



ABN 28 095 466 961

Level 6/55 Southbank Boulevard Melbourne, Victoria, 3006
Telephone: +61 (0)3 92072500, Facsimile: +61 (0)3 92072400

Supply of Goods and/or Services Terms & Conditions

TERMS AND CONDITIONS

The Supplier agrees to supply the Goods and/or Services to Boom Logistics on these terms and conditions.

1. Definitions:

“Boom Logistics” means Boom Logistics Limited ABN 28 095 466 961 which is the purchaser of Goods and/or Services from the Supplier;

“Contract” means these terms and conditions, the RFQ, RFP, RFT and the Purchase Order;

“Goods” means the goods specified in the Purchase Order;

“Intellectual Property Rights” means letters patent, a pending patent, trade marks, copyright, design, electrical layout rights, confidential information or similar protection whether granted by the Commonwealth of Australia or any foreign state or the common law;

“Price” means the amount specified for the Goods and/or Services specified in the Purchase Order;

“Purchase Order” means the document issued by Boom Logistics or any of its subsidiaries to the Supplier to order the Goods and/or Services;

“RFQ” “RFP” “RFT” means the request for quotation, proposal or tender issued by Boom Logistics relating to the Goods and/or Services;

“Services” means the services specified in the Purchase Order;

“Supplier” means the supplier of Goods and/or Services to Boom Logistics as described on the Purchase Order;

2. Delivery: The Goods will be delivered and the Services performed by the Supplier by such date as specified in the Purchase Order or such other date as may be agreed by the parties in writing. The Time for delivery of the Goods and performance of the Services is of the essence.

3. Delay in Delivery: Without limiting clause 2 if the Supplier is delayed or becomes aware of the likelihood of delay in its delivery of any Goods or performance of any Services, the Supplier will as soon as possible after becoming aware of those circumstances notify Boom Logistics in writing and provide full details of the circumstances. Boom Logistics may then at its absolute discretion:

- a. acquire alternative supplies of the Goods and/or performance of the Services from sources other than the Supplier to make good the shortfalls in deliveries or lack of performance and, if it does so, then the Supplier will be liable for any price difference and any transport costs incurred by Boom Logistics acting reasonably in respect of such alternative supplies or performance; or
- b. extend the time for delivery of those Goods and/or performance of the Services at no additional expense without limitation to Boom Logistics rights arising from the delay.

4. Delivery Requirements: At the time of delivery of the Goods, the Supplier must provide to Boom Logistics a packing slip, a consignment note plus relevant or requested information relating to Boom Logistics use of the Goods, including safety information, warranty information and information that by law must accompany the Goods. Adequate and safe packaging of Goods is the responsibility of the Supplier. Goods must be packed in a form consistent with best industry practices and all applicable laws and safety requirements including, if applicable, the Australian Code for the Transport of Dangerous Goods by Road and Rail. Palletised Goods are to be securely strapped when delivered.

5. Risk and Title: Subject to clause 6, title to and property in the Goods immediately passes to Boom Logistics upon payment of the Price or delivery, whichever is the earlier to occur. The Goods must be marked and identified by the Supplier as the property of Boom Logistics. Risk in the Goods remains with the Supplier until delivery. Risk and title in respect of any plant or equipment which the Supplier utilises in the performance of Services remains with the Supplier unless otherwise specified in the Purchase Order.

6. Inspection of Goods: All Goods will be accepted by Boom Logistics subject to inspection by Boom Logistics either within a reasonable time after delivery or before delivery (at Boom Logistics discretion) and Boom Logistics being satisfied with the Goods. Signed delivery documents will not mean acceptance by Boom Logistics of the Goods delivered but only of the number of packages or cartons delivered.

