

ING Bank (Australia) Limited

Purchase Order Terms and Conditions

IBAL and the Supplier agree that the Purchase Order given by IBAL to the Supplier is subject to these Terms.

1. Contract

- 1.1 The Purchase Order may be given electronically or by any other form or method.
- 1.2 The Purchase Order constitutes an offer by IBAL to purchase the Goods and/or Services from the Supplier on these Terms. If there is any inconsistency between these Terms and any other terms and conditions, the Terms contained in this Purchase Order will, subject to clauses 1.3 and 1.4, prevail.
- 1.3 If IBAL and the Supplier have separately agreed in writing to other terms and conditions applying to the purchase of Goods and/or Services prior to the delivery of this Purchase Order, those other terms and conditions will prevail over the Terms to the extent of any inconsistency.
- 1.4 IBAL and the Supplier agree that these Terms can only be amended by another agreement signed by the parties.

2. Definitions

The following defined terms have the designated meaning unless the context requires otherwise:

ABN means Australian Business Number.

Claim means, in relation to a party, a demand, claim, action or proceeding made or brought by or against that party, however arising and whether present, unascertained, future or contingent.

Contract means any Purchase Order incorporating these Terms when accepted by the Supplier.

Delivery includes any installation.

Delivery Address means the address set out in the Purchase Order to which goods are to be delivered or at which the Services are to be performed.

Delivery Date means the date of delivery or supply (as the case may be) set out in the Purchase Order.

Goods means the goods (including any instalment or part of the Goods, the packaging and labelling used in relation to the Goods and any point of sale or other publication which accompanies the Goods) set out in the Purchase Order.

GST means any goods and services tax imposed by the GST Law.

GST Exclusive Value has the same meaning as in the GST Law.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* as amended or replaced from time to time, and any associated legislation and regulations insofar as they relate to GST.

IBAL means ING Bank (Australia) Limited ABN 24 000 893 292.

Loss means any liabilities, expenses, charges, losses, damages and costs (including legal costs on a full indemnity basis) whether incurred by or awarded against a party.

Insolvency Event means any of the following:

- a) a person is unable to pay from the person's own money all the person's debts as and when they become due and payable;
- b) a person is taken or must be presumed to be insolvent or unable to pay the person's debts under any applicable legislation;
- c) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation;
- d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven days;
- e) a controller is appointed in respect of any property of a corporation;
- f) a corporation is deregistered under the Corporations Act 2001 (Cth) or notice of its proposed

- g) deregistration is given to the corporation;
- g) a distress, attachment or execution is levied or becomes enforceable against any property of a person;
- h) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members or a moratorium involving any of them;
- i) a petition for the making of a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within seven days or a person presents a petition against himself or herself;
- j) a person presents a declaration of intention under section 54A of the *Bankruptcy Act 1966 (Cth)*; or
- k) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of a person.

Materials means data, information, concepts, logos, images, films, software (in both object code and source code), and other material (in any format) and other confidential information of IBAL.

Price means the price of any Goods and/or Services set out in the Purchase Order;

Privacy Laws means any legislation (to the extent ING, the Supplier, or the services provided by the Supplier under this Agreement are subject to it), whether Australian or otherwise, which affects privacy or any personal information (including the collection, storage, use or processing of such information) including the *Privacy Act 1988 (Cth)*, the *General Data Protection Regulation (EU) 2016/679*, and any codes of conduct, recommendations, directives or orders made or issued under such legislation.

Purchase Order means a purchase/service order for Goods and/or Services that incorporates these Terms.

Services means the services (including any part performance of the Services) set out in the Purchase Order;

Site means any location from which IBAL carries on business or in relation to which Goods or Services are sought under the Purchase Order.

Supplier means the entity set out in the Purchase Order as the supplier of the Goods/Services.

Terms means these standard terms and conditions.

United States or US means the United States of America;

US Person means:

- a) a citizen or resident of the United States;
- b) a partnership under the laws of the United States or incorporated or organised in the United States;
- c) a corporation under the laws of the United States or incorporated or organised in the United States;
- d) any estate (other than a foreign estate), or descendant of a citizen or resident in the United States;
- e) any trust if:
 - I. a court within the United States is able to exercise primary supervision over, or would have authority under applicable law to render orders or judgments concerning all issues regarding the administration of the trust; and
 - II. one or more United States persons have the authority to control all substantial decisions of the trust.
- f) the United States Government (including an agency or instrumentally

ING Bank (Australia) Limited

Purchase Order Terms and Conditions

thereof);

- g) a State (including an agency or instrumentally thereof);
- h) the District of Columbia (including an agency or instrumentality thereof)
- i) a foreign insurance company that has made an election to be treated as a domestic corporation in the United States, provided that either:
 - I. the foreign insurance company is not a specified insurance company and is not licensed to do business in any State in the United States; or
 - II. the foreign insurance company is a specified insurance company and is licensed to do business in any State in the United States.

