

Terms & Conditions of Supply

1 General

1.1 Agreement

- (a) These supply terms & conditions of supply (**terms**) apply to the supply of services by Precise Pallet Management Pty Ltd ACN 115 498 523 (**PPM**) to the customer (**Customer**) as described in PPM's proposal (**Proposal**).
- (b) The Customer acknowledges and agrees that by:
 - (i) signing:
 - (A) the credit application; and / or
 - (B) the acceptance section in the Proposal; or
 - (ii) other conduct which indicates its acceptance of the Services,

the Customer agrees to be bound by these terms and that the Services will be supplied subject to these terms, the Proposal, the credit application and any other subsequent correspondence or agreement between the Parties intended to be contractually binding upon them pertaining to the provision of services by PPM to the Customer.

2 Definitions and interpretation

2.1 Definitions

In these terms, the following words have the following meanings:

Claims means all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise).

Confidential Information includes any information marked as confidential and any information exchanged between the Parties whilst the Services are being provided, which is not publicly available and relates to processes, equipment and techniques used by a Party in the course of its business. **Confidential Information** also includes all information, data, drawings, specifications, documentation, software (including software source or object code and documentation), designs, construction, workings, functions, features and performance notes, techniques, concepts not reduced to material form, agreements with third parties, schematics and proposals and intentions, technical data and marketing information such as customer lists, financial information and business plans.

Contract means the contractual obligations between the Parties consisting of, as applicable:

- (a) these terms;
- (b) the Proposal;

- (c) **the credit application; and**
- (d) **any other correspondence or agreement between the Parties intended to be contractually binding upon them pertaining to the provision of services by PPM to the Customer.**

Facilities means working space, computer equipment, access to the internet and the Customer's computer network, telecommunications system, the computer interface between the Customer and its pallet provider(s) and similar. It includes access to such resources but also use of them to the extent required by PPM in order to perform the Services.

Fees means the *amount or rates set out in the Proposal or as otherwise agreed between the Parties.*

GST Law means the same as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and **GST** means goods and services tax under GST Law.

Intellectual Property includes trademarks, patents, copyrights, processes know-how, registered designs or other like rights or any right to apply for registration of any of the former.

Losses means all losses including financial losses, damages, legal costs and other expenses of any nature whatsoever.

Parties means PPM and the Customer, and **Party** means either one of them.

Relevant Date means the date that is 12 months after the Customer signs the latter to be signed of:

- (a) **the credit application; and**
- (b) **the acceptance section in the Proposal.**

Services means *the services to be provided by PPM as set out in the Proposal, or as otherwise agreed between the Parties.*

PPM's Personnel means any person or persons that PPM designates to perform the Services on PPM's behalf.

Termination Date means the date of termination of the Contract.

2.2 Interpretation

In these terms:

- (a) words importing any gender include every gender;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing persons include firms, companies and corporations and vice versa;

- (d) references to numbered clauses, paragraphs and schedules are references to the relevant clause or paragraph in or schedule to these terms;
- (e) any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- (f) the headings in these terms do not affect the interpretation;
- (g) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or bylaw made under that enactment; and
- (h) the word "including" (and related forms such as "includes") means "including without limitation".

3 Services

- (a) PPM will provide the Services to the Customer in consideration for the Customer paying the Fees to PPM, subject to these terms.
- (b) To the extent not provided in the Proposal, PPM and the Customer will agree the time and place for the performance of the Services, subject to the availability of PPM's Personnel.
- (c) PPM will use reasonable endeavours to complete the Services in accordance with the Proposal, and to the extent not there specified, by *the dates agreed by the Parties*.
- (d) The Services will be performed by the employees or agents that PPM may choose as most appropriate to carry out the Services.

4 Fees

4.1 Payment of Fees

- (a) In consideration of the provision of the Services in accordance with these terms, the Customer will pay PPM the Fees.
- (b) Subject to contrary provision in the Proposal, PPM's Fees are based on an hourly rate. Time is recorded in minimum units of 6 minutes. For example, the time charged for work taking up to 6 minutes will be rounded up to 6 minutes and the time charged for work taking 7-12 minutes will be rounded up to 12 minutes.
- (c) PPM's Fees are GST exclusive and the Customer must pay GST in accordance with clause 4.2(b).

4.2 Invoicing

- (a) PPM will provide the Customer with a tax invoice in accordance with the GST Law in relation to amounts payable under this clause 4.
- (b) Payment (including any applicable GST) must be made by the Customer to PPM within 14 days after receiving PPM's invoice, or such other period as specified in the Proposal.

- (c) PPM may set-off any amounts payable by PPM to the Customer against any amounts payable by the Customer to PPM from time to time.