7. Defects or Damage: Boom Logistics will notify the Supplier of any defects in or damage to the Goods and hold any Goods found to be defective or damaged for the Supplier's instructions and at the Supplier's risk for a period not exceeding 30 days. If the Supplier's instructions are not received by Boom Logistics within such period, Boom Logistics may return the Goods to the Supplier at the Supplier's expense and risk and any expense incurred by Boom Logistics will be payable by the Supplier and will constitute a debt due and payable to Boom Logistics and which may be set off by Boom Logistics against any moneys otherwise due by Boom Logistics to the Supplier. Damage to Supplier's plant and equipment used to perform the Services shall be Supplier's liability.

8. Price: Boom Logistics agrees to pay the Price for the Goods and/or Services which will be inclusive of any GST, and delivery, packaging, transport, taxes and all other costs and expenses unless otherwise stated in the Purchase Order. Liability for payment of the Price by Boom Logistics is subject to receipt of the Goods and/or satisfactory completion of the Services in accordance with this Contract.

9. Invoicing: The Supplier must provide Boom Logistics with a valid "Tax Invoice" as specified by The New Tax System (Goods and Services) Act (1999) under Division 29. The invoice must be clearly marked with the Purchase Order number.

10. Payment: Payment will be made 45 days from the end of the month in which a valid "Tax Invoice" is issued.

11. Taxes: The Supplier is and remains liable for payment of any taxes due and payable by the Supplier. If any Tax is imposed, the Supplier must pay the full amount to the relevant authority and indemnifies Boom Logistics against any failure to do so. If any exemptions, reductions, allowances, credits, rebates, adjustments or other privileges in relation to taxes may be available directly or indirectly to the Supplier or Boom Logistics, the Supplier will adjust any payments due to reflect any such savings or refunds (including interest awarded) to the maximum allowable extent and assist Boom Logistics in obtaining any such benefits. If under this Contract Boom Logistics is required to pay or reimburse the Supplier in respect of an acquisition from a third party for which the Supplier is entitled to claim an input tax credit, the amount required to be paid or reimbursed by Boom Logistics will be the GST-exclusive value of the acquisition. If the recovery from Boom Logistics is a taxable supply Boom Logistics will gross up the payment to include in addition to the GST-exclusive value of the acquisition, any GST payable in respect of that supply providing the Supplier renders a tax invoice in respect of that supply.

12. Warranties: The Supplier represents and warrants to Boom Logistics that:

- a. it has the right to sell the Goods to Boom Logistics on the terms of this Contract and, subject to clause 6, upon payment of the Price or delivery, whichever is the earlier to occur, Boom Logistics will have good title to the Goods, free and clear of all interests including security interests;
- b. Workmanship and materials used by the Supplier and Goods and Services supplied to Boom Logistics will correspond in all respects with specifications set out in this Contract (including the Purchase Order), and any samples provided by or to Boom Logistics, or representations made to Boom Logistics by the Supplier.
- c. Boom Logistics will have the full benefit of any manufacturer's warranties that may be applicable to the Goods or any part of the Goods and the Supplier will indemnify Boom Logistics to the extent the manufacturer's warranties are inadequate. The Supplier will do all things and sign all documents required to transfer the benefit of the manufacturer's warranties to Boom Logistics ;
- d. the Goods will be of merchantable quality;
- e. the Goods and/or Services will be fit for any particular purpose which Boom Logistics has made known (whether expressly or by implication) to the Supplier and will be fit also for the purpose for which Goods and/or Services of a similar nature are commonly supplied;
- f. the Goods will comply with all laws (including statutes, the common law and equity) in force in the jurisdiction in which they are supplied;
- g. it will perform the Services in a skilful, diligent, workmanlike, careful safe and proper manner and in accordance with all reasonable directions of Boom Logistics and Boom Logistics applicable policies and procedures as amended from time to time and as provided to the Supplier;
- h. the provision of the Services complies with all necessary consents, registrations, approvals, licences or permits whether required by statute regulation government governmental policy or administrative requirement or by any agreement order or award binding on the Supplier;
- i. to the extent that the same has not been amended by this Contract, all written information furnished to Boom Logistics or to any of its advisors or consultants by the Supplier prior to execution of this Contract concerning the Supplier and the Services are true and correct in every material particular as at the date to which they relate and are not misleading and deceptive in any respect;
- j. it will not engage in deceptive, misleading, illegal or unethical practices that are or may be detrimental to Boom Logistics or the public;
- k. it will make no false or misleading representations with regards to the Services provided to Boom Logistics and
- l. that the supply of the Goods and the performance of the Services, and any use of the Goods by Boom Logistics or any other person for any purpose, will not infringe any Intellectual Property Rights. The

