

# VARLEY GENERAL TERMS & CONDITIONS FOR THE SALE OF GOODS AND SERVICES



## 1. Definitions & Interpretations

- 1.1 **Agreement** means the Purchase Order terms and these General Terms & Conditions.
- 1.2 **Business Day** means a day that is not a Saturday, a Sunday or any public holiday in the jurisdiction in which each Purchase Order under these Terms and Conditions is interpreted.
- 1.3 **Force Majeure** means any circumstances beyond the reasonable control of party which results in a party being unable to observe or perform an obligation on time under these Terms and Conditions.
- 1.4 **Goods** means all goods, equipment, materials, articles or other property or parts to be provided and delivered, fit for purpose as specified in the Purchase Order Form.
- 1.5 **GST** has the same meaning as in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth) (as amended from time to time).
- 1.6 **Incoterms** means the rules which define the responsibilities of the sellers and buyers for the delivery of Goods and/or Services under each Purchase Order.
- 1.7 **Insolvency Event** means circumstances in which the Purchaser is unable to pay its debts as they fall due or otherwise takes any corporate action or any steps are taken or legal proceedings are started for its winding up, dissolution, liquidation or reorganisation, other than to reconstruct or amalgamate while solvent on terms approved by Varley; or where the appointment of a receiver, controller, administrator, official manager, trustee or similar officer of it or of any of its revenues and assets; or seeks protection or is granted protection from its creditors, under any applicable legislation.
- 1.8 **Intellectual Property** or **IP** means Background, Foreground or Third Party IP associated with this Agreement and any Purchase Order raised pursuant to this Agreement. Background IP will be retained by the contributing party, all developed Foreground IP will vest in Varley and Third Party IP will vest with the third party contributing to the Agreement or Purchase Order. Third Party IP will be provided on the best available commercial terms.
- 1.9 **Notice** means any advice or direction given between the parties verbally or in writing, which can via hard copy, fax or email.
- 1.10 **Purchaser** means the person ordering the Goods and/or Services, as identified in the Purchase Order Form.

- 1.11 **Purchase Order** means the purchase order issued by the Purchaser to the Supplier as evidenced by the documents listed in the Purchase Order Form.
- 1.12 **Purchase Order Form** means the section of the Purchase Order completed by the Purchaser, which identifies the Purchaser and the Supplier and includes, but is not limited to, a description of the Goods and/or Services and a list of the documents comprising the Purchase Order.
- 1.13 **Seller** means Varley Group Pty Limited or any of its subsidiaries or affiliates as defined in the *Corporations Act 2001* (Cth) (**Varley**).
- 1.14 **Services** means work performed in an expert manner by an individual or team for the benefit of the Purchaser to be provided and delivered as specified in the Purchase Order.
- 1.15 **Warranty Period** means the period of one (1) year, unless otherwise stated in the Purchase Order.

## 2. General Terms

- 2.1 Words importing the singular are deemed to include the plural and vice versa. Headings and Subheadings are inserted for convenience only and shall not be used to interpret the text. Words denoting a natural person shall include a corporation and vice versa.
- 2.2 No amendments to these Terms and Conditions will be binding on the parties unless approved in writing by a Varley employee with the delegated authority to approve amendments as notified by Varley from time to time.
- 2.3 Unless previously withdrawn, Varley's quotations are open for acceptance within the time stated in them or, when no period is so stated, within 30 days only after its date. Varley reserves the right to refuse any order based on this quotation within 7 days after the receipt of the order.
- 2.4 The Purchase Order and any associated Varley documentation constitute the entire agreement between the Supplier and Varley. The parties shall not be bound or liable for any statement, representation, promise or understanding not set out herein. Nothing contained in proposals, correspondence, discussions or negotiations prior to the date of the Purchase Order has any effect on the Purchase Order unless specifically incorporated herein.
- 2.5 The Purchaser shall be deemed to have carefully examined all documents furnished by Varley and fully satisfied itself regarding all the conditions, risks, contingencies and other circumstances which might affect the supply of the Goods or Services.

