

Windia Pty Ltd is the holding company of RBA Australia.

ABN 88 003 672 231

1. General

- 1.1 These Terms and Conditions apply to the order for goods (“Goods”) or services (“Services”) placed by RBA as described in the attached purchase order (“Purchase Order”) with the supplier of the Goods or Services (“Supplier”).
- 1.2 For the purposes of these Purchasing Terms and conditions, Windia Pty Ltd Trading as RBA Australia (“RBA”) ABN 88003672231, or an entity under the direct or indirect control or ownership of RBA Australia, is the purchaser.
- 1.3 They are to be read as in addition to any terms specified by RBA in the Purchase Order and/or any attachment to it that is expressly incorporated in writing. No other Terms and Conditions apply to this Purchase Order or to the Goods or Services under any circumstances except where:
 - a) RBA first provides its agreement in writing; or
 - b) these terms are replaced by a longer form agreement on RBA’s Terms and Conditions in which case the terms of that agreement will apply between the parties.
- 1.4 No amendments to these Terms and Conditions will be binding on the parties unless approved in writing by a RBA representative with the actual delegated authority to approve any such amendments as notified by RBA from time to time.

2. Offer and Acceptance

- 2.1 The Supplier is taken to have accepted a Purchase Order if it notifies RBA that it accepts the Purchase Order or delivers the Goods and/or Services described in the Purchase Order.
- 2.2 If the Supplier is unable or unwilling to accept the Purchase Order, it must notify RBA promptly. It may propose a variation to the Purchase Order, or offer other Goods and/or Services in substitution, but any such variation or substitution must be approved by the RBA authorised representative in writing before delivery.
- 2.3 The Purchase Order once accepted, combined with these Terms and Conditions and any terms and conditions in the Purchase Order and/or any attachment expressly incorporated in writing, will form a binding agreement between the parties (“Agreement”).

3. Cancellation and Changes

- 3.1 RBA may at any time before delivery change or cancel the Purchase Order.
- 3.2 If the Supplier has already incurred expense in arranging for the order or delivery of the Goods and/or Services specified in the first Purchase Order, RBA agrees to pay the Supplier’s reasonable and demonstrable costs or expenses incurred. The Supplier must mitigate any such costs or expenses.

- 3.3 If RBA changes the Purchase Order and any change causes an increase or decrease in the cost of the Goods and/or Services, or time required to deliver the Goods and/or Services, an equitable adjustment must be made to the Fees which is appropriate to the circumstances.

4. Delivery, Acceptance and Title

- 4.1 Unless otherwise specified as such in the Purchase Order, time will be of the essence with respect to the Supplier's delivery obligations under this Agreement. The Supplier must deliver the Goods and Services as set out in the Purchase Order in accordance with the time periods for delivery specified in the Purchase Order.
- 4.2 Payment of any invoice by RBA will not be deemed acceptance of any Goods and/or Services, but rather such Goods and/or Services will be subject to a 4-month period of inspection, testing, acceptance or rejection by RBA. If RBA rejects any Goods and/or Services within such 4-month period, an equitable adjustment must be made to the Fees to reflect non-delivery (the Supplier must refund RBA accordingly).
- 4.3 Title and risk in the Goods will pass to RBA when they are delivered to RBA.

5. Sub-contracting

- 5.1 Except as expressly provided in the Purchase Order, the Supplier may not sub-contract any obligations under this Agreement without the prior written consent of RBA.
- 5.2 Where the Supplier sub-contracts any of its obligations under this Agreement, the Supplier remains liable for the carrying out and completion of those obligations.

6. Fees and Invoices

- 6.1 In consideration for the provision of Goods and/or Services under this Agreement, RBA agrees to pay to the Supplier the fees specified in the Purchase Order ("Fees").
- 6.2 Unless otherwise specified in the Purchase Order, RBA agrees to pay the Supplier the Fees within 30 days from End of Month of receipt and acceptance of an invoice by RBA (such invoice to be accompanied by such reasonable information as RBA may require). RBA may withhold any disputed portion of the Fees until the dispute is resolved.
- 6.3 If GST is payable in connection with the Goods and/or Services to be supplied under this Agreement, then the Supplier irrevocably warrants and agrees that the Fees payable to it under this Agreement and specified in the Purchase Order is the GST inclusive price of those Goods and/or Services unless otherwise agreed in the Purchase Order.

7. Indemnity, Insurance and Warranties

- 7.1 The Supplier indemnifies RBA against all Losses it directly or indirectly sustains or incurs as a result of:
- a) Any negligent, unlawful or willful act or omission of the Supplier, Supplier personnel or Supplier subcontractors;
 - b) Any infringement or claimed infringement of the IPRs or moral rights of a third party arising out of its receipt or use of the Goods and / or Services;

- c) Death or personal injury of any person to the extent caused by the Supplier;
- d) Property damage to the extent caused by the Supplier;
- e) any breach by the Supplier of clause 8.

7.2 The liability of a party for breach of this Agreement, or in tort, or for any other common law or statutory cause of action arising out of the operation of this Agreement, will be determined under the relevant law in Australia that is recognised, and would be applied, by the High Court of Australia.

7.3 The Supplier must have and maintain Public and Products liability insurance (in each case \$10 million for each occurrence) throughout the term of this Agreement including the following contractual endorsements:

- a) a waiver of subrogation; and
- b) contractual liability,

and the Supplier must ensure that any sub-contractor engaged by it is insured to a level commensurate with the insurance obligations of the Supplier under this Agreement.

7.4 The Supplier must provide RBA with a certificate of currency from its insurance broker certifying that it has the insurance required under this Agreement.

7.5 The Supplier represents and warrants that:

- a) it has all rights, title, licences, interests and property necessary to provide the Goods and/or perform the Services;
- b) the Supplier personnel will have all necessary experience, skill, knowledge and competence to perform the Services, and the Services will be performed in accordance with good industry practice;
- c) the Goods and/or Services will be fit for the purposes intended;
- d) if applicable, the Goods and/or Services will meet any agreed design and performance criteria and correspond with any sample;
- e) the Goods will be complete, accurate and of merchantable quality;
- f) it is entitled to grant any licence of IPRs to RBA under this Agreement;
- g) RBA's use of any Background IPRs and/or Project IPRs in the Goods and/or Services ("Warranted Materials") will not infringe the IPRs of any person; and
- h) it will supply to RBA in English all complete, accurate and up-to-date documentation associated with the use of the Goods and/or Services.

- 7.6 If a third party claims, or RBA reasonably believes that a third party is likely to claim, that all or part of the Warranted Materials infringe their IPRs or breach their confidence, the Supplier must, in addition to the indemnity under this Agreement and to any other rights that RBA may have against it, promptly, at the Supplier's expense:
- a) use its best efforts to secure the rights for RBA to continue to use the affected Warranted Materials free of any claim or liability for infringement; or
 - b) replace or modify the affected Warranted Materials so that the Warranted Materials or the use of them does not infringe the IPRs of any other person without any degradation of the performance or quality of the affected Warranted Materials.

