
1. How these terms work

Unless you have entered into a separate contract with the Purchaser that is expressly referred to in a Purchase Order, these Terms, together with the Purchase Order, any Statement of Work (**SOW**) and any Specifications we have agreed, form the Contract between you (**Supplier**), and The Citadel Group Limited, or a related company (the **Purchaser**).

These terms permit the use of SOWs and Specifications to record important Contractual details. Neither an SOW nor a Specification can override these terms unless one of the Purchaser's General Managers agrees in writing and signs the amending document.

This means we cannot (and do not) accept your 'standard terms', regardless of how they are described (eg 'credit application', 'invoice' or 'delivery terms'), or limitations imposed by your suppliers. If this is a problem, raise it in writing with the Purchaser before your authorised representative agrees the Purchase Order.

Terms that are capitalised are defined in the Dictionary at the end of this document.

2. Performing the Contract

2.1. Payment and service levels

By beginning to perform the Contract, the Supplier signifies their acceptance of its terms.

The Supplier will provide the Supplies in accordance with the Contract, and the Purchaser will pay the Fee or Price.

The Supplier must give the Purchaser an invoice in accordance with clause 3 in order to be paid.

Payments may be:

- reduced if the Supplier does not meet any Contract service levels; or
- delayed if Goods or Services do not pass Contracted acceptance tests.

2.2. Delivery or place of performance

Delivery must occur by the Completion Date.

2.3. Acceptance

Goods or Services must pass any Contracted acceptance testing.

2.4. Title

Full and unencumbered title to Goods passes to the Purchaser on the earlier of:

- payment of the relevant invoice by the Purchaser; or
- Delivery.

2.5. Shipping and risk

Goods must be lawfully shipped in suitable packaging by the Supplier.

Risk of loss or damage to the Goods only passes to the Purchaser upon Delivery - even if title in the Goods has passed earlier.

3. Price & payments

Unless we have agreed something different in the Contract, the following terms apply:

3.1. GST excluded

All amounts stated exclude GST.

3.2. Incidental Costs

The Price or Fee includes all Incidental Costs. The Supplier must not charge or invoice Incidental Costs separately.

All amounts stated in the Contract and any associated tax invoice must be in Australian currency.

The Price or Fee is fixed regardless of changes in exchange Rates or the Supplier's costs.

3.3. Presentation of invoices

The Supplier must render a valid tax invoice that includes the following additional information:

- each Supply listed separately; and
- the relevant Purchase Order number; and
- the Supplier's Australian bank details.

Where there are multiple Supplies, invoice frequency should be once per month or longer.

3.4. Payment Terms

Unless otherwise stated on the Purchase Order, the Purchaser will initiate payment of the undisputed part of a Supplier's complying invoice on or before that date that is thirty (30) days from the end of the month in which the Payment Start Date falls.

The Payment Start Date is the latest to occur of the following:

- a date identified as such on the Purchase Order;
- Delivery; or
- the date of receipt by the Purchaser of a complying invoice.

Late payment does not entitle the Supplier to any additional payment however expressed or calculated.

3.5. GST

If GST is payable on the supply of any Goods or Services, subject to first receiving a valid tax invoice, the Receiving Party must pay the GST Amount when it is liable to provide the consideration.

4. Documentation

The Supplier must deliver one copy of the Documentation to the Purchaser with each Delivery.

Documentation must be delivered in machine-readable format provided the means by which it can be read is available at no cost to the Purchaser.

5. The importance of time

Delivery by the Completion Date is an essential term of the Contract.

If Delivery is delayed by more than 7 days from the agreed Completion Date, the Purchaser may do one or more of the following:

- terminate the Contract, with no obligation to make any further payments to the Supplier;
- reject the delayed Supplies;
- reject any Supplies that have already been Delivered to the Purchaser; and
- deduct from the Price or recover from the Supplier any liquidated damages specified in the Contract.

The Purchaser must notify the Supplier before exercising any of the rights in this clause.

6. Supplier failure to perform

The Purchaser does not have to pay for any Services until they are rendered in accordance with the Contract.

The Supplier must fix any defects, or correctly re-perform defective Services if asked to do so by the Purchaser. The Purchaser must allow a reasonable time for the Supplier to do this.

If the Supplier cannot:

- fix the defects; or
- re-perform the Services,

at all (or within the reasonable time specified by the Purchaser), then the Purchaser may pay a third party to perform the Services or remedy the defect and charge the Supplier the reasonable cost of doing so.

The Purchaser's rights under this clause continue even after a Contract is terminated.

7. Guarantees about the Goods and Services

The Supplier gives:

- the Goods Guarantees (including the Quality Guarantees) in respect of Goods; and
- the Services Guarantees in respect of Services.

