

TERMS AND CONDITIONS FOR PURCHASE ORDER between Southern Cross Austereo Pty Ltd (ABN 78 109 243 110) of 101 Moray Street, South Melbourne, VIC 3205, Australia (SCA), and the Supplier as described in the Purchase Order.

1. Introduction

- (a) SCA may order the Goods and/or purchase the Services by issuing a Purchase Order to the Supplier. The Purchase Order, together with these terms and conditions (**General Conditions**), and any Attachments to a Purchase Order, form the binding agreement between the parties (**Agreement**).
- (b) The Supplier agrees that by supplying the Goods and/or providing the Services to SCA it has accepted the terms of this Agreement and that all other terms and conditions are excluded, including terms and conditions otherwise supplied by the Supplier (unless SCA expressly agrees to such terms in writing). If you have entered into a master supply agreement or other existing agreement with SCA, then such existing agreement will govern the provision of goods, services and deliverables to SCA by the Supplier as supplemented by the specified requirements in the Purchase Order, and the General Conditions will not apply.

2. Term

This Agreement starts on the earlier of the date specified in a Purchase Order or the date SCA places an order for goods, services or deliverables and ends on the expiry date specified in the Purchase Order (if any) or as terminated pursuant to clause 13 of these General Conditions.

3. Supply and delivery of Goods

If the Supplier is supplying Goods to SCA, clauses 3, 4 and 5 apply to the supply as follows:

- (a) The Supplier must supply, and if applicable install, the Goods to SCA in accordance with the Purchase Order, any reasonable directions given by SCA and otherwise in accordance with these General Conditions.
- (b) The Supplier must deliver the Goods to the Delivery Point by the Completion Date and in accordance with the Time for Delivery.
- (c) On delivery, the Supplier must obtain the name and signature of the SCA employee that receives the Goods.
- (d) Acceptance of the Goods by SCA will not be taken to have occurred until either:
 - (i) acceptance is acknowledged in writing by SCA; or
 - (ii) acceptance is deemed to have occurred in accordance with clause 4(a) below.

4. Acceptance or rejection of Goods

- (a) SCA or its authorised agent may inspect the Goods after the delivery. If the Goods conform with this Agreement, SCA will accept the Goods. If the Goods:
 - (i) do not conform with this Agreement (including the specifications in the Purchase Order); or
 - (ii) on delivery are damaged, unfit for purpose or not of merchantable quality,SCA may reject the Goods by giving written notice (including reasons for rejection) to the Supplier within 30 days of delivery. SCA is not obliged to pay for any rejected Goods. If SCA does not give written notification of acceptance or rejection of the Goods within 30 days of delivery, acceptance of the Goods will be deemed to have occurred on the date of delivery.
- (b) The Supplier must ensure that any Goods that are physical goods are packed, marked and labelled to prevent damage during transit.
- (c) The Supplier must, at its cost, collect and remove any rejected Goods as soon as practicable following notification. If the Supplier fails to collect and remove the rejected Goods within a reasonable time, SCA may return the Goods to the Supplier at the Supplier's expense, or, following further notification, destroy the Goods or otherwise dispose of the Goods in its discretion.

5. Title and risk

Title in the Goods will pass to SCA upon acceptance of the Goods. Risk in the Goods will pass to SCA when the Goods are delivered to the Delivery Point.

6. Supply of Services

If the Supplier is supplying Services to SCA, the Supplier must

- (a) provide the Services to SCA in accordance with this Agreement and any reasonable directions given by SCA from time to time;
- (b) perform the Services by the date specified on the Purchase Order or any timetable notified by SCA;
- (c) provide fit for purpose Services in a timely and efficient manner using the standard of care, skill and diligence that would reasonably be expected from an experienced professional

provider of services that are similar to the Services; and

- (d) use appropriately skilled and qualified Personnel to provide the Services.