4.3 Variation of Fees

After the Relevant Date, PPM may vary its hourly rates and other Fees for the Services by giving the Customer not less than 30 days' written notice.

4.4 Costs and disbursements

PPM is permitted to charge for those costs and expenses incurred in performing the Services (e.g. including travel, accommodation, and other reasonable out of pocket expenses) as set out in the Proposal or as otherwise agreed by the Parties.

4.5 Failure to pay

If the Customer does not make a payment by the date determined under clause 4.2, then PPM is entitled to do any or all of the following:

- (a) charge interest on the outstanding amount at the rate of 3% per year above the base lending rate of Westpac Banking Corporation, accruing daily;
- (b) require the Customer to pay, in advance, for any Services (or any part of the Services) which have not yet been performed; and
- (c) not perform any further Services (or any part of the Services).

5 Customer's obligations

- (a) During the performance of the Services the Customer must:
 - (i) co-operate with PPM as PPM reasonably requires;
 - (ii) provide the information and documentation that PPM reasonably requires, do so in a timely manner and at all times take all reasonable steps to ensure the accuracy of all information and documentation provided;
 - (iii) make available to PPM such Facilities as PPM reasonably requires; and
 - (iv) ensure that the Customer's staff and agents cooperate with and assist PPM.
- (b) The Customer acknowledges that PPM agrees to provide the Services to the Customer (and has based the amount of the Fees) in reliance on the Customer complying with all of its obligations in clause 5(a) of these terms.
- (c) The Customer will not charge for PPM's use of the Facilities made available by the Customer.
- (d) If the Customer does not provide the Facilities that PPM reasonably requires (and within the time period) to perform the Services, then:
 - (i) the Customer will be in breach of these terms;

- (ii) PPM will be entitled to terminate these terms under clause 9(a); and
- (iii) any additional costs and expenses reasonably incurred by PPM must be paid by the Customer.

6 Intellectual property and software

- (a) All discoveries, improvements and inventions made or conceived by PPM or PPM's Personnel (either solely or jointly with others) in the course of performing the Services which result from or are suggested by any work performed for the Customer, whether or not they contain intellectual property rights capable of protection, are and remain the sole and exclusive property of PPM and the Customer hereby assigns to PPM all Intellectual Property therein in consideration for PPM agreeing to provide the Services. The Customer acknowledges that PPM (or its associated entities or persons) owns all Intellectual Property created by PPM in connection with the Services, that now exists or that later comes into existence.
- (b) The Customer must not assert ownership rights in respect of or attempt to register or apply for any Intellectual Property rights of any kind in respect of the Services anywhere in the world.
- (c) If PPM provides PPM software to the Customer in connection with the Services, PPM grants the Customer a non-exclusive, non-transferable licence to use the PPM software strictly as necessary for the Customer to receive the benefit of the Services and only until the Termination Date (at which time the Customer must immediately return or permanently erase the PPM software). In no circumstances may the Customer copy, modify, adapt or reverse-engineer any PPM software.
- (d) If it is necessary for the Customer to use third party software in connection with the Services, the Customer agrees to enter into a software licence directly with the third party on request by PPM.

7 Confidentiality

- (a) Each Party must:
 - (i) keep the Confidential Information of the other Party confidential and not deal with it in any way that might prejudice its confidentiality; and
 - (ii) not use Confidential Information of the other Party other than as reasonably necessary in connection with the provision of the Services
- (b) The Customer acknowledges that information resulting from the activities of PPM pursuant to the Contract will also be treated as Confidential Information and agrees that the Parties' obligations in clause 7(a) extend to this category of information.
- (c) At the Termination Date, or when earlier directed by the Party for whom the relevant Confidential Information is confidential (**Discloser**), all of the Discloser's Confidential Information must be returned (or as required, destroyed) to the Discloser, including all copies of the Discloser's

Confidential Information and any extracts or summaries of that Confidential Information that the other Party has made.

- (d) Confidential Information does not include information which:
 - (i) is generally available in the public domain otherwise than as a result of a breach of clause 7(a) by a Party; or
 - (ii) was known by a Party prior to the other Party disclosing the information.
- (e) The Parties acknowledge that damages are an inadequate remedy for breach or threatened breach of this clause 7 and that a Party may obtain injunctive relief against the other Party for any breach or threatened breach of this clause 7.

8 Warranties, liability and indemnities

8.1 Warranties

- (a) PPM warrants that it will use reasonable care and skill in performing the Services.
- (b) These terms exclude all conditions, warranties, terms and guarantees implied by law, general law or custom except any the exclusion of which would contravene any laws or cause this clause to be void.
- (c) Subject to paragraphs 8.3(a) and 8.3(b), PPM's liability to the Customer in respect of the Services (or any part of the Services) is limited, at PPM's option, to supplying the services again, or the cost of supplying the services again.