The Supplier's Quality Guarantees continue for a period of at least the Guarantee Period.

The Supplier guarantees that it will:

- comply with all applicable laws; and
- maintain all necessary authorisations, licences and permits,

while it is making Supplies or is required to meet any guarantee in the Contract.

8. Indemnities, limitations and insurance

8.1. Indemnity for wrongful acts of Supplier

The Supplier indemnifies the Purchaser (and each of its employees, officers and agents) for all loss, cost, liability or expense they incur as a result of any unlawful, wilful or grossly negligent act, error or omission of the Supplier, its employees, officers, and agents.

8.2. Exclusion for consequential loss

Subject to the exceptions in the second paragraph of this clause, neither the Purchaser nor the Supplier shall be liable to the other for any loss (Excluded Loss), other than loss occurring in the natural course of things. Specific types of Excluded Loss are (without limitation), loss of profits, loss of contract and opportunity.

The exclusion in the first paragraph of this clause 8.2 does not apply to the indemnities given under clauses 8.1, 9.4 and 11.2.

8.3. Insurance

The Supplier must take out, maintain and pay for insurance policies on terms usual for its trade or profession in the following classes:

- those required by law (eg workers compensation insurance);
- public and products liability insurance with a limit not less than \$10,000,000 each occurrence and in the annual aggregate;
- (if it supplies Services) professional liability or errors and omissions insurance with a limit not less than \$20,000,000 each claim and in the annual aggregate.

The Supplier must provide evidence of its compliance with this clause 8.3 when requested by the Purchaser.

9. Privacy and data

9.1. Compliance with Privacy Laws

Supplier must:

- comply, and assist Purchaser to comply, with all Privacy Laws in relation to Personal Information, whether or not Supplier is an organisation bound by the Privacy Act;
- not do or omit to do anything that would cause Supplier or Purchaser to breach or be taken to breach a Privacy Law;
- collect, store, use, disclose or otherwise deal with Personal Information as directed by us and only for the purposes of performing your obligations under the Contract.

9.2. Protection of Personal Information

Supplier must

- take all reasonable steps to ensure that Personal Information is protected against misuse, interference and loss, and from unauthorised access, modification or

disclosure, and is up-to-date, complete and relevant;

- not disclose any Personal Information to a person (including yourself) outside Australia without our prior written consent;
- ensure that any person to whom Personal Information is disclosed under this agreement, does not do or omit to do anything which, if done or omitted to be done by Supplier, would constitute a breach of this clause.

9.3. Breach notification

If Supplier becomes aware or suspects that it has breached its obligations under this clause 9, including in the event of any unauthorised disclosure or loss of Personal Information, the Supplier must:

- immediately notify Purchaser;
- comply with Purchaser's reasonable directions with respect to remedying that breach; and
- not disclose to any third party (including any government agency) the existence or circumstances of the breach without Purchaser's prior written approval.

The Purchaser's assessment of the severity (including the risk of serious harm to persons whose Personal Information has or may have been disclosed) of a Data Breach or Loss of Data is conclusive.

9.4. Acts that result in liability for Purchaser

The Supplier must indemnify the Purchaser for any loss, cost, liability or expense it suffers as a result of a breach by the Supplier (or any third party to whom it discloses Personal Information) of its obligations in this clause 9.

9.5. Audit and location

The Supplier must give the Purchaser all information and access to the Supplier's staff, premises, processes and systems reasonably required by the Purchaser to enable it to assess or audit the Supplier's compliance with this clause.

The Supplier:

- represents and warrants that it carries on business in Australia or an external Territory; and
- will not disclose or transmit any Personal Information outside Australia without the Purchaser's prior written consent.

10. Intellectual property

10.1. Guarantee about infringement of Supplies

The Supplier guarantees that the Supplies, and the Purchaser's reasonably foreseeable use of them, will not infringe any intellectual property right or moral rights of any person.

10.2. IP Indemnity

The Supplier indemnifies the Purchaser against breach of this guarantee.

10.3. IP ownership, assignment and licensing

Unless otherwise agreed in an SOW, the Purchaser will own all intellectual property rights created by performance of the Services. The Supplier hereby assigns such rights to the Purchaser, and agrees to execute any document reasonably required by the Purchaser to prove or perfect such ownership.

The Supplier licences to the Purchaser all intellectual property rights owned by the Supplier and not assigned under the preceding paragraph, to enable it to use, modify, maintain and repair the Goods and enjoy the benefit of the Services.

11. Confidentiality

The Supplier must ensure that its officers, employees, contractors and agents keep confidential all information of the Purchaser or relating to the Contract, and not use or disclose that information except to fulfil its obligations under the Contract.