8. Intellectual Property Rights and Confidential Information

- 8.1 Subject to clause 8.2, all rights, title and interest in any IPRs created in providing the Goods and/or Services ("Project IPRs") will be owned by RBA, and to the extent needed, the Supplier hereby assigns all rights, title and interest it may have now or in the future in those Project IPRs to RBA.
- 8.2 The IPRs owned by a party prior to the date of this Agreement ("Background IPRs") remain with the contributing party.
- 8.3 The Supplier grants to RBA a perpetual, irrevocable, royalty-free worldwide, non-exclusive licence (including a right of sub-licence) to use, reproduce, modify, publish, adapt, or communicate to the public and exploit the Supplier's Background IPRs in conjunction with the Goods and/or Services, and the Project IPRs. The Supplier must provide RBA with all necessary documentation and materials to take advantage of this licence.
- 8.4 Each party ('recipient') must keep any Confidential Information disclosed to it confidential and must not deal with it in any way that might prejudice its confidentiality. These obligations continue indefinitely beyond the end of this Agreement, but do not extend to disclosures:
- a) required by law (including under the Government Information (Public Access) Act 2009); and
 - b) to a recipient's officers or employees:
 - i) who have a need to know for the purposes of this Agreement (but only to the extent that each has a need to know); and
 - ii) before disclosure, have been directed by the recipient to keep that Confidential Information confidential.
- 8.5 The Supplier must comply with, carry out and discharge the obligations contained in the information privacy principles set out in sections 8 to 19 of the Privacy and Personal Information Act 1998 (NSW) as if it were RBA carrying out and discharging those obligations. The Supplier must notify RBA as soon as possible upon it becoming aware of a breach of these obligations.

9. Miscellaneous

9.1 RBA may terminate this Agreement by written notice to the Supplier:

a) if the Supplier breaches a term of this Agreement and fails to remedy the breach within 14 days after receiving notice requiring to do so (or the Supplier breaches a term of this Agreement which is not capable of remedy); or

b) if the Supplier is or becomes subject to proceedings which may result in the Supplier becoming bankrupted, wound up, under voluntary administration or subject to the control of a receiver or receiver and manager.

9.2 This Agreement is governed by the laws of New South Wales.

9.3 Each party agrees to execute such agreements, deeds and documents and do or cause to be executed or done all such acts and things as may be reasonably necessary to give effect to this Agreement. The Supplier agrees to cooperate and work with third party suppliers of RBA to the extent necessary to give effect to this Agreement.

9.4 RBA reserves the right to retain other persons or entities to supply the Goods and/or Services, including but not limited to any part of the Goods and/or Services.

9.5 The Supplier may only assign its rights or novate its rights and obligations under this Agreement with the prior written consent of RBA.

9.6 A provision of this Agreement or a right created under it may not be waived or varied except in writing, signed by the party or parties intended to be bound. A failure of a party to exercise a right arising out of this Agreement does not constitute a waiver of that right.

9.7 The Supplier must comply with any applicable RBA policies and procedures as notified by RBA to the Supplier from time to time.

9.8 If there is an inconsistency between a provision of:

(a) a longer form contract entered into between the Supplier and RBA for the Goods and/or Services described under the Purchase Order;

(b) these Terms and Conditions;

(c) any Terms and Conditions added to the Purchase Order;

(d) any annexures or attachments to the Purchase Order, then the first-mentioned terms shall prevail in the order set out.

9.9 Unless the contrary intention appears, in this Agreement:

Confidential Information means all data and/or information exchanged between the parties for the purposes of this Agreement before, on or after the date of this Agreement (including the terms of this Agreement) relating to the operations, business, research and technology of the disclosing party, but not including any information which:

- (a) is publicly available at the date of this Agreement;
- (b) becomes publicly available subsequent to the date of this Agreement without breach of this Agreement;
- (c) a party obtained from a third party without breach by that third party of any obligation of confidence concerning that Confidential Information; or
- (d) was already in the party's possession (as evidenced by written records) when provided by or on behalf of the other party.

IPRs means all registered and unregistered rights in relation to the present and future copyright, trademarks, designs, know-how, patents, confidential information and other intellectual property as defined in article 2 of the Convention establishing the World Intellectual Property Organisation 1967.

Losses means actions, claims, liabilities, expenses, losses, damages and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a party) and consequential and indirect losses and damages including those arising out of any third-party claim.

9.10 In this Agreement:

- a) references to the singular includes the plural and vice versa; and
- b) references to person or individuals include that person's successors, administrators, executors and assigns and a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any government agency.