The term 'US Person' does not include a foreign insurance company that has made an election to be treated as a domestic corporation in the United States, if it is a specified insurance company and is not licensed to do business in any State in the United States.

US Supplier means a Supplier who is a US Person.

3. Price of Goods or Services

- 3.1 The Price is inclusive of all charges for packaging, packing, carriage, insurance, supply and Delivery of the Goods and/or Services to the Delivery Address and all applicable taxes, duties and levies (excluding GST).
- 3.2 Within 30 days of receiving an invoice issued in accordance with clause 4.1, IBAL will pay the invoice.
- 3.3 IBAL is not obligated to pay an invoice which does not contain the Purchase Order number and the Supplier's ABN. IBAL will not pay on statement.

4. Invoicing

- 4.1 The Supplier must invoice IBAL only on, or up to 60 days after, delivery or supply of Goods and/or Services. Each invoice, and any of the Supplier's other documents must quote the Purchase Order number and the Supplier's ABN.
- 4.2 IBAL may set off any sums owed to IBAL by the Supplier against any amounts IBAL is due to pay the Supplier.

5. Delivery, Supply and Packaging

- 5.1 The Supplier must deliver or supply Goods and/or Services (as the case may be) at the Delivery Address during IBAL's usual business hours by the Delivery Date. IBAL may at any time prior to delivery or supply of the Goods or Services and at the cost of the Supplier require a different mode of delivery or supply.
- 5.2 Each delivery or supply of Goods and/or Services must be accompanied by a delivery/supply advice slip detailing a description of the Goods and/or Services, the number and constituency of packages delivered, the cost per item, total Price and the Purchase Order number.
- 5.3 If Goods and/or Services are to be delivered or supplied by instalments, the Contract formed by acceptance of the Purchase Order will be treated as a single contract and not severable.
- 5.4 Where Services are required to be provided or Goods are required to be installed at IBAL's premises, the Supplier must at all times comply with all premises requirements (including without limitation hours for access) and minimise the possibility of causing nuisance to any person.
- 5.5 The Supplier must inform IBAL in writing immediately if events beyond its control may affect timely delivery or supply of Goods and/or Services or any part thereof, and thereafter IBAL may:
 - (a) temporarily suspend the performance of this Purchase

Order for as long as IBAL nominates; or

- (b) terminate this Purchase Order without any liability on IBAL.
- 5.6 The Supplier must inform IBAL in writing immediately of any damage to material or property that occurs in connection with delivery or supply of the Goods and Services.

6. Acceptance and Rejection

- 6.1 IBAL will not be deemed to have accepted any Goods and/or Services until IBAL has had a reasonable time to inspect them following Delivery or supply (as the case may be) or within a reasonable time after any latent defect in the Goods and/or Services has become apparent whether or not any part or all of the Price has been paid.
- 6.2 Where the Goods and/or Services are a component of a final product, IBAL reserves the right to reject such Goods and/or Services until such time as the final product is complete and accepted by IBAL.

7. Risk and title

Title in the Goods passes to IBAL on payment for or acceptance of the Goods whichever is earlier. Risk in the Goods passes to IBAL on delivery of the Goods. Where Goods are returned by IBAL to the Supplier, risk in the Goods passes to the Supplier on delivery to the Supplier.

8. Supplier Warranties and Liability

- 8.1 The Supplier warrants, represents and agrees:
 - (a) that the Goods are marked and packed in accordance with IBAL's instructions (if any) and any applicable regulations or requirements of the carrier and in the manner necessary to ensure that they reach the Delivery Address in an undamaged condition;
 - (b) that the Goods and/or Services:
 - (i) will comply with and will be provided strictly in compliance with the Purchase Order and any statutory requirements and regulations, Australian Standards, industry codes, licenses and permits;
 - (ii) will comply with:
 - (A) any applicable plans, drawings, data, descriptions, samples or other specifications provided by IBAL to the Supplier; and
 - (B) any applicable specifications, drawings, catalogues, illustrations, or other specification contained in any quotation or relevant promotional material of the Supplier or the manufacturer of such Goods;
 - (c) that the use of the Goods and/or Services by IBAL or any other person will not infringe the intellectual property rights of a third party;
 - (d) for the Services, that the Supplier will:
 - (i) comply with all reasonable directions of IBAL's authorised representative in starting, executing or supplying the Services; and
 - (ii) comply with all IBAL conduct policies, relevant Australian standards and industry codes;
 - (e) that the warranties that would apply to the Goods and/or Services were they supplied to a consumer pursuant to the *Competition & Consumer Act 2010* (Cth), are deemed to be given to IBAL by the Supplier even if the Supplier under this Contract is not supplied to a consumer within the meaning of the *Competition & Consumer Act*.
- 8.2 The warranties contained in clause 8.1 are in addition to any implied warranties under the *Competition & Consumer Act 2010* (Cth) the *Sale of Goods Acts* and *Fair Trading Acts* applicable under relevant State and Territory legislation.
- 8.3 Any defective goods acquired whether in breach of any warranty or otherwise must be promptly replaced by the Supplier or the Contract may be terminated by IBAL (at the election of IBAL) and a refund given by the Supplier.