Each party undertakes to keep all Confidential Information confidential, and to use the Confidential Information solely for the performance of its obligations under the Contract.

12. Termination

12.1. Termination upon notice

The Purchaser may terminate the Contract (or any individual Purchase Order or SOW issued under the Contract) by giving the Supplier 14 days' written notice.

Upon issue of a valid notice, the Purchaser will be liable to pay all reasonable amounts due in accordance with clause 3 for:

- Services actually performed by the Supplier;

- and/or
- Goods that have been dispatched, up to the termination date.

Supplier must by the termination date deliver to the Purchaser:

- all Goods, and/or
- outputs of Services,

for which the Purchaser is liable to pay.

12.2. Termination for breach

The Purchaser may immediately terminate the Contract (or any individual Purchase Order or SOW issued under the Contract) by written notice if:

- the Supplier commits a breach of the Contract;
- (in the Purchaser's reasonable opinion), the Supplier becomes bankrupt or unable to pay its debts as and when they fall due, or
- any steps are taken towards its winding up, dissolution, liquidation or the appointment of a receiver, administrator or other controller over the Supplier.

12.3. Consequences of termination

Upon termination of the Contract (or any individual Purchase Order or SOW issued under the Contract), the Purchaser may recover from the Supplier all money paid to it for Services and/or Goods not yet completed or provided, and Supplier shall at its cost immediately deliver to the Purchaser all materials, Confidential Information and any other property of the Purchaser in its possession or control.

13. Supply chain compliance

The Supplier will:

- ensure that it remunerates its personnel and suppliers appropriately and in accordance with all applicable laws and industrial awards, and complies with all other obligations imposed on it by applicable laws and industrial awards relevant to its workforce;
- take reasonable steps to ensure that there is no modern slavery or human trafficking in the Supplier's or its subcontractors' supply chains or in any part of their business;
- implement appropriate due diligence procedures for its own suppliers, subcontractors and other participants to

- ensure that there is no slavery or human trafficking in its supply chain;
- cooperate with the Purchaser in providing such information as the Purchaser reasonably requests regarding the Supplier's supply chain;
- immediately advise the Purchaser if the Supplier becomes subject to an investigation or enforcement proceedings in any jurisdiction regarding any offence or alleged offence of or in connection with modern slavery and human trafficking; and
- at its own cost, comply with all laws relating to modern slavery in Australia (including laws enacted during the Term of this Agreement), and in each jurisdiction in which the Supplier does business.

14. GENERAL TERMS

14.1. Policies and codes

The Supplier agrees to comply with the Company's Supplier Code of Conduct, its Bribery, Corruption, Gifts & Hospitality Policy and such other codes or policies as the Customer may in writing notify to the Supplier from time to time.

14.2. Assignment

The Supplier may not transfer, assign, charge, mortgage or encumber any of its rights under the Contract without the Purchaser's prior written consent.

14.3. Subcontracting

The Supplier must not subcontract any of its obligations under the Contract without the Purchaser's prior written consent. The Supplier will remain responsible for the acts or omissions of any approved subcontractor or any employee or agent of the subcontractor as if they were the acts or omissions of the Supplier or the employees or agents of the Supplier.

14.4. Notices

Notices (such as termination notices) must be given in writing and (if given to the Purchaser), they should be addressed to the Procurement Manager, and (if given to the Supplier), to the contact nominated in the Contract. Postal notices will be deemed to have been delivered 3 business days after dispatch.

Email notices will be deemed to have been delivered on the next Business Day after the date of transmission, provided the sender has received no intimation (human- or computer-

generated) that the notice has not been received.

14.5. Severability

If any part of the Contract is illegal or unenforceable, the rest may be enforced to the fullest extent commercially possible.

14.6. Entire agreement

The Contract constitutes the entire agreement between the parties. Any prior statements, representations, discussions or negotiations between the parties are of no effect.

14.7. Survival of certain clauses

Clauses 5,7,8,9, and 11, and any other guarantees and indemnities provided for under the Contract and any transition arrangements agreed to under an SOW survive termination or expiry of the Contract.

14.8. Waiver

A waiver by either party in respect of a breach of a provision of the Contract by the other party will not constitute a waiver in respect of any other breach of that or any other provision.

14.9. Governing law and jurisdiction

The Contract is governed by the laws of the State of Victoria. Subject to clause 15, each party submits to the jurisdiction of the courts of that State.

14.10. Variation

The Contract cannot be varied except in writing signed by both parties.

14.11. Precedence

The documents listed in the definition of "Contract" will take precedence in the order in which they are listed, in the event of inconsistency.

14.12. Counterparts

The Contract may be signed in counterparts, and all counterparts are together taken to form constitute the whole Contract.