Supplier undertakes at its expense to defend, protect and hold harmless Boom Logistics and the users of Boom Logistics products from and against any claim for infringement of any Intellectual Property Rights arising by reason of the supply of the Goods and/or the performance of the Services by the Supplier to Boom Logistics and /or the use of the goods by Boom Logistics and users of its products.

13. Breach of Warranty: Where any warranty provided by the Supplier pursuant to this Contract is breached, the Supplier will, at the direction of Boom Logistics and without prejudice to any other remedy or right Boom Logistics may have (under this Contract or otherwise):

- a. in the case of warranties relating to Goods:
 - i replace the Goods or supply equivalent Goods;
 - ii repair the Goods;
 - iii pay to Boom Logistics the cost of replacing the Goods or acquiring equivalent Goods; or
 - iv pay to Boom Logistics the cost of having the Goods repaired; and
- b. in the case of warranties relating to Services:
 - i supply the Services again; or
 - ii pay to Boom Logistics the cost of having the Services supplied again.

Where the Supplier repairs or replaces any Goods pursuant to any warranty the Supplier will bear all the costs of such repair or replacement including the removal and transportation costs of the Goods from and return to Boom Logistics premises, labour costs and the costs of replacing or providing new parts for the Goods. Where the Supplier re-supplies the Services pursuant to any warranty the Supplier will bear all of the costs of such re-supply. The warranties contained herein will survive any termination or expiration of this Contract.

14. Insurance: The Supplier must at its own expense procure and maintain the following policies of insurance:

- a. workers' compensation (including occupational disease where required by law) and employer's indemnity insurance which complies with the relevant laws covering all claims and liabilities under any statute and at common law (where applicable) for the death of or injury to:
 - i any person employed by the Supplier in connection with this Contract; and
 - ii any person who is a worker of the Supplier in connection with this Contract and who may be deemed under statute to be a worker of Boom Logistics ;
- b. public and product liability insurance with a sum insured, respectively, of not less than \$10,000,000 per occurrence in respect of public liability risks and not less than \$10,000,000 in any one occurrence and \$10,000,000 in the aggregate during any one period of insurance in respect of product liability risks which is extended to cover:
 - i liability arising out of the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with this Contract; and
 - ii registered vehicles used as a tool of trade in the performance of the Services;
- c. motor vehicle insurance, covering all mechanically propelled vehicles that are registered, or capable of being registered, for road use and are at any time used in connection with this Contract, including:
 - i insurance that is compulsory under applicable laws governing the use of motor vehicles and liability for personal injury or death; and
 - ii liability insurance for third party property damage with a sum insured of not less than \$10,000,000 per occurrence;

The Supplier will, when requested by Boom Logistics to do so, promptly satisfy Boom Logistics that each contract of insurance it is required to procure under this Contract is current.

If the Supplier fails to procure and maintain insurance policies in accordance with this Contract, Boom Logistics may, but is not obliged to:

- a. procure and maintain any such insurance and deduct the cost of doing so from any payments to be made to the Supplier by Boom Logistics (under this Contract or any other contract); or
- b. refuse to make any further payments due from time to time to the Supplier (under this Contract or any other contract) until the insurance policies and receipt for the payment of premiums are made available for inspection by Boom Logistics.

Whenever a claim is made under any of the policies of insurance referred to in this clause, the Supplier is liable for any excess or deductible payable as a consequence. The Supplier must inform Boom Logistics in writing immediately it becomes aware of any actual, threatened or likely claims under any of the insurances referred to in this clause. The Supplier must not do or omit to do, or permit or suffer to be done, any act or omission whereby any of the insurances referred to in this clause may be vitiated, rendered void or voidable.