# VARLEY GENERAL TERMS & CONDITIONS FOR THE SALE OF GOODS AND SERVICES



2.6 The order of precedence of the documents shall be as follows:

- a. The Purchase Order Form;
- b. Special terms and conditions set out in schedule 1 of the Varley General Terms and Conditions for the Procurement of Goods and Services (if applicable);
- c. Varley General Terms and Conditions for the Procurement of Goods and Services;
- d. Specification(s); and
- e. Drawing(s).

2.7 If the Purchaser discovers any ambiguity in the Agreement it shall immediately notify Varley in writing. Varley shall then determine the correct interpretation of the Agreement. The determination of Varley shall be final and binding on the Purchaser.

2.8 Once accepted by Varley, a Purchase Order may not be cancelled by the Purchaser except with the express consent of Varley.

2.9 Any documents given by Varley to the Purchaser shall not be copied or used for anything else other than the supply of the Goods and/or Services, unless otherwise authorised by Varley.

2.10 No failure or delay on the part of Varley in exercising any of its rights under the Purchase Order shall be construed as constituting a waiver of any such rights.

2.11 Neither party, by virtue of the Purchase Order Form, is the employee, agent or partner of the other party, nor is not authorised to bind or represent the other party.

2.12 In all dealings related to the Purchase Order, the parties agree to communicate openly, act honestly and ethically, comply with fair commercial standards and health and safety legislation.

2.13 Nothing in the Agreement is to be interpreted against Varley solely on the ground that Varley put forward the Agreement.

### 3. Confidentiality

3.1 Any information provided by Varley to the Purchaser, which is noted as confidential shall not be disclosed to any third party without the prior written consent of Varley. The obligations under this clause shall be continuing obligations and shall survive the completion or termination of the Purchase Order.

3.2 The Purchaser shall not issue any information which includes details about the Goods, Services or

Purchase Order, for publication in any news or communication media, without the prior written approval of Varley.

### 4. Delivery Terms

4.1 Any timeframes quoted by Varley for delivery of the Goods and/or Services are estimates only. Varley will use its reasonable endeavours to supply the Goods and/or Services in the quantities specified in the relevant Purchase Order.

4.2 The cost of any special packing and packing materials used in relation to the Goods and/or Services are at the Purchaser's expense notwithstanding that such cost may have been omitted from any quotation.

4.3 Varley will not be liable for any loss suffered by the Purchaser arising out of any delay or failure to deliver the Goods and/or Services (or any part of them) or failure to deliver in the requested quantities.

4.4 Varley is entitled to refuse to deliver the Goods and/or Services to the Purchaser if there are any outstanding monies owing to Varley.

4.5 Delivery of the Goods and/or Services will be made in the manner and at the place specified in the relevant Purchase Order or if not specified, delivery will be made as determined by Varley.

4.6 If Varley fails to deliver some or all of the Goods pursuant to a Purchase Order, the Purchaser will not be entitled to cancel that Purchase Order or any other order or delivery. Varley will not be obliged to accept any claims for shortages of deliveries or non-conforming Goods and/or Services unless written notice of the claim is given to Varley within 10 Business Days after receipt by the Purchaser of the Goods and/or Services at the delivery destination.

4.7 If the Purchaser does not, or indicates to Varley that it will not, take or accept delivery, then the Goods and/or Services will be deemed to have been delivered when Varley delivers them as per the Purchase Order.

4.8 Varley may suspend or cancel delivery of the Goods and/or Services if Varley reasonably believes that the Goods and/or Services may cause injury or damage (including for technical, or efficacy reasons) or may infringe the intellectual property rights of any person, or if payments owing from the Purchaser to Varley remain outstanding. No such suspension or cancellation will in any way constitute admission of liability or fault on Varley's part.

# VARLEY GENERAL TERMS & CONDITIONS FOR THE SALE OF GOODS AND SERVICES



4.9 Varley may at its option deliver the Goods and/or Services to the Purchaser in any number of instalments unless there is an endorsement in the Purchase Order to the effect that the Purchaser will not take delivery by instalments.

4.10 If Varley delivers any of the Goods and/or Services by instalments, and any one of those instalments is defective for any reason:

- (i) it is not a repudiation of this Agreement or associated Purchase Order formed by these Terms; and
- (ii) the defective instalment is a severable breach that gives rise only to a claim for compensation.

## 5. Limitation of Liability & Indemnity

5.1 Any provision of these Terms that excludes any terms, conditions or warranties, or limits the liability of a party will apply only to the extent permitted by law and these Terms will be construed subject to such terms, conditions, warranties and limitations.

5.2 Subject to clause 5.1, where any terms, conditions or warranties are implied by law into these Terms which the law expressly provides may not be excluded, restricted or modified, or may be excluded, restricted or modified only to a limited extent, the liability of Varley to the Purchaser under such implied terms, conditions or warranties is limited to the Purchase Order Price actually paid to Varley under the relevant Purchase Order.

5.3 Except as expressly provided in these Terms, to the extent permitted by law, Varley will have no liability to the Purchaser, however arising and under any cause of action or theory of liability, in respect of special, indirect or consequential damages, loss of profit (whether direct or indirect) or loss of business opportunity.

5.4 The Purchaser shall indemnify and keep indemnified Varley and its officers, employees and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses arising as a result of any act, neglect or default of the Purchaser, its employees or agents related to the extent caused by the Purchaser, its officers, employees or agents.

5.5 If the Purchaser gives instructions to Varley with respect to the manufacture, packaging, sale or supply of the Goods and/or Services, the Purchaser warrants to Varley that adherence by Varley to any such instructions will not infringe the intellectual property rights of any other person.

## 6. Warranty

6.1 Varley will give the Purchaser a 12-month warranty on the Goods and Services supplied under the Purchase Order, unless otherwise stated on the Purchase Order.

6.2 During the Warranty Period, the Purchaser shall give written notice to Varley of any failure or defect in the Goods and/or Services. Varley will investigate the Purchaser's warranty claim, and if found by Varley to be a warranty issue, Varley will agree the remediation of the warranty item with the Purchaser.

6.3 The warranty in this clause 6 does not apply:

- a. as a result of any acts or omissions by any person other than Varley or any external cause;
- b. if the defect is due to the Goods and/or Service being used for purposes other than for purposes for which it was intended or which do not fall within the scope of the Purchase Order;
- c. to a Good and/or Service that has been modified without the written permission of Varley; or
- d. if the Good and/or Service has not been stored or transported in accordance with Varlet recommendations.

6.4 The benefit of the warranty in clause 6 is personal to the Purchaser and is not assignable except as expressly stated within the Purchase Order or via Varley's prior written consent.

6.5 Except as expressly set out in these Terms, and subject to any terms, warranties or conditions that by law may not be excluded (including those under sections 51, 52 and 53 of the Australian Consumer Law), all conditions, warranties, terms, and obligations expressed or implied by law or otherwise relating to the performance of Varley's obligations under these Terms, or any Goods and/or Services supplied, or to be supplied, by Varley under these Terms, are excluded and the rights set out in this clause 6 are the sole and exclusive remedies of the Purchaser with respect to defective Goods and/or Services.

6.6 Varley is not under any duty to accept Goods and/or Services returned by the Purchaser and will do so only on terms to be agreed in writing in each individual case.

6.7 If Varley agrees to accept returned Goods and/or Services from the Purchaser under clause 6.6, the

# VARLEY GENERAL TERMS & CONDITIONS FOR THE SALE OF GOODS AND SERVICES



Purchaser must return the Goods and/or Services to Varley at Varley's place of business as detailed in the Purchase Order.

## 7. Variations

- 7.1 Either party may vary the work under the Purchase Order or any condition thereof.
- 7.2 Varley's price (whether addition or reduction) for any variation and any effect on the delivery date(s) of the Goods and/or Services shall be agreed between the Purchaser and Varley prior to Varley carrying out any such variation. If agreement cannot be reached, Varley shall determine the price for the variation and the delivery date(s) for the Goods and/or Services.

## 8. Price and Payment

- 8.1 Unless otherwise stated all prices quoted by Varley are net, exclusive of GST. The price for the Good and/or Services will be specified in the Purchase Order.
- 8.2 Unless the Purchase Order states otherwise, Varley may alter the Price at any time prior to acceptance of an order without prior notice.
- 8.3 The Purchaser must pay GST or any other tax duty, levy, tariff or charge applicable to the supply of the Goods and/or Services in addition to, and at the same time as, payment of the price. Varley will provide the Purchaser with a tax invoice as required by law.
- 8.4 Unless the Purchase Order states otherwise, the Purchaser must pay the Price for Goods and/or Services within thirty (30) days after receipt of an invoice.
- 8.5 The Purchaser must not withhold payment or make any deduction from the invoiced price or any other amount owing to Varley without Varley's prior written consent.
- 8.6 Receipt of any amount will not constitute payment until such time as the amount is paid or honoured in full
- 8.7 Varley may in its discretion allocate a payment that does not specifically identify the invoice for which such payment is made in satisfaction for monies owing under any outstanding invoices without regard to the date of those invoices.
- 8.8 Varley may charge interest on any overdue monies at the rate which is 2% above the rate charged by Varley's major banker for commercial overdraft balances of over \$100,000 from time to time, calculated from the due date for payment of the outstanding amount until the date of payment by the Purchaser. Any payment made by the

Purchaser will be credited first against any interest that has accrued.

- 8.9 Varley will be entitled to recover from the Purchaser all legal and other costs incurred by Varley arising from the Purchaser's default in payment and the collection of any overdue monies.
- 8.10 Varley reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Purchaser within fourteen (14) days of a request by Varley for such instructions. The parties agree that Varley may charge for storage from the first day after Varley requests the Purchaser to provide delivery instructions.

## 9. Intellectual Property Rights

- 9.1 Nothing in this Agreement affects ownership of Background IP. All Background IP will remain with the contributing party.
- 9.2 Upon written agreement between the parties, Varley may issue the Purchaser a revocable, royalty-payable, non-exclusive licence (and Varley may also agree to include a right for the Purchaser to sublicense) to use, reproduce, modify, adapt and exploit Varley's Background IP in conjunction with the Goods and/or Services under this Agreement. Varley may, in its absolute discretion, provide the Purchaser with all necessary documentation and materials to take advantage of this licence.
- 9.3 All right, title and interest in any Foreground IP created by Varley in providing the Goods and/or Services will vest in Varley, and the Purchaser hereby assigns all rights, title and interest in the Foreground IP to Varley. Varley may elect to issue the Purchaser and the Purchaser's customers with a licence under the same terms as clause 9.2 above for the Foreground IP.

## 10. Risk & Title

- 10.1 Legal and beneficial ownership in the Goods and/or Services will not pass to the Purchaser until the Purchaser has paid in full the Price for those Goods and/or Services.
- 10.2 Risk of loss or damage to the Goods and/or Services will remain with Varley under the specified Incoterms listed in the Purchase Order. Thereafter risk of damage to, or loss or deterioration of, the Goods and/or Services from any cause whatsoever passes to the Purchaser.
- 10.3 Where Varley supplied the Goods and/or Services in advance of receiving full payment from the Purchaser, Varley and the Purchaser agree that the Purchaser is a bailee of the Goods and/or Services until such time as property in them asses to the

Purchaser and that this bailment continues in relation to each Good and/or Service until the price of the Goods and/or Services have been paid in full.

- 10.4 If the Purchaser fails to pay for the Goods and/or Services within the period nominated by Varley, Varley may recover possession of the Goods and/or Services at any site owned, possessed or controlled by the Purchaser and the Purchaser agrees that Varley has an irrevocable licence to do so without liability for trespass or any resulting damage and retake possession of the Goods and/or Services.
- 10.5 Varley and the Purchaser hereby agree that the provisions of sections 95, 96, 117, 118, 125, 129, 120, 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the *Personal Property Securities Act 2009* (Cth) do not apply to this Agreement or any Purchase Order.

## 11. Disputes

- 11.1 Disputes between the Purchaser and Varley shall be settled quickly and by negotiation.
- 11.2 In the event of any resolved dispute between Varley and the Purchaser, the parties will continue their performance under this Agreement.
- 11.3 The preferred method of determination of unresolved disputes shall be by amicable agreement at Varley and the Purchaser's senior management level.
- 11.4 Failing such agreement, the parties agree that the dispute shall be resolved by mediation conducted in accordance with the Australian Commercial Disputes Centre (ACDC) mediation procedures. The parties will equally share the costs of a mediator.
- 11.5 If the dispute has not been settled within four (4) weeks (or as otherwise agreed between the parties) after the appointment of a mediator, either party can commence legal action.
- 11.6 Varley and the Purchaser will each bear their own legal costs.
- 11.7 This dispute resolution procedure does not apply to action relating to the Purchaser's breach of these terms and conditions, or to legal proceedings for urgent interlocutory relief.

## 12. Miscellaneous

- 12.1 Neither party will be liable for any delay or failure to perform its obligations under these Terms (other than payment obligations) if such delay is due to Force Majeure.
- 12.2 If a delay of a party to perform its obligations is caused or anticipated due to Force Majeure, the

performance of that party's obligations will be suspended.

- 12.3 If an Insolvency Event occurs in relation to the Purchaser, or if any other event occurs which gives Varley reasonable grounds for doubting the credit of the Purchaser, Varley may by notice to the Purchaser, at its option and without prejudice to any other right it may have, suspend or terminate a Purchaser Order, or cancel any undelivered or uncompleted Goods and/or Services under a Purchase Order, and may retain any monies paid by the Purchaser in relation to a Purchase Order and apply such monies against any loss or damage incurred by it in relation to the default by the Purchaser.
- 12.4 These Terms and Contracts are governed by the laws of the Australian State or Territory within which the Purchase Order is received. The parties agree to submit to the non-exclusive jurisdiction of the courts of that Australian State or Territory.
- 12.5 In providing the Goods and/or Services, the Purchaser agrees to comply, and to ensure that its officers, employees, agents and subcontractors comply with the *Privacy Act 1988* (Cth). The parties will immediately notify the other if it becomes aware of a breach or possible breach under this clause.
- 12.6 The Purchaser may only assign its rights or novate its rights and obligations under the Purchase Order with the prior written consent of the Varley.
- 12.7 A failure of Varley to exercise a right arising out of the Purchase Order does not constitute a waiver of that right.

## 13. Modern Slavery

The Purchaser warrants that:

- there is no outstanding investigation of it and it has not been convicted of any offence under the Modern Slavery Legislation, and
- it will not cause Varley to breach the Modern Slavery Legislation, whether as a result of a breach of these terms and conditions and relevant Purchase Order(s) by the Purchaser or any other default, act or omission of the Purchaser or any person for whom the Purchaser is responsible in connection with this Agreement or otherwise; and
- it will comply with any requests made by Varley to provide any assistance, information, documents or interview any person as required by Varley to enable Varley to discharge any obligations arising under the Modern Slavery Legislation; and



## VARLEY GENERAL TERMS & CONDITIONS FOR THE SALE OF GOODS AND SERVICES



- d. it indemnifies Varley against all actions, claims, demands and proceedings against Varley, and all losses, damages, costs, expenses and other liabilities suffered or incurred by Varley arising from any failure by the Supplier to comply with its obligations under this clause 19.