7. Delay

- (a) If the Supplier becomes aware of any actual or likely delay in delivery of Goods or supply of Services, the Supplier must notify SCA as soon as practicable of the details of the delay, Goods or Services affected, and any additional time reasonably required.
- (b) The Supplier must take all reasonable steps to mitigate and minimise the effects of any delay. SCA may, at its discretion, extend the affected due date by a reasonable period.
- (c) The Supplier will reimburse SCA for any additional substantiated costs reasonably incurred by SCA during any extension granted under clause 7(b), which will be reduced to the extent that SCA is responsible for the delay.

8. Pricing

- (a) The Unit Price is fixed and inclusive of all taxes (excluding GST), for the duration of the Agreement.
- (b) The Supplier may not charge SCA any additional fee or amount for packaging, transport, insurance, loading, unloading, storage or any other costs incurred by the Supplier in supplying or delivering the Goods to SCA.

9. Invoicing and payment

- (a) On or following acceptance of the Goods or completion of the Services (as applicable) the Supplier must submit a tax invoice to SCA for the Price (which must include the information set out in clause 9(b).
- (b) Any invoice must include the following details:
 - Supplier Company/Name;
 - Supplier Address;
 - Supplier ABN;
 - Supplier Phone No;
 - Supplier Email Address (for Remittance Advice);
 - date;
 - a unique invoice number;
 - be addressed to Southern Cross Austereo Pty Ltd;
 - the relevant name of station (e.g. HIT107 or MMM Perth) and the station's address; and
 - name of SCA Contact.

In addition, all invoices must:

- be submitted in PDF format;
 - be submitted as each individual invoice (i.e. multiple invoices are not to be combined into one attachment).
 - include any relevant supporting documentation that is to accompany the invoice being the first page of the attachment;
 - be clear and legible (including where the invoice contains scanned images);
 - if the invoice is for an amount over \$5,000 the invoice must include a SCA Purchase Order number; and
 - only be submitted to accountspayable@sca.com.au.
- (c) The Supplier must not send copy invoices, unless requested by SCA.
 - (d) SCA will pay all invoices that comply with clauses 9(a) and 9(b), within 30 days of receipt. However, if SCA disputes the invoiced amount, it must pay the undisputed amount (if any) and notify the Supplier of the amount in dispute. The parties will endeavour to resolve any such dispute in accordance with clause 21.
 - (e) Payment of an invoice is not to be taken as evidence that the Goods and/or Services have been supplied in accordance with the Agreement but must be taken only as payment on account.

10. Warranties

- (a) The Supplier represents and warrants to SCA that:
 - (i) **(Capacity)** it has the right to enter into the Agreement and perform the Services;
 - (ii) **(Title)** it has the right to sell, and transfer title to and property in, the Goods to SCA;
 - (iii) **(IP)** it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the Goods;
 - (iv) **(Conflict)** it and its Personnel do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations whereby duties or interests are or might be created in conflict with or might appear to be created in conflict with its obligations under this Agreement; and
 - (v) **(Trust)** it has not entered into the Agreement on behalf of a trust; and
 - (vi) **(Goods)** the Goods:
 - (A) are new and fit for the purpose stated in the Purchase Order (or, if no purpose is stated, the purpose

for which the Goods would ordinarily be used);

- (B) conform in all respects with this Agreement;
 - (C) are free from defects (including defects in installation); and
 - (D) are of merchantable quality and comply with all Laws.
- (vii) **(No infringement)** the receipt of the Services and the possession or use of any deliverables by SCA will not infringe the Intellectual Property Rights or other rights of any person or any Laws; and
- (viii) ensure that it obtains the benefit of any manufacturer's warranties for SCA that are applicable to the Goods.

11. Intellectual Property Rights

The Supplier irrevocably and unconditionally grants SCA a non exclusive, perpetual, royalty free, worldwide and transferable licence (including the right to sub-license) to use any Intellectual Property Rights in relation to any Goods and/or Services supplied to the extent necessary to allow the Organisation the full use and enjoyment of those Goods and/or Services.

