

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

1. ORDERS FOR THE SUPPLY OF GOODS AND SERVICES

1.1 You agree to supply Us with the Goods and/or Services set out in the Order.

2. PROVISION OF THE GOODS AND SERVICES

2.1 We engage You as an independent contractor on a non-exclusive basis.

2.2 You must provide the Goods and/or Services in accordance with Good Industry Practice, these Terms and Conditions, all Legal Requirements, the OHS Requirements and Our reasonable directions.

2.3 You must ensure the provision of the Goods and/or Services does not interfere with the day-to-day business activities at the Sites.

2.4 If you fail to comply with Your obligations under these Terms and Conditions and You do not remedy the non-compliance within any reasonable period (as notified by Us) then We may:

- (a) withhold payment of any Fees until the failure has been remedied;
- (b) require the Goods and/or Services to be provided again, at no cost to Us; or
- (c) require You to reimburse any Fees paid by Us.

3. VARIATION OR CANCELLATION OF ORDERS

3.1 We may vary an Order by giving You written notice at any time after placing the Order.

3.2 We may at any time cancel an Order for the supply of Goods and/or Services and We will not be required to pay You or any third party for the cancelled Order if:

- (a) You breach these Terms and Conditions or the Order and fail to remedy the breach within 7 days of receiving notice to do so;
- (b) You become Insolvent;
- (c) The Goods are not delivered by the delivery date specified in the Order; or
- (d) The delivery date is varied by arrangement and the Goods are not delivered by that varied date.

3.3 We may at any time cancel an Order for the provision of Goods and/or Services and We will only be required to pay You or any third party for the Goods and/or Services provided up to the date upon which We cancel the Order.

4. MATERIALS AND EQUIPMENT

4.1 You must:

- (a) provide all materials and equipment necessary to provide the Goods and/or Services, subject to our rights under clause 4.2;
- (b) ensure that all materials and equipment you provide for the provision of the Goods and/or Services (including spare or replacement parts) are fit for purpose and must be consistent with the manufacturers specification; and
- (c) ensure that all spare or replacement parts you provide are installed in accordance with manufacturers recommendations or standard operating procedures.

4.2 We reserve the right to supply or recommend certain materials (including spare or replacement parts) for use in the Services.

4.3 Title in the parts supplied by You passes to Us when the parts have been installed. Title in any goods supplied by Us will remain with Us.

4.4 You will be responsible for any loss of, or damage to, any parts supplied or recommended by Us.

5. GOODS

5.1 You must ensure any Goods are labelled, packed and loaded in accordance with the Order and Our instructions and all requirements of the carrier to ensure that no damage occurs to the Goods whilst in transit.

5.2 Unless otherwise agreed, we may keep any packaging or packing materials for the Goods whether or not the Goods are accepted by Us.

5.3 If the Goods are delivered:

- (a) FIS, you must deliver the Goods to the address, and on the date, specified in the Order during Our usual business hours or within the period and in the manner set out in the Order; or
- (b) FOB, then We will take delivery of the Goods at Your premises, or You must engage a carrier to take delivery of the Goods at Your premises and at Our cost.

5.4 If the Goods are delivered FIS, then the risk of damage to or loss of the Goods passes to Us when the Goods are delivered to the address specified in the Order.

5.5 If the Goods are delivered FOB, then the risk of damage to or loss of the Goods passes to Us when We, or our Carrier, obtains possession of the Goods.

5.6 You must immediately advise Us of any problems with the Goods when You become aware of them.

5.7 We may check the Goods for compliance with the Order. If the Goods do not comply with the Order in any respect, We may:

- (a) pay only for the Goods delivered, if the quantity is less than the quantity Ordered; and/or
- (b) reject any Goods that do not comply with the Order or these Terms and Conditions and Claim against you in respect of those Goods including and the cost of returning the Goods.

5.8 If the non-compliance becomes apparent later, we may still reject the Goods and make a Claim.

5.9 The rejection of a delivery will not affect the validity of the remainder of the Order.

6. FEES, INVOICING AND PAYMENT

6.1 You may Invoice Us for payment of the Goods and/or Services on or after completion of the Services and/or delivery of the Goods.

6.2 Invoices must be accompanied by proof of the Services and/or delivery of the Goods and must comply with Our invoicing instructions, as may be modified and provided to You from time to time.

6.3 Payment terms are 30 days from end of month upon receipt of correct Tax Invoice.

6.4 Our payment of an Invoice does not constitute Our acceptance of, or acknowledgment that, the Goods and/or Services have been provided satisfactorily.

7. GOODS AND SERVICES TAX

7.1 All Invoices should show the Fees for the Goods and/or Services and separately itemise the applicable GST.

7.2 We will pay the full amount of each correctly issued Invoice, being the amount for the Taxable Supply plus the GST.

7.3 Where an Adjustment Event occurs in respect of any amount paid or payable by Us for Taxable Supplies, we will issue, on Your behalf, an Adjustment Note as required under the GST Law. Any Adjustment Note that You purport to issue will not have legal status.

8. COMPLIANCE WITH LAWS AND POLICIES

8.1 You must:

- (a) comply with all Legal Requirements and any other requirements of government authorities applicable to the provision of the Services and/or manufacture, packaging, packing and delivery of the Goods;
- (b) comply with the OHS Requirements and Our security, administrative and other policies whilst You or Your employees or subcontractors are on the Sites or using any of Our equipment or property;
- (c) ensure that all Your employees and subcontractors (and their employees) are appropriately qualified and licensed as required by relevant State or Commonwealth legislation or industry codes of practice; and

- (d) comply with all industrial awards, instruments and legislation relating to employment and ensure that all Your employees and subcontractors (and their employees) are legally entitled to work in Australia.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 Ownership of the IPR in any item which exists prior to the date of the Order will not be altered, transferred or assigned by using that item for the purposes of supplying the Goods and/or Services.

9.2 You must not use any of Our or Our customer's trade marks for any purpose without the prior written consent of the registered trade mark owner.

9.3 You agree that You will not do anything which may infringe any IPR of Ours or a third party.

10. YOUR WARRANTIES

10.1 In respect of each Order, you warrant that:

- (a) You have full capacity and all necessary licences, permits, consents and authorisations to contract with Us and supply the Goods and/or Services;
- (b) You will comply with the Order and all Legal Requirements and provide the Goods and/or Services in accordance with Good Industry Practice;
- (c) all information You provide with the Goods and/or Services is comprehensive and current and accurate;
- (d) the Goods and all materials You provide under the Order are free of any encumbrance, safe, free from defects, are fit for the purpose they were supplied and comply with all specifications and relevant standards and recommendations of the original manufacturer;
- (e) all Your employees and subcontractors (and their employees) are legally entitled to work in Australia;
- (f) if You provide us with a sample, the Goods correspond with the most recent sample We approved;
- (g) the Goods and Services will not infringe any IPR; and
- (h) You are not aware of any Claims in relation to the Goods and/or Services and have made reasonable enquiries to determine if there are any Claims if the Goods are imported from a third party.

11. INDEMNITIES

11.1 You indemnify Us against all Claims made against, or Costs incurred by, us arising out of or about:

- (a) any breach by You of an Order or these Terms and Conditions, any Legal Requirement or OHS Requirement;
- (b) any loss of, or damage to, tangible property caused by any act, omission or negligence of You or Your employees, agents or subcontractors;
- (c) any injury to or death of any person caused by any act, omission or negligence of You or Your employees, agents or subcontractors;
- (d) use or possession by Us of any material provided by You under an Order;
- (e) any breach of warranty or negligence or other Claim with respect to Goods and/or Services provided by You;
- (f) any defects in the parts or Goods provided by You, or the recall or withdrawal of those parts or Goods;
- (g) any Claim of infringement of IPR by any person in respect of the Goods and/or Services or the material You provide under the Order;
- (h) the supply, importation, promotion, sale, resale of the Goods by Us or You;
- (i) the use of the Goods by Us or any of Our Customers or use of the material You provide under the Order; and

- (j) the steps taken, or omitted to be taken, by You in Your discharge of Your obligations under the OHS Requirements, except to the extent that the Claim made against or Cost incurred by Us is directly attributable to Our negligence or wrongful act or omission.

11.2 The indemnity in clause 11.1 includes:

- (a) any loss of or damage to any property (including IPR);
- (b) the injury or death of any person; and
- (c) any costs or liabilities incurred in respect of a Claim by a third party.

12. INSURANCE

Prior to providing the Goods and/or Services You must obtain and maintain (with insurers acceptable to Us) a:

- (a) public liability insurance policy of \$20,000,000 per occurrence and unlimited in the aggregate, indemnifying You against liability for property damage, personal injury or death arising from the Services or the Goods manufactured, distributed or sold by You;
- (b) product liability insurance policy of \$20,000,000 per occurrence;
- (c) professional liability insurance policy of \$5,000,000 per occurrence and in the aggregate, which must be maintained for two years following the completion of the Order; and
- (d) workers compensation insurance policy as required by State laws in the applicable State in which You provide the Goods and/or Services.

13. CONFIDENTIALITY

13.1 During and after the term of the Order You must:

- (a) keep all the Confidential Information strictly confidential and not disclose it to any third party without Our prior written consent;
- (b) only use the Confidential Information to perform the Order; and
- (c) immediately return or permanently delete or destroy all records of the Confidential Information in Your possession or control upon (i) completion; or (ii) cancellation of an Order; or (iii) otherwise when We direct you to do so.

13.2 Disclosure of the Confidential Information must be limited to those officers, employees or subcontractors who need to know, except for disclosure required by law, in which case You must use reasonable endeavours to provide Us with prior notice of the disclosure.

14. ASSIGNMENT AND SUBCONTRACTING

14.1 You will not in whole or in part assign, transfer or novate any of Your obligations under an Order or these Terms and Conditions without Our prior written consent.

14.2 If You subcontract the provision of the Goods and/or Services, you must ensure the subcontractor complies with the Order and these Terms and Conditions; and

14.3 You are liable to Us and responsible for the acts, defaults and omissions of Your subcontractors and employees and agents of subcontractors as if those acts, defaults and omissions were Yours.

15. GENERAL PROVISIONS

- (a) Set-Off: Any amount You owe Us may, if not paid to Us within 14 days of request, be offset by Us against any amounts We owe You, until the full amount owed has been offset.
- (b) Severance: If any part of these Terms and Conditions is illegal or unenforceable for any reason, that part will be regarded as removed, and the remainder of the Terms and Conditions will remain effective.
- (c) Survival: Any obligations in these Terms and Conditions which continue or which are not fully discharged on fulfilment or termination of an Order, continue to apply.

- (d) Waiver: If either party fails to insist on strict performance of any condition by the other, it is not a waiver of any later breach or default. A waiver is only valid or binding on the party granting that waiver if made in writing.

16. DEFINITIONS

The following terms have these meanings:

Adjustment Note and Adjustment Event have the meaning given by Section 195-1 of the GST Law.

City Group means City Holdings (Aus) Pty Ltd and each of its subsidiaries. **Claim** means any claim made by allegation, demand, suit, action or other proceeding of any nature, whether arising under contract, tort, equity or otherwise.

Confidential Information means all information (including without limitation, information relating to Us and Our customer's, and business dealings, customers, operations and other sensitive corporate information) which should reasonably be regarded in all the circumstances as confidential to City FM or Our customer's.

Costs means any, cost, loss, liability, damage charge, outgoing or expense, including any costs and disbursements on a full indemnity basis.

Fees means the fees for the Goods and/or Services set out in an Order and includes all taxes, levies and duties and all insurance costs:

FIS means Free into Store wherein You will deliver the Goods into the store specified in the Order, including procuring storage, loading, freight and transportation of the Goods and/or Services as required.

FOB means Free on Board wherein You will deliver the Goods to Us at any agreed delivery point, from which point We are responsible for the freight.

Good Industry Practice means that degree of skill, care, judgement and foresight that would reasonably be expected of a skilled and experienced person, engaged in the same type of activities as You under the same or similar circumstances.

Goods means the goods described in an Order and includes samples, packaging and labelling and any accessories and documentation pertaining to the Goods.

GST has the meaning given by Section 195-1 of the GST Law.

GST Law means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended or replaced from time to time.

Insolvent means a party:

- (a) is in liquidation or provisional liquidation or under administration;
- (b) is unable to pay its debts as they fall due; or
- (c) any analogous event under the laws of any jurisdiction, unless occurring as part of a solvent reconstruction, amalgamation, merger or consolidation.

IPR means intellectual property rights and includes all present and future rights including any applications for such rights in respect of copyright, trademarks, patents, designs, protection of confidential information, inventions, know how, product or business concepts, the right to object to the passing off of goods or services or misleading or deceptive conduct in relation to goods or services, and any other identifiable result of intellectual endeavour, whether arising under statute, contract or otherwise.

Invoice has the meaning given to Tax Invoice by Section 195-1 of the GST Law.

Legal Requirements means all relevant industrial awards, laws, regulations, requirements of government authorities and Australian or other mandatory standards relating to the Goods and/or Services. **OHS Requirements** mean the requirements set out in the Occupational Health & Safety Obligations which is subject to change from time to time (as notified to you) and available at

www.cityholdings.com.au/OHSObligations.html.

Order means Our order for the purchase of Services and/or Goods. **Services** means the services described in an Order.

Sites means premises identified in the Order where the Services are provided and/or the Goods are delivered, and any other locations required by Us from time to time.

Taxable Supply has the meaning given by the GST Law.

Force Majeure means an event outside the reasonable control of a party. **Us or We or Our** means, the relevant entity in the City Group, as stated in the Order.

You means the supplier of the Services and/or Goods, as stated in the Order.