



therapy and
assistive technology



leisure and
independence



home and
community



training and
employment



Rocky Bay

discovering abilities

Optimising the quality of life for people living with disability

Rocky Bay Purchase Terms and Conditions

Definitions

1. Terms defined below are given their respective meanings when used in these purchase terms and conditions (**Terms**) and the attached purchase order (**Order**) (together comprising a contract between Rocky Bay and the Supplier):

Business Day means a day on which banks are open for general banking business in Perth, Western Australia excluding a Saturday, Sunday or public holiday in that city.

Confidential Information means the Terms and information (regardless of its form) which is disclosed directly or indirectly by Rocky Bay and treated or designated as confidential by Rocky Bay or the Supplier knows, or ought to know, is confidential.

Contract IP means the intellectual property rights in subject matter developed by the Supplier in the performance of the Services or otherwise however under the Terms but does not include Existing IP.

Customs Duty means the imposition of charges and duties under *the Customs Act 1901 (Cth)*.

Date for Delivery means the date for delivery specified in the Order or, if no such date is specified, four weeks after issue of the Order.

Delivery Address means the delivery address specified in the Order.

EPS means Greentree or any other electronic procurement system used by Rocky Bay from time to time.

EPS Conditions means the terms and conditions for the use of the EPS as applicable from time to time.

Existing IP means the intellectual property rights owned by the Supplier prior to the commencement of the Services.

Goods means the goods stated in the Order and includes software and, unless expressly stated otherwise, Services.

Invoice means an invoice that complies with clauses 35 and 36.

Order Number means the order number specified in the Order.

Personnel means the Supplier's officers, employees, delegates, subcontractors, partners, agents and service providers of any nature.

Purchase Price means the price payable in respect of the Order which is deemed to include, unless expressly stated otherwise in the Order, all costs of delivery including any Customs Duty, storage and packaging of the Goods.

Rocky Bay means Rocky Bay Inc. ABN 66 028 387 386 trading as Rocky Bay.

Services means the services provided or to be provided by the Supplier under the Terms.

Service Levels means:

- (a) the exercise of that degree of skill, diligence, prudence and foresight that would reasonably be expected from a reputable and prudent contractor in performing services similar to the Services under conditions comparable to those applicable under the Terms; and
- (b) the service levels, standards and codes as would ordinarily be applied in the circumstances.

Supplier means the party supplying the Goods.

Term means the period specified in the Order.

Warranty Period means the warranty period specified in the Order or, if no warranty period is specified, a period of 12 months from the date on which the Supplier delivers the last of the Goods to the Delivery Address.

Other contracts

2. If at the time Rocky Bay issues an Order, Rocky Bay and the Supplier are parties to a contract covering supply of the Goods, Rocky Bay will quote the relevant contract number in the Order. The Terms will not apply to the Order, other than this clause 2. Quotation in the Order or notification of the relevant contract number constitutes conclusive evidence that the relevant contract applies to the Order.

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Order

3. Subject to any contract prevailing over the Terms under clause 2, by issuing the Order to the Supplier, Rocky Bay offers to purchase the Goods from the Supplier on the Terms. The Supplier needs to accept the Order by advising Rocky Bay through the EPS and/or email. By accepting the Order, the Supplier agrees to supply the Goods on the Terms. Unless stated otherwise in the Order, an Order expires if it has not been fully accepted within 10 Business Days of the date of the Order. A partial acceptance of an Order constitutes a rejection of the Order unless the Order specifically states that it may be accepted as to certain identified parts only.

Delivery and provision of Services

4. The Supplier must deliver the Goods to the Delivery Address by no later than the Date for Delivery and in accordance with the Terms. The Supplier must secure a signature from a Rocky Bay staff member as proof of Delivery. The Supplier must provide the Services during the Term.

5. If the Supplier is unable to deliver the Goods by the Date for Delivery, the Supplier must notify Rocky Bay within 2 business days. Rocky Bay reserves the right, in its absolute discretion, to cancel the Order by two Business Days written notice if the alternative date for delivery proposed by the Supplier is unacceptable to Rocky Bay. The Supplier is not entitled to any payment, costs or damages from Rocky Bay by reason of such cancellation.

Quality, guarantee and defects inspection

6. All Goods supplied must be of merchantable quality, conform to any relevant description, specification or other requirements in the Terms and, unless otherwise stated in the Order, be new.

7. The Supplier warrants that the Goods will be free from defects in quality, design, materials and workmanship for the