12. Liability

- (a) The Supplier indemnifies, and will at all times keep SCA and each of its Personnel indemnified, against any liabilities, losses, damages, costs and expenses (including all legal and settlement costs determined on a full indemnity basis) or compensation arising out of, or in any way in connection with, any:
- (i) personal injury, including sickness and death;
 - (ii) property damage;
 - (iii) breach of an obligation of confidence or privacy, whether under this Agreement or otherwise;
 - (iv) fraudulent acts or omissions;
 - (v) wilful misconduct or unlawful act or omission;
 - (vi) breaches of logical or physical security;
 - (vii) loss or corruption of Data;
 - (viii) third party claim arising out of a breach of the Agreement by the Supplier or its Personnel (including breach of warranty) or any negligent act or omission of the Supplier or its Personnel; or
 - (ix) infringement or alleged infringement of the Intellectual Property Rights or any other rights of any person, including any third party,

which was caused, or contributed to by, any act or omission by the Supplier or any of its Personnel.

- (b) The Supplier's liability to indemnify SCA under clause 12(a) is reduced to the extent that any wilful, unlawful or negligent act or omission by SCA or its Personnel contributed to the liability, loss, damage, cost, expense or compensation.

13. Termination

- (a) SCA may terminate the Agreement with immediate effect (or with effect from a specified date) by giving notice in writing to the Supplier if the Supplier:
- (i) fails to provide the Goods or perform the Services in accordance with the Agreement;
 - (ii) breaches any provision of the Agreement and, where that breach is capable of remedy, fails to remedy the breach within 10 Business Days after receiving written notice requiring it to do so (or such later date as may be specified in that notice);
 - (iii) breaches any provision of the Agreement that is not capable of remedy;
 - (iv) or any of its Personnel involved in the supply of the Goods or Services commits fraud, dishonesty or any other serious misconduct;
 - (v) commits any act or does anything that may be prejudicial or otherwise detrimental to the reputation of SCA; or
 - (vi) suffers from an Insolvency Event.
- (b) SCA may terminate this Agreement for any reason upon 7 days written notice to the Supplier without liability, except that SCA will pay the Supplier for any part of the Goods delivered and/or Services performed prior to termination.
- (c) When SCA issues a notice under clause 13(b), the Supplier will immediately:
- (i) comply with any directions given in the notice;
 - (ii) seek to cancel the supply of any incomplete or undelivered Goods;
 - (iii) do all that is possible to mitigate its losses arising from the termination of the Agreement; and
 - (iv) provide SCA (or, where requested by SCA, a third party nominated by SCA) with an electronic copy of all SCA Data (in the file format(s) and using the data structures, required by SCA).
- (d) Termination or expiry of this Agreement will not prejudice any right of action or remedy which

may have accrued to either party prior to termination or expiry.

- (e) On termination or expiry the Supplier must immediately, following instructions by SCA, cease using all materials that contain any Confidential Information by either destroying the materials or returning the materials within 30 days of expiry or termination at no additional cost to SCA.

14. Insurance

- (a) The Supplier must obtain and maintain insurance cover, at the Time for Delivery of the Goods and/or performance of the Services sufficient to cover any loss or costs that may be incurred and for which the Supplier may be liable in connection with the Agreement, including product liability insurance and, if applicable, public liability insurance. Product liability insurance must be maintained for the longer of any warranty period and three years from acceptance of the Goods.
- (b) On request, the Supplier must provide SCA with evidence of the currency of any insurance it is required to obtain

15. Confidentiality, privacy and data protection

- (a) The Supplier and its Personnel must keep the Confidential Information confidential and secure and must not disclose or otherwise make available any Confidential Information to any other person.
- (b) If the Supplier deals with any Personal Information, the Supplier must:
 - (i) comply with all Privacy Laws as if it were an entity regulated under those Privacy Laws;
 - (ii) not do anything that would put SCA in breach of any Privacy Laws in relation to the Personal Information;
 - (iii) comply with all reasonable directions given by SCA, except to the extent that doing so would cause the Supplier to breach a Privacy Law; and
 - (iv) only collect, store, use, disclose, or otherwise deal with Personal Information as required for the purposes of providing the Services or as otherwise expressly permitted under this Agreement.