9. Indemnity Obligations

ING Bank (Australia) Limited

Purchase Order Terms and Conditions

- 9.1 The Supplier must indemnify IBAL and keep IBAL indemnified against all Loss or other payments, demands, liabilities and fines that IBAL or any of its related bodies corporate suffer or incur as a consequence of:
- (a) a breach by the Supplier of these Terms;
 - (b) any Claim arising out of any material discrepancies, errors or omissions in the information provided by the Supplier to IBAL;
 - (c) any Claim for breach of contract, fraud, wilful misconduct, wilful default and negligence;
 - (d) any Claim arising out of environmental pollution caused by the Supplier;
 - (e) any Claim relating to a breach of intellectual property rights;
 - (f) the Supplier's breach of any applicable Privacy Laws;
 - (g) use or disclosure of Material provided by IBAL to the Supplier other than in accordance with these Terms; and
 - (h) any Claim related to or arising out of any acts and omissions of the Supplier's employees and contractors.

10. Insurance

- 10.1 The Supplier must effect and maintain appropriate insurance policies with insurers during the term of a Purchase Order and on terms generally appropriate for the risks associated with the Supplier's business, including:
- (i) public liability insurance with a minimum cover of \$20 million per claim;
 - (ii) professional indemnity insurance with a minimum cover of \$20 million per claim; and
 - (iii) workers' compensation insurance for the full extent of the Supplier's liability under the relevant workers compensation legislation in respect of each person employed by the Supplier and ensure any subcontractor complies in respect of its employees in the name of the Supplier.
- 10.2 The Supplier must:
- (a) give IBAL copies of the certificates of currency (or other evidence of compliance as may be requested by IBAL for the policies listed in clause 10.1); and
 - (b) notify IBAL immediately if an insurance policy required by clause 10.1 is cancelled or an event occurs which may allow a claim or affect rights under an insurance policy in connection with any Site or property in it.
- 10.3 The Supplier must not do anything which may affect rights under any insurance or which may increase an insurance premium payable in connection with any Site or property in it.

11. Confidentiality

All Materials supplied by IBAL to the Supplier must be kept confidential and secure. The Supplier must not reproduce, copy or deal with the Materials without the prior written consent of IBAL and then only for the purpose of complying with the Purchase Order. Property (including intellectual property) in any such information and other documentation belongs at all times to IBAL. The Supplier must return to IBAL all such information and documentation upon request.

12. Cancellation

IBAL may, without incurring any liability to the Supplier, cancel all or any part of the Purchase Order by giving notice to the Supplier at any time prior to delivery or supply.

13. Termination

- IBAL may terminate a Contract:
- (a) for convenience by giving the Supplier no less than 30 days' written notice (without liability); or
 - (b) immediately (or such other time IBAL specifies) by giving written notice to the Supplier (without liability) if:
 - (i) anything warranted by the Supplier is incorrect in any material respect;
 - (ii) the Supplier breaches a material term of a Contract and

the breach is not capable of rectification or, if it can be rectified, it is not rectified within 30 days of receipt of notice of the breach;

(iii) the Supplier materially breaches any obligation under a Contract that it has breached previously (whether or not the previous breach was rectified); or

(iv) the supplier commits, or is the subject of, an Insolvency Event.

14. General

- 14.1 The Supplier must not assign part or all of this Contract. The Supplier must not use any subcontractors or suppliers for supply of the Goods or Services without IBAL's prior written consent. If the Supplier uses a subcontractor or supplier, the Supplier remains liable for the subcontractor's performance.
- 14.2 Any Contract is governed by the laws of the State of New South Wales and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of New South Wales.

15. GST

- 15.1 The Price and all fees, charges and other amounts referred to in this Contract are based on their GST Exclusive Value (unless otherwise stated GST inclusive).
- 15.2 If any supply under this Contract is a Taxable Supply, the party making the supply may, in addition to any payment for the supply, recover the amount of the GST applicable to the supply. Any amount of GST payable for a supply will be payable at the same time as the payment for the supply to which it relates.
- 15.3 The party making a Taxable Supply must issue a Tax Invoice to the recipient within 28 days of making the Taxable Supply, when requested by the recipient.
- 15.4 Where a party must pay an outgoing of the other party, the amount payable is the sum of:
- (i) the amount of the outgoing less any input tax credit (including any reduced input tax credit) in respect of it to which the other party, or its GST group representative member, is entitled; and
 - (ii) if the amount payable is subject to GST, an amount equal to that GST.

16. Compliance with Law

- 16.1 The Supplier shall at all times strictly comply with all applicable laws, rules, regulations, and governmental orders, now or hereafter in effect, relating to their performance of this contract, including without limitation environmental laws, work health and safety laws, anti-bribery laws, anti-corruption laws, anti-slavery laws, tax laws and any law aimed at preventing the facilitation of criminal behaviour. The Supplier agrees to provide at all times any assistance reasonably requested by IBAL to enable IBAL to comply with the then current regulatory and statutory requirements.
- 16.2 The Supplier recognises that IBAL and its related bodies may be subject to certain information gathering and reporting requirements pursuant to Chapter 3 and Chapter 61 of the US Treasury Regulations.
- 16.3 The Supplier acknowledges that in order for IBAL to fulfil its obligations in the US Treasury Regulations, the Supplier is required to, and must, provide the appropriate US withholding certificate form (**Withholding Certificate**) to IBAL as soon as reasonably possible to enable IBAL to determine whether or not the Supplier is a US Person for US tax purposes.
- 16.4 If the Supplier considers that it is not a US Person, the Supplier must inform IBAL in case it is performing Services to IBAL from, or in, the US.
- 16.5 If the Supplier is a US Supplier, or is a non US Supplier who is performing Services in, or from, the US, the Supplier:
- (a) irrevocably and unconditionally consents to:
 - (i) IBAL reporting payments by IBAL to the Supplier under

ING Bank (Australia) Limited
Purchase Order Terms and Conditions

- this Contract or under any other agreement to the US Internal Revenue Service ("IRS"); and
- (ii) withholding tax from the payments to the Supplier under this Contract as and if required by the US Treasury Regulations; and
 - (b) must cooperate with, and do all things as may be necessary or desirable, to give effect to clause 16.5(a).
- 16.6 Failure of the Supplier to fully (and in a timely manner) comply with clauses 16.3, 16.4, or 16.5 will constitute a material breach of this Agreement which entitles IBAL to terminate this Agreement for cause with immediate effect and may result in IBAL, at its discretion, withholding US tax from payments to the Supplier and reporting the Supplier's failure to comply to the IRS.
- 16.7 The Supplier must, and must use reasonable efforts to procure that the Supplier's employees, directors, officers, agents, attorney, delegates, subcontractors, and Screened Employees (**Supplier's Personnel**) and the Supply Chain Participants, comply with, all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the *Modern Slavery Act 2018* (NSW), the *Modern Slavery Act 2018* (Commonwealth), and any law, rule or other legally binding measure of any jurisdiction that creates similar reporting obligations to those set out in the *Modern Slavery Act 2018* (Commonwealth) (together Modern Slavery Laws).
- 16.8 The Supplier must:
- (a) maintain throughout the term of this Contract, policies and procedures to ensure compliance with Modern Slavery Laws; and
 - (b) co-operate with, and do all things reasonably requested by, IBAL to assist IBAL to comply with Modern Slavery Laws.
- 16.9 The Supplier must ensure that any agreement with subcontractors includes anti-slavery and human trafficking provisions that are no less onerous as those set out in clauses 16.7 – 16.11.
- 16.10 The Supplier represents and warrants on a continuing basis that the Supplier, the Supplier's personnel, the Supply Chain Participants, and any other persons associated with the Supplier:
- (a) have not been convicted of any offence or, is/are involved in any conduct, involving slavery, servitude, human trafficking, or forced labour to exploit children or other persons; or
 - (b) having made reasonable enquires, so far as the Supplier is aware, has not/ have not been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with a breach of Modern Slavery Laws.
- 16.11 IBAL may immediately terminate this Contract by giving written notice to the Supplier, if:
- (a) the Supplier breaches clause 16.7 – 16.10; or
 - (b) the Supplier or any of the Supplier's personnel or Supply Chain Participant breaches Modern Slavery Laws.
- 16.12 Under this clause, **Supply Chain Participant** means any organisation or individual involved in the chain of production and provision of particular goods or services to the Supplier.