

**ING Bank (Australia) Limited**  
**Terms and Conditions of Purchase/Service Order**

ING and the Supplier agree that the Purchase Order given by ING 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 ING 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 prevail excepting if ING and the Supplier have separately agreed in writing to other terms and conditions applying prior to the delivery of this Purchase Order, in which case those other terms and conditions will prevail over the Terms to the extent of any inconsistency.
- 1.3 The Supplier accepts the Terms if the Supplier notifies ING of its acceptance or if the Supplier performs any part of the Contract.

**2. Definitions**

The following terms have these meaning unless the context otherwise requires:

**Contract** means this Purchase Order 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;

**ING** means ING Bank (Australia) Limited ABN 24 000 893 292;

**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 ING;

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

**Purchase Order** means this purchase/service order including all the details contained in the purchaser/service order and 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 ING carries on business or in relation to which Goods or Services are sought under the Contract;

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

**Terms** means these terms and conditions of purchase/service order.

**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 (excepting for GST).
- 3.2 Within 30 days of receiving an invoice issued in accordance with clause 4.1, ING will pay the invoice.
- 3.3 ING is not obligated to pay an invoice which does not contain the Purchase Order number and the Supplier's ABN. ING will not pay on statement.

**4. Invoicing**

- 4.1 The Supplier must invoice ING 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 Items listed on this Purchase Order must be invoiced separately from any other items listed on another purchase order.
- 4.3 ING may set off any sums owed to ING by the Supplier against any amounts ING 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 ING's usual business hours by the Delivery Date. ING 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 ING'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 ING 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 ING may:
  - (a) temporarily suspend the performance of this Purchase Order for as long as ING nominates; or
  - (b) terminate this Purchase Order without any liability on ING.
- 5.6 The Supplier must inform ING 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 ING will not be deemed to have accepted any Goods and/or Services until ING 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, ING reserves the right to reject such Goods and/or Services until such time as the final product is complete and accepted by ING.

**7. Risk and title**

Title in the Goods passes to ING on payment for or acceptance of the Goods whichever is earlier. Risk in the Goods passes to ING on delivery of the Goods. Where Goods are returned by ING 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 ING'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 the 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 ING 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 ING 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 ING's authorised representative in starting, executing or supplying the Services; and
    - (ii) comply with all ING 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 ING 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 cancelled by ING (at the election of ING) and a refund given by the Supplier.

#### 9. Insurance

- 9.1 Subject to clause 9.2, the Supplier must effect and maintain:
- (a) with insurers during the terms of this Purchase Order and on terms generally appropriate for the risks associated with the Supplier's business, including:
    - (i) public liability insurance for at least \$20 million; and
    - (ii) 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.
- 9.2 The Supplier must:
- (a) give ING copies of the certificates of currency or other evidence of compliance as may be requested by ING for the policies listed in clause 9.1(a); and
  - (b) notify ING immediately if an insurance policy required by this clause 9.1 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.
- 9.3 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.

#### 10. Confidentiality

All Materials supplied by ING 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 ING 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 ING. The Supplier must return to ING all such information and documentation upon request.

#### 11. Cancellation

ING 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

#### 12. Termination

ING may terminate this Purchase order:

- (a) for convenience on 30 days' written notice (without liability); or
- (b) immediately by giving notice to the Supplier if the Supplier commits a material breach of this Purchase Order or in ING's opinion, becomes insolvent.

#### 13. General

- 13.1 The Supplier must not assign part or all of this Purchase Order. The Supplier must not use any subcontractors or suppliers for supply of the Goods or Services without ING's prior written consent. If the Supplier uses a subcontractor or supplier, the Supplier remains liable for the subcontractor's performance.
- 13.2 This Purchase Order 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.

#### 14. GST

- 14.1 The Price and all fees, charges and other amounts referred to in this Contract are based on their GST Exclusive Value.
- 14.2 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.
- 14.3 The party making a Taxable Supply must issue a Tax Invoice to the recipient within 28 days of making the Taxable Supply

#### 15. Compliance with Law

The Supplier must comply with all laws relating to the Goods or Services supplied under this Contract including (without limitation) environmental laws and occupational health and safety laws.