8.2 No warranties in relation to completion

PPM provides no warranty that any result or objective can or will be achieved or attained at all or by *a given completion date* or any other date, whether stated in these terms, the Proposal or elsewhere.

8.3 Limitation on liability

- (a) Except in the case of death or personal injury caused by PPM's negligence, to the fullest extent permitted by law, the liability of PPM in connection with the Services whether arising in contract, tort, negligence, breach of statutory duty or otherwise must not exceed the amount paid by the Customer to PPM under the Contract during the period of 3 months immediately preceding the last of the claims made by the Customer in connection with any occurrence or related occurrences.
- (b) Despite any other provision in these terms and to the fullest extent permitted by law, PPM excludes all liability to the Customer or any other person in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the Customer or other person of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill.

8.4 Indemnities

- (a) The Customer must indemnify and hold PPM harmless from and against all Claims and Losses arising from loss, damage, liability, injury to PPM, its employees and third parties, infringement of third party intellectual property, or third party losses by reason of or arising out of negligence, breach or default by the Customer in performing its obligations under the Contract, and specifically by reason of or arising out of:
 - (i) any information supplied to PPM by the Customer; or
 - (ii) the Customer breaching any of its obligations under clauses 5 and 6.
- (b) Each Party (**First Party**) must indemnify and hold harmless the other fully from and against all Claims and Losses which a Party may incur as a result of the First Party's breach of its obligations under clause 7.

8.5 No reliance

Each of the Parties acknowledges that, in entering into the Contract, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in these terms or the Proposal. To the fullest extent permitted by law, any conditions, warranties or other terms implied by statute or common law are excluded.

9 Termination

- (a) Either Party may terminate the Contract by notice in writing to the other if the Party notified:
 - (i) breaches a material obligation under the Contract; and
 - (ii) fails to rectify this breach, to the reasonable satisfaction of the notifying Party, following the expiration of 30 days' notice of the breach being given in writing by the notifying Party to the other Party.
- (b) Either Party may terminate the Contract after the Relevant Date by giving at least 3 months' written notice to the other Party.
- (c) Either Party may terminate the Contract by notice in writing to the other if the Party notified:
 - (i) enters into a deed of arrangement or an order is made for it to be wound up;
 - (ii) is subject to the appointment of an administrator, receiver or receiver/manager or a liquidator pursuant to the Corporations Act 2001 (Cth); or
 - (iii) would be presumed to be insolvent by a court in any of the circumstances referred to in the Corporations Act 2001 (Cth).

10 General

10.1 Force majeure

- (a) Neither Party has any liability under or may be deemed to be in breach of the Contract for any delays or failures in performance of its obligations under the Contract which result from circumstances beyond the reasonable control of that Party, provided that Party complies with any obligation under clause 10.1(b).
- (b) The Party affected by these circumstances must promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.
- (c) If such circumstances continue for a continuous period of more than 3 months, either Party may terminate these terms by written notice to the other Party.

10.2 Amendment

The Contract may only be amended in writing signed by duly authorised representatives of the Parties.

10.3 Assignment

- (a) Subject to paragraph 10.3(b), neither Party may assign, mortgage, charge or otherwise transfer any or all of its rights and obligations under the Contract without the prior written agreement of the other Party, such consent not to be unreasonably withheld.
- (b) A Party may assign and transfer all its rights and obligations under the Contract to any person to whom it transfers all of its business, provided that the assignee undertakes in writing to the other Party to be bound by the obligations of the assignor under the Contract.

10.4 Waiver

- (a) No failure or delay by a Party in exercising any right, power or privilege under these terms will impair the same or operate as a waiver of the same nor may any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
- (b) The rights and remedies provided in these terms are cumulative and not exclusive of any rights and remedies provided by law.

10.5 Agency, partnership etc

- (a) These terms will not constitute or imply any partnership, joint venture, agency (except as expressly agreed between the parties in writing (including in the Proposal)), fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in these terms.

- (b) Except as expressly agreed between the parties in writing (including in the Proposal) neither Party will have, nor represent that it has, any authority to make any commitments or enter into any compromise or arrangement on the other Party's behalf.
- (c) Nothing in these terms constitutes the relationship of employer and employee between the Customer and PPM or between the Customer and PPM's Personnel. It is the express intention of the Parties that any such relationships are denied.

10.6 Severance

If any provision of the Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and will not in any way affect any other circumstances of or the validity or enforcement of the Contract.

10.7 Survival

The obligations of the Parties under clauses 6, 7, 8 and (to the extent any amount remains unpaid) 4 survive termination of the Contract.

10.8 Law and jurisdiction

These terms take effect, are governed by, and will be construed in accordance with the laws from time to time in force in the State of Victoria, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria.