

Purchase Order Terms and Conditions

1. General

- 1.1 These Purchase Order Terms and Conditions (“**Terms**”) apply to Goods or Services ordered by Seeing Machines Limited or its subsidiaries (“**Seeing Machines**”) as described in the attached Seeing Machines purchase order (“**Purchase Order**”) with the Vendor of the goods or services (“**Vendor**”).
- 1.2 These Terms are to read as an addition to any contract entered into with Seeing Machines and no other terms or conditions apply to this Purchase Order or the Goods or Services except: a) where Seeing Machines provides agreement in writing; or b) to the extent these Terms are inconsistent with a legally binding agreement between Seeing Machines and Vendor.
- 1.3 No amendment to these Terms are of any effect unless agreed in writing and executed by Seeing Machines and Vendor.

2. Offer and Acceptance

- 2.1 The Vendor is deemed to have accepted a Purchase Order if it notifies Seeing Machines that it accepts the Purchase Order or delivers the Goods and/or Services described in the Purchase Order.
- 2.2 If Vendor is unwilling or unable to accept the Purchase Order, it must notify Seeing Machines in writing within 5 business days from receipt of the Purchase Order, or prior to the delivery of the Goods and/or Services.
- 2.3 The Purchase Order once accepted, combined with these Terms 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**”).
- 2.4 An Agreement does not include any Vendor terms and conditions howsoever provided to Seeing Machines.

3. Delivery

- 3.1 Unless otherwise specified in the Purchase Order, time will be of the essence with respect to the Vendors delivery obligations and must deliver the Goods and/or Services as setout in a Purchase Order, and in accordance with the time periods for delivery specified.
- 3.2 Seeing Machines may specify in writing a later time for delivery of Goods or Services and should this change cause an increase or decrease in the cost of the Goods and/or Services, an equitable adjustment will be made to the fees which is appropriate in the circumstances.
- 3.3 Either a delivery docket, packing note or invoice is to accompany all deliveries made, quoting the Purchase Order number, quantity dispatched, description of the Goods and consignment details.
- 3.4 Goods shall be packed with the minimum of packaging material so as to ensure safe delivery. Environmentally friendly packaging material shall be used where practicable.

4. Quality

- 4.1 The Vendor shall deliver Goods and/or Services in accordance with any Seeing Machines specified quality requirements, where none exists, the Supplier shall provide the Goods and/or Services in accordance with reasonably applicable quality standards.
- 4.2 Unless expressly stated in the Purchase Order, all Goods shall be: a) new; b) free from defects in materials and workmanship; and c) be of merchantable quality.
- 4.3 Seeing Machines may inspect the Goods and at any time and reject those not in accordance with the Agreement (including after acceptance). Upon rejection of Goods, Seeing Machines is not liable to pay for: a) rejected Goods; b) damaged Goods identified by inspection; or c) costs associated with inspection or rejection.
- 4.4 If Goods are rejected by Seeing Machines, the Vendor shall, without prejudice to any Seeing Machines’ rights or remedies:
 - a) replace or repair, without cost to Seeing Machines, the rejected Goods; or
 - b) remove the rejected Goods and refund payment of the rejected Goods.
- 4.5 The Vendor shall comply with any reasonable request, at no cost, to enable Seeing Machines to inspect the Goods.

5. Acceptance and Title

- 5.1 Where acceptance tests or procedures are set out in an Agreement, Goods and/or Services shall be subject to completion of the acceptance tests or procedures to the satisfaction of Seeing Machines. Should no acceptance tests or procedures be setout in an Agreement, Goods and/or Services will be subject to a ninety (90) day acceptance period.
- 5.2 Payment of any invoice by Seeing Machines will not be deemed acceptance of any Goods and/or Services, but rather such Goods and or Services will be subject to the acceptance criteria setout above, including without limitation inspection, testing, acceptance or rejection.
- 5.3 Where Seeing Machines rejects Goods and/or Services an equitable adjustment to fees will be made to reflect the non-delivery and Vendor must refund Seeing Machines accordingly.
- 5.4 Title and risk in Goods will pass to Seeing Machines upon delivery and payment in accordance with this Agreement.

6. Indemnity, Liability and Insurance

- 6.1 **Indemnity.** The Vendor indemnifies Seeing Machines against all losses and damages it directly or indirectly sustains or incurs as a result of:
 - a) any negligent, unlawful or willful act or omission of the Vendor, Vendor’s personnel or Vendor’s subcontractors;
 - b) any infringement or claimed infringement of any intellectual property rights 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 Vendor;
 - d) property damage to the extent caused by the Vendor; and
 - e) any breach of Clause 7.
 - 6.2 **Liability.** The liability of Seeing Machines is limited to fees payable to the Vendor in an Agreement.
 - 6.3 **Insurance.** The Vendor must have and maintain public and products liability insurance and professional indemnity insurance throughout the term of the Agreement and must ensure that any sub-contractor engaged by the Vendor is insured to a commensurate level under this Agreement. Upon request the Vendor will provide Seeing Machines proof of insurances in the form of a certificate of currency from its insurance broker.
- ### 7. Intellectual Property Rights, Confidential Information and Privacy
- 7.1 Subject to clause 7.2, all rights, title and interest in any IP created in providing the Goods and/or Services (“**Project IP**”) will be owned by Seeing Machines, and to the extent needed, the Vendor hereby assigns all rights, title and interest it may have now or in the future in Project IP to Seeing Machines.
 - 7.2 The IP owned by a party prior to the date of the Agreement remain with that party (“**Background IP**”). Nothing in this Agreement shall convey any rights, title or interests in Seeing Machines Background IP to the Vendor.
 - 7.3 The Vendor grants to Seeing Machines 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 Vendors Background IP in conjunction with the Goods and/or Services, and the Project IP. The Supplier shall provide Seeing Machines with all necessary documentation and materials to take advantage of this licence.
 - 7.4 Each party (“**Recipient**”) must keep any Confidential Information disclosed to it by the other party (“**Discloser**”) 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 a law to which the party is subject; b) required for the purpose of an Agreement (to the extent that each has a need to know); and c) before disclosure, the Discloser authorised the disclosure in writing.
 - 7.5 The Vendor shall comply with, and carry out and discharge all obligations, setout in the *Privacy Act 1999* (Cth) and other applicable privacy, data protection and surveillance laws. The Vendor shall notify Seeing Machines as soon as possible upon becoming aware of a breach of these obligations.

8. Warranty

8.1 The Vendor represents and warrants that:

- a) that Goods do not contain friable asbestos, asbestos containing material including bonded asbestos or hexavalent chromium;
- b) at all times it will comply with all laws, regulations, standards which are relevant to the supply of Goods and/or Services;
- c) that Goods and/or Services comply with restrictions that apply in respect of customs legislation, ITAR/EAR and controlled materials;
- d) all Goods that contain toxic, harmful, irritant, dangerous or poisonous substances that it will clearly mark Goods indicating the nature of the substance(s), package and label those substances in accordance with any regulatory requirement and provide a Material Safety Data Sheet (MSDS) for each substance;
- e) counterfeit Goods will not be delivered to Seeing Machines and the Vendor is responsible for replacing any such Goods at their costs;
- f) it has all rights, title, licences, interests and property necessary to provide the Goods and/or perform the Services;
- g) it will meet all costs of, and incidental to, the discharge of warranty obligations, including any packing, freight, disassembly and re-assembly costs;
- h) its personnel will have all necessary experience, skill, knowledge and competence to perform the Services, and the Services will be performed in accordance with accepted industry practice;
- i) Goods and/or Services will be fit for the purposes intended;
- j) if applicable, the Goods and/or Services will meet any agreed design and performance criteria and correspond with any sample;
- k) it is entitled to grant any licence of IP to Seeing Machines under this Agreement;
- l) Seeing Machine's use of any Background IP and/or Project IP will not infringe the IP of any other party;
- m) It will supply to Seeing Machines in English all complete, accurate and up-to-date documentation associated with the use of the Goods and/or Services;
- n) Where the Goods are to be incorporated into a consumer product retailed by Seeing Machines in Australia, the Supplies shall, on incorporation into the product, satisfy the guarantees in the Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
- o) Vendor shall correct any defect or omission in Goods and/or Services, at its own costs, including without limitation Clause 8.1 (Warranties); and
- p) If a third party claims, or Seeing Machines reasonably believes that a third party is likely to claim, that all or part of Goods and/or Services infringe their IP or breach their confidence, the Vendor must, in addition to the indemnity under this Agreement and to any other rights or remedies that Seeing Machines may have against it, promptly, at the Vendor's expense: a) use its best efforts to secure the rights for Seeing Machines to use the Goods and/or Services; or b) replace or modify the Goods and/or Services so as not to infringe IP of any other party, without degradation of the performance of the Goods and/or Services.

9. Payment

- 9.1 Subject to the Agreement, Seeing Machines shall pay for Goods and/or Services no later than 45 days end of month, after ownership of the Goods has passed to it or upon receipt of a correctly rendered invoice, whichever is the later.
- 9.2 All payments shall be made by Seeing Machines in the currency specified in Seeing Machines Purchase Order by Electronic Funds Transfer (EFT).

9.3 Where Seeing Machines is required to deduct withholding tax from its payment to the Supplier, it will deduct the minimum amount required by law and deposit this to its tax authority within the statutory time limit. Seeing Machines will provide reasonable evidence to the Vendor that the tax deduction has been made and payment made to the relevant taxing authority.