16. Security

Where the Supplier suspects or validates an exposure that materially and substantially affects the security, integrity, confidentiality or availability of SCA, SCA's customers, SCA's business, SCA Confidential Information or SCA Data (**Security Breach**), the Supplier must promptly (and in any event no longer

than 48 hours after the Security Breach) notify SCA via cyber.security@sca.com.au of the Security Breach and any details known about the Security Breach at the time of notification. The Supplier must use its best endeavours to resolve promptly the Security Breach and provide SCA with regular updates (including on request) in relation to its investigation and resolution of the Security Breach.

17. Access

When at SCA's premises, the Supplier must, and must ensure that its Personnel:

- (a) protect people and property;
- (b) prevent nuisance;
- (c) act in a safe and lawful manner;
- (d) comply with the safety standards and policies of SCA (as notified to the Supplier); and
- (e) comply with any lawful directions of SCA or its Personnel.

18. Sub-contracting

- (a) The Supplier must not sub-contract to any third person any of its obligations in relation to the supply of the Goods and/or performance of the Services without the prior written consent of SCA.
- (b) The Supplier will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under the Agreement and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Supplier itself.

19. Compliance with Law and policy

- (a) The Supplier must, in performing its obligations under the Agreement, comply with the Laws relevant to the provision of the Goods and/or performance of the Services by the Supplier under the Agreement.
- (b) The Supplier acknowledges that:
 - (i) the Supplier Code of Conduct describes SCA's minimum expectations regarding the conduct of its suppliers; and
 - (ii) it has read and will comply with the Supplier Code of Conduct in performing its obligations under this Agreement.
- (c) In performing its obligations under this Agreement, the Contractor agrees:
 - (i) to comply with all applicable anti-slavery and human rights laws including the *Modern Slavery Act 2018* (Cth) and maintain throughout the term of this Agreement its own policies and procedures to ensure its compliance;
 - (ii) to provide SCA with information or documentation evidencing the

- Contractor's compliance with paragraph (i) upon request; and
- (iii) to provide any other information reasonably requested by SCA regarding the Contractor's modern slavery risks and processes (including the completion of SCA's Modern Slavery Checklist).

20. GST

- (a) The terms used in this clause have the same meanings given to them in the GST Act.
- (b) Unless otherwise expressly stated, all Prices or other sums payable or consideration to be provided under or in accordance with the Agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with the Agreement, the recipient of the taxable supply must pay to the party making the taxable supply an amount equal to the GST payable on or for the taxable supply. Subject to the recipient first receiving a valid tax invoice, payment of the GST amount will be made at the same time the consideration for the taxable supply is to be paid or provided in accordance with the Agreement.

21. Dispute Resolution

- (a) If any dispute arises under or in connection with this Agreement (**Dispute**), either party may at any time give written notice to the other (**Dispute Notice**) requesting that a meeting take place to seek to resolve the Dispute in good faith.
- (b) If the Dispute is not resolved in 15 Business Days it will be referred to mediation (**Mediation**) conducted by the Australian Disputes Centre (**ADC**) in accordance with the ADC mediation guidelines (**Guidelines**) with each party bearing their own cost.
- (c) If the parties fail to settle the Dispute at Mediation, the parties may agree to submit the dispute for resolution to final and binding arbitration.
- (d) The parties will continue to perform their respective obligations under this Agreement pending the resolution of a Dispute.

22. General

- (a) The Agreement is governed by and is to be construed in accordance with the Laws. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- (b) A waiver of any right, power or remedy under the Agreement must be in writing and signed by

the party granting it. The fact that a party fails to do, or delays in doing, something the party is entitled to do under the Agreement does not amount to a waiver.

- (c) Any provision of the Agreement which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision will, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.
- (d) A party may not assign any right under the Agreement without the prior written consent of the other party. The Supplier will be responsible for acts and omissions of any assignee.