14.13. Arbitration (Overseas Suppliers Only)

If the Supplier's address is a place outside Australia, then this clause 14.13 applies.

Any dispute, controversy or claim arising out of or in connection with the Contract (including its validity) shall be submitted to arbitration and resolved in accordance with the expedited arbitration rules published by the Australian Centre for International Commercial Arbitration.

The seat of the arbitration shall be Melbourne, Australia and the language of the arbitration shall be English.

The existence of, proceedings before and any documents or evidence provided to an arbitral tribunal pursuant to this clause shall remain confidential.

15. DICTIONARY

Australian Consumer and Competition Act 2010 (Cth) means the Act of that name, a copy of which can be found at www.comlaw.gov.au.

Completion Date means by 4pm on the date (or dates) specified in the Contract by which Goods or the Services under the relevant Purchase Order must be Delivered by the Supplier.

Consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably.

Contract means the contract between the Supplier and the Purchaser consisting of:

- the Purchase Order;
- any relevant SOW;
- the Specifications; and
- these Terms and Conditions.

Confidential Information means any technical, commercial, financial or other information of, about or in any way related to the Purchaser including any information the Purchaser designates as confidential, which is communicated to the Supplier. Confidential Information does not mean information:

- that is in, or enters the public domain other than as a breach of these Terms;
- that the Supplier can prove it possessed before the date of the Contract;
- that the Supplier can prove it independently developed; or
- that the Supplier lawfully obtains from another person entitled to disclose such information.

Documentation means:

- written material (whether provided by the manufacturer or otherwise) containing sufficient information to enable the Purchaser to safely operate, to make full use of and to maintain the Supplies; and
- any other documentation specified in the Contract.

Delivery means:

- delivery of Products to; or
- satisfactory completion of the Services at, the place specified in the Contract.

Fees means the fixed fee specified in the Purchase Order payable to the Supplier for the Services.

GST means a goods and services tax payable under the GST Act.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

GST Amount means an amount equal to the GST payable in respect of a supply.

Goods means any tangible item or material the Supplier must provide under the Contract.

Goods Guarantees means the guarantees set out in sections 51-59 of Schedule 1 to the Australian Competition and Consumer Act 2010 (Cth) with the Purchaser substituted for the word 'consumer'.

Guarantee Period means the period of 24 months commencing on the date of Delivery of the Supplies or 12 months from the date on which the Service is performed (as applicable), unless otherwise specified in the Purchase Order.

Guarantees means the Goods Guarantees and the Services Guarantees (as applicable).

Incidental Costs means costs the Supplier incurs supplying and Delivering Supplies, including without limitation freight, insurance, customs duties, GST and other taxes.

Personal Information means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not, which is received or learnt by a party from any source as a consequence of or in the performance of its rights and obligations under this agreement.

Privacy Act means the Privacy Act 1988 (Cth).

Privacy Laws means the Privacy Act, the Spam Act 2003 (Cth), the Do Not Call Register Act 2006 (Cth), any Code registered under Part IIIB of the Privacy Act that binds a party, the [Privacy Policy](#) issued by Citadel from time to time and any other legislation, principles, industry codes and policies relating to the handling of Personal Information.

Price means the amount specified as the price for the Goods in the Purchase Order.

Purchase Order means the document with that title that incorporates these terms and forms part of the Contract.

Purchaser means Citadel or its related body corporate identified in the Purchase Order.

Quality Guarantees means the means the guarantees set out in sections 54-57 of Schedule 1 to the Australian Competition and Consumer Act 2010 (Cth).

Rates means the rates used by the Supplier to calculate the Fee for Services.

Related Body Corporate has the meaning given to it under the Corporations Act 2001 (Cth).

Citadel means The Citadel Group Limited (ABN 79 127 151 026).

Services means the services specified in a Purchase Order to be provided by the Supplier under the Contract.

Services Guarantees means the guarantees set out in sections 60-63 of Schedule 1 to the Australian Competition and Consumer Act 2010 (Cth) with the Purchaser substituted for the word 'consumer'.

Specifications means the relevant Supplier Specifications, the Standards, Warranties and any other specifications, including without limitation the purposes, requirements and service levels, stated in the Purchase Order or SOW.

SOW or **Statement of Work** means a written document with that title in the Purchaser's standard form signed by both parties containing terms governing the provision of the Supply under these Terms.

Standards means any governmental regulations and standards applicable to the Supplies and any other Standards specified in the Purchase Order.

Supply/Supplies means any Good or Service listed in the Purchase Order to be provided by the Supplier under the Contract.

Supplier means the party identified in the Purchase Order as the supplier of the Supplies.

Supplier Specifications means the Supplier's published descriptions of and technical specifications for the Supplies.

You/your means the Supplier.