen Queensland Property (including copies) are immediately returned to Screen Queensland.
- 15.2 The Supplier:
 - (a) assigns to Screen Queensland all existing and future Intellectual Property Rights in any work created by the Supplier and its Personnel in the course of providing the Services (**Work Products**);
 - (b) retains the Intellectual Property Rights created outside the terms of this Agreement and used in performing the Services. The Supplier grants to Screen Queensland an

irrevocable, perpetual, royalty and licence fee free non-exclusive licence to use, adapt, modify and exploit such Intellectual Property Rights for any purpose for which the Services are provided;

- (c) consents to Screen Queensland modifying and using the Work Products in any way it deems appropriate;
- (d) must procure the unconditional and irrevocable consent of any author of any Works produced as part of the Services to any acts or omissions that otherwise infringe the author's Moral Rights in any Works including:
 - (i) any alteration to or deletion from the Works;
 - (ii) any use of the Works that do not identify the person as the author of the Works; and
 - (iii) any use of the Works that may falsely attribute authorship of the Works to any other person,

together with a waiver of all Moral Rights the person may hold outside of Australia in the works created, for the benefit of Screen Queensland, its licensees, successors in title and anyone authorised by Screen Queensland; and

- (f) will sign all documents and do all things reasonably required by Screen Queensland to give effect to the above.

15.3 The Supplier warrants that:

- (a) the supply of the Goods and/or Services by it; and
 - (b) the exercise of the rights granted in clause 15.2 by Screen Queensland,
- or any transferee through Screen Queensland, will not infringe any patent, trademark, copyright or other intellectual property right.

16 Confidential Information

- 16.1 The Supplier agrees to keep confidential, and not to use or disclose, other than with the prior written consent of Screen Queensland, Confidential Information and immediately notify Screen Queensland if the Supplier becomes aware of any unauthorised use or disclosure of Confidential Information.
- 16.2 The Supplier may disclose Confidential Information to its professional advisers and any of its personnel who have a need to know the Confidential Information for the Supplier to be able to perform its obligations under this Agreement, provided that the recipient agrees to keep the Confidential Information confidential.

17 Privacy

- 17.1 The Supplier must, in respect of any Personal Information:
 - (a) comply at all times with Privacy Law and any reasonable directions of Screen Queensland notified to the Supplier in connection with the disclosure or handling of Screen Queensland Data which comprises Personal Information;
 - (b) only use or disclose Personal Information for the purpose of fulfilling its obligations under the Agreement;
 - (c) not transfer or disclose Personal Information outside of Australia or allow any person outside of Australia to access, view or receive and Personal Information unless expressly authorised by Screen Queensland in writing;
 - (d) ensure that Personal Information held by it is protected against misuse, loss, unauthorised access, interference, modification or disclosure;
 - (e) cooperate with any reasonable requests or directions of Screen Queensland concerning the security, use and disclosure of Personal Information, and in the case of any investigation by the Office of Australian Information Commissioner, closely and urgently

cooperate with all requests and directions of Screen Queensland;

- (f) as soon as reasonably practicable notify Screen Queensland if it:
- (i) becomes aware of any breach of this clause; or
 - (ii) if any Screen Queensland Personal Information is subject to a data breach of any kind under the *Privacy Amendment (Notifiable Data Breaches) Act 2017* (Cth) through an act or omission of the Supplier.

19 General

- 19.1 The Supplier must comply with all reasonable directions of Screen Queensland related to the supply of goods and services outlined in this agreement.
- 19.2 The Supplier performs its obligations as an independent contractor and not as an employee, agent or partner of Screen Queensland.
- 19.3 Where the Supplier comprises more than one person or entity, each of them shall be jointly and severally liable for the full performance of the Supplier's obligations under the Agreement.
- 19.4 Where any provision of the Agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in the Agreement.
- 19.5 This Agreement shall be governed by and construed in accordance with the laws in force in the State of Queensland, except that the United Nations Convention on Contracts for the International Sale of Goods does not apply to the supply of Goods by the Supplier.
- 19.6 The failure of a party to require full or partial performance of a provision of the Agreement does not affect the right of that party to require performance subsequently.
- 19.7 No obligation in the Agreement is waived unless it is waived in writing and signed by the parties. A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- 19.8 The Agreement may not be amended, altered, supplemented or cancelled without the prior written consent of Screen Queensland.
- 19.9 The Supplier must not assign or subcontract its rights or obligation under this Agreement without Screen Queensland's written consent.
- 19.10 The Agreement is not to be interpreted against the interests of Screen Queensland merely because it proposed this Agreement or some provision in it or because it relies on a provision of this Agreement.
- 19.11 No disclaimer contained within the Services or a Deliverable is of any force and effect unless it is expressly agreed in writing by Screen Queensland prior to its inclusion in the services or a Deliverable.

20 Interpretation

- 20.1 In this Agreement unless the contrary intention appears:
- "Agreement"** means this agreement comprising the documents set out in clause 1.1.
- "Confidential Information"** means any information relating to the business and affairs of Screen Queensland, whether provided to or obtained by the Supplier prior to a contract being formed between Screen Queensland and the Supplier, including any provision of the Agreement and information about Screen Queensland's customers and personnel, but excludes information in the public domain (other than due to breach of the Agreement) or information rightfully in the possession of the Supplier and not subject to an obligation of confidentiality at the time it was obtained by the Supplier.
- "Goods"** means the goods, if any, described in the Order.
- "Insolvency Event"** means any of the following events occurring in relation to a party:

- (a) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the Corporations Act 2001 (Cth)), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the party;
- (b) the party is, or becomes unable to, pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Corporations Act 2001 (Cth), or is presumed to be insolvent under the Corporations Act 2001 (Cth);
- (c) an application or order is made for the liquidation of the party or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the party;
- (d) execution is levied against the party by a creditor; or
- (e) any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition.

"Intellectual Property Rights" includes all present and future rights in relation to copyright, trade marks, designs, software, inventions, programs, systems, patents, trade, domain, business or company names, trade secrets, or any rights to registration of such rights whether created before or after the date of this Agreement, and whether existing in Australia or otherwise.

"Law" means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time, whether made by a State, Territory, Commonwealth, or a local government, and includes common law and the principles of equity as applicable from time to time, and any applicable legally binding industry codes of conduct.

"Moral Rights" has the meaning given in the *Copyright Amendment (Moral Rights) Act 2000* (Cth).

"Other Documents" means such other documents which form part of this Agreement, as specified in the Order.

"Order" the purchase order to which these terms and conditions are attached, which identifies, among other things:

- a) the Supplier;
- b) the Price (Unit Price and Total Price);
- c) the Goods and/or Services; and
- d) the Required Date.

"Personal Information" has the meaning given to that term in the Privacy Act as amended from time to time.

"Personnel" in relation to a party, that party's employees, officers and agents and in relation to the Supplier also includes its contractors, consultants, licensees and invitees (including their employees, officers and agents).

"Privacy Act" means the *Privacy Act 1988* (Cth) and includes any guidelines issued by the Privacy Commissioner.

"Privacy Law" means any Law that applies to either of Screen Queensland or the Supplier, Australian or otherwise, and as amended from time to time, which affect privacy or any personal information (including its collection, storage, use or processing) including without limitation:

- (a) the Privacy Act and corresponding Australian State privacy Laws; and
- (b) any codes of conduct, directives, principles or orders made under the legislation referred to in (a) above.

"Screen Queensland Data" means:

- (a) unprocessed data that may be stored in a file, database or other medium including, without limitation, paper based;
- (b) any Screen Queensland Data that is stored by the Supplier on behalf of Screen Queensland; and
- (c) Information which is transmitted, received, stored, processed, generated, compiled or modified through the use, or in connection with, the provision of the Services.

"Screen Queensland " means Screen Queensland Pty Ltd ABN 056 169 316 with its registered head office at Level 2, 130 Commercial Road, Teneriffe 4006.

"Services" means those services, if any, described in the Order.

"Site" means [INSERT], or such other site as directed by Screen Queensland in writing.

"Supplier" means [#insert supplier details].

Other capitalised terms in the Agreement have the meanings set out in the Order or the relevant clause.

"Works" means any copyright work created, produced or reproduced by a person as part of the Services.

20.2 In this Agreement:

- (a) a reference to a party includes the party's successors, permitted substitutes and permitted assigns;

- (b) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) a reference to a document or agreement (including a reference to these Terms and Conditions) is to that document or agreement as amended, supplemented, varied or replaced;
- (d) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (e) if any day on or by which a person must do something under these Terms and Conditions is not a business day, then the person must do it on or by the next business day; and
- (f) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity.

The Supplier referred to below agrees to supply the Goods and/or Services to Screen Queensland in accordance with the Purchase Order and the attached Terms and Conditions.

Name:

Position:

Signature:

_____ for [insert Supplier]

Name:

Position:

Signature:

_____ for Screen Queensland