9.4 Without prejudicing any other right or remedy Seeing Machines may have, Seeing Machines shall be entitled to set-off any payment owed by it to the Vendor against any sums that are due and payable by the Vendor, under an Agreement or otherwise.

10. Invoices

10.1 An invoice shall be correctly rendered if it is addressed in accordance with the Purchase Order, identifies the Purchase Order number, is a tax invoice for GST purposes (for Australian suppliers) and is, where explanation is necessary, accompanied by documentation substantiating the amount claimed and those amounts are to be in accordance with the Purchase Order.

11. Assignment

11.1 The Vendor shall not, without Seeing Machines' consent in writing, assign or novate the Vendor's rights or obligations under in this Agreement.

12. Subcontracting

12.1 The Vendor shall not, without Seeing Machines' consent in writing, subcontract whether in whole or in part the provision of Goods and/or Services.

12.2 The Vendor shall be liable to Seeing Machines for the acts and omissions of any subcontractor as if those were the acts or omissions of the Vendor.

13. Applicable law

13.1 The Agreement shall be governed by and construed in accordance with the laws in force in the Australian Capital Territory.

14. Cancellation

14.1 Upon written notice to the Vendor, Seeing Machines may at any time cancel or reduce a Purchase Order, subject to Seeing Machines reimbursing the Vendor for any costs incurred and evidenced as a direct consequence of such a cancellation or reduction.

15. Inducement or fraud

15.1 The Vendor undertakes that it will not do, and warrants that prior to accepting a Purchase Order it has not induced any employee, agent or subcontractor of Seeing Machines to make any concession or to confer any benefit on the Vendor, refrain or withhold from doing any act or alter any of the requirements of the Purchase Order in return for any gift, money, benefit or other inducement.

15.2 The Vendor undertakes that it will not do, and warrants that prior to accepting a Purchase Order it will not pay money or give any other benefit to any third party (either directly or indirectly) in connection with the negotiation and/or issue of the Purchase Order.

16. Publicity

16.1 The Vendor shall not publicise in any media or public announcement information regarding this Agreement or use "Seeing Machines" or any other trade-mark owned by Seeing Machines or derivatives thereof without prior written consent of Seeing Machines.

17. Termination

17.1 Seeing Machines may terminate an Agreement, whether in whole or part, by written notice to the Vendor:

- a) if the Vendor breaches a term of this Agreement and fails to remedy the breach with 14 days after receiving notice requiring it to do so (or immediately if Vendor breaches a term of an Agreement which is not capable of remedy);
- b) if Vendor is or becomes subject to proceedings which may result in the Vendor becoming bankrupted, wound up, under voluntary administration or subject to the control of a receiver or receiver and manager; or
- c) fails to deliver the goods by the date required in this Agreement;

- 17.2 On termination of this Agreement Seeing Machines may:
- a) cease payment;
 - b) recover from the Vendor all sums paid for undelivered Goods and/or Services; and
 - c) purchase similar goods and/or services from alternative vendors and claim by way of indemnity from the Vendor any loss it may occur in doing so.

18. Waiver

- 18.1 A party's failure or delay to exercise a power or right does not operate as a waiver of the power or right. A waiver is not effective unless it is in writing.

19. Variation

- 19.1 This Agreement shall only be varied in writing. Seeing Machines and the Vendor shall act reasonably in deciding whether to agree to a variation, as requested by the other party.

20. Negation of Employment, Partnership and Agency

- 20.1 This Agreement does not create a relationship of employment, agency or partnership between the Vendor and Seeing Machines.

21. Price

- 21.1 Fees payable by Seeing Machines in this Agreement include:
- a) all taxes, duties and other imposts for which the Vendor is liable;
 - b) all insurance costs;
 - c) all amounts payable for the use (whether in course of performance of the Services or their enjoyment) of patents, copyright, registered designs, trademarks and other IP rights; and
 - d) all charges for performance of the Services and the delivery of Goods.

22. Interpretation

- 22.1 In these Terms:
- a) **Goods** means all the commodities, raw material, machinery, equipment or other moveable thing to be supplied by the Vendor.
 - b) **IP** 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.
 - c) **Services** means the services and work to be performed by the Vendor.
- 22.2 Headings are for convenience only and do not form part of the Terms.
- 22.3 References to the singular includes the plural and vice versa.
- 22.4 This Agreement contains everything the parties have agreed in relation to the matters it deals with.
- 22.5 If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 22.6 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.
- 22.7 If this Agreement or any Purchase Order is translated into another language, then to the extent permitted by law, the English language text will prevail.
- 22.8 The provisions of this Agreement are the result of negotiations between the parties; accordingly, this Agreement shall not be construed in favour of or against either party by reason of the extent to which the party participated in its preparation.
- 22.9 The parties warrant that each is authorised to enter into this Agreement and have authority to carry out the terms and conditions of this Agreement.

END