It is expressly agreed and acknowledged that the insurance requirements are fundamental requirements of this Contract.

15. Termination: Boom Logistics may terminate this Contract and any outstanding Purchase Orders by giving not less than 7 days written notice to the Supplier. The Supplier will not be entitled to claim any compensation or indemnification from loss or damage upon termination of this Contract by Boom Logistics.

Boom Logistics may terminate this Contract and any outstanding Purchase Orders immediately upon written notice in the event that the Supplier:

- a. breaches any of these term or condition or;
- b. becomes insolvent, commits an act of bankruptcy, an order is made for it to be wound up, or if a receiver or administrator is appointed.

Any termination under this clause does not relieve Boom Logistics or the Supplier of their respective obligations under this Contract as to any unterminated part of a Purchase Order.

16. Indemnity: The Supplier will be responsible for and will indemnify Boom Logistics against liability for all loss, damage or injury to persons or property caused by the Supplier or its employees, subcontractors or agents and the amount of all claims, damages, costs and expenses (including legal costs on a full indemnity basis) which may be paid, suffered or incurred by Boom Logistics in respect of any such loss, damage or injury will be made good at the Suppliers expense and may be deducted from any monies due or becoming due to the Supplier.

17. Notices: All notices that are required under this Contract will be in writing and will be considered effective upon receipt. The address for notice for Boom Logistics is C/O Company Secretary, Level 6, 55 Southbank Boulevard, Southbank, Vic 3006 and the address for notices for the Supplier is the address noted on the Purchase Order.

18. Entire Contract: The Contract constitutes the entire contract of provision and performance of the Goods and/or Services and supersedes all previous arrangements, correspondence, tenders, representations, proposals, understandings and communications whether written or oral. To the extent that the Supplier's terms and conditions are supplied with the Goods and/or in the performance of the Services (including as printed on consignment notes or other documents), such terms and conditions will be of no legal effect and will not constitute part of the contract for the provision of the Goods and/or performance of those Services (notwithstanding the signing of any such document by a representative of Boom Logistics for any reason). To the extent that there is any inconsistency between the RFQ,RFP, RFT and these terms and conditions, these terms and conditions will take precedence.

19. Governing Law: This Contract will be deemed to have been made in the State of Victoria and will be subject to the laws of the State of Victoria. The parties will be subject to the non-exclusive jurisdiction of the courts of the State of Victoria in relation to any proceedings concerning this Contract.

20. Waiver: Neither party's failure to exercise or delay in exercising any of its rights under this Contract will constitute or be deemed a waiver or forfeiture of those rights.

21. Amendment: This Contract will not be amended, modified, varied or supplemented except in writing signed by the parties.

22. Assignment: The Supplier may not assign otherwise transfer or subcontract any part of its rights or obligations under this Contract, without the prior written consent of Boom Logistics.

23. Severability: Any provision in this Contract which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Contract or the validity or unenforceability of that provision in any other jurisdiction.

24. No affiliation: Nothing in this Contract will render the Supplier an officer, agent or partner of Boom Logistics and the Supplier will not hold itself out as such. In providing the Goods and/or Services the Supplier will at all times be an independent contractor of Boom Logistics The Supplier will not pledge the credit of Boom Logistics nor sign any document, enter into any contract or make any promise on behalf of Boom Logistics without its prior written authority.

Executed by the parties:

Signed for and on behalf of)
Insert Supplier's name)
by an authorised representative)

.....
Signature

.....
Name (Please Print)

.....
Title

.....
Date

By executing this Contract the signatory warrants that the signatory is duly authorised to execute this Contract on behalf of the Contractor

Signed for and on behalf of)
Boom Logistics Limited)
by an authorised representative)

.....
Signature

.....
Name (Please Print)

.....
Title

.....
Date