23. Definitions

In this Agreement, unless the context otherwise requires:

Agreement means the agreement for the supply of the Goods and/or provision of Services, consisting of these General Conditions and the Purchase Order.

Business Day means a day which is not a Saturday, Sunday or public holiday (being a public holiday appointed as such under the *Public Holidays Act 1993* (Vic)) in Melbourne.

Completion Date means the date by which the Goods should be delivered by the Supplier, as specified in the Purchase Order.

Confidential Information means any technical, scientific, commercial, financial or other information of, about or in any way related to, SCA, including this Agreement and any information designated by SCA as confidential, which is disclosed, made available, communicated or delivered to the Supplier, but excludes information which:

- (a) is in or which subsequently enters the public domain, other than as a result of a breach of an obligation of confidentiality;
- (b) the Supplier can demonstrate was in its possession prior to the date of the Agreement;
- (c) the Supplier can demonstrate was developed by it independently of any disclosures previously made by SCA;
- (d) is lawfully obtained by the Supplier on a non-confidential basis from a person who is not bound by a confidentiality agreement with SCA or otherwise prohibited from disclosing the information to the Supplier; or
- (e) is required to be disclosed pursuant to Law, court order or other legal process.

Delivery Point means the location or address to which the goods are to be delivered, as specified in the Purchase Order.

General Conditions means these terms and conditions.

Goods means the goods or services specified in the Purchase Order and as provided under this Agreement.

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

Insolvency Event means, in relation to the Supplier, any of the following:

- (a) anything that reasonably indicates that there is a significant risk that the Supplier is or will become unable to pay debts as they fall due;
- (b) a step being taken to have a receiver, receiver and manager, liquidator or provisional liquidator appointed to the Supplier or any of its assets; or
- (c) the Supplier ceasing, or indicating that it is about to cease, carrying on business.

Intellectual Property Rights means all intellectual property rights at any time recognised by law, including all present and future copyright, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, trade secrets and know-how, registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Laws means:

- (a) any statute, regulation or subordinate legislation of the Commonwealth of Australia, the State or local or other government in force in the State of Victoria, irrespective of where enacted; and
- (b) lawful requirements of any government or government department or other body or a governmental, semi-governmental, judicial, municipal, statutory or public entity or authority (including a statutory authority or a State-owned enterprise), a self-regulatory authority established under statute or a stock exchange (wherever created or located) or a person (whether autonomous or not) who is charged with the administration of a law.

Personal Information means all personal information (as defined in the *Privacy Act 1988* (Cth)) which is

received or learnt by a party from any source as a consequence of or in the course of exercising or performing its rights and obligations under this Agreement.

Personnel of a party includes the officers, employees, agents, contractors and sub-contractors of that party.

Privacy Laws means the *Privacy Act 1988* (Cth), the privacy policy issued by SCA from time to time (available at

<https://www.southerncrossaustereo.com.au/privacy-policy/>) and any other applicable Laws and binding industry codes and policies relating to the management of Personal Information applicable to the local jurisdiction in which the Goods are received by SCA.

Purchase Order means any form of order or purchase issued by SCA for the supply of the Goods and/or the provision of Services, made under or incorporating these General Conditions.

Price means:

- a) in the case of Goods, the sum ascertained by multiplying the Unit Price for the applicable Goods by the number of units delivered; and
- b) in the case of Services, the price of the Services.

SCA means Southern Cross Austereo Pty Ltd (ABN 78 109 243 110) and its related bodies corporate.

SCA Data means all data, information and other materials provided to, generated by, or otherwise used by, the Supplier relating to SCA, its personnel or customers.

Supplier means the entity supplying the Goods and/or providing the Services under the Agreement.

Supplier Code of Conduct means the Supplier Code of Conduct issued for suppliers providing goods or services to SCA (as amended from time to time and available at www.sca.com.au).

Time for Delivery means the date and, where relevant, the time specified in the Purchase Order (or such other date or time as may be agreed in writing) by or on which the Goods must be delivered or the Services must be provided by the Supplier.

Unit Price means the price per item of each of the Goods, as specified in the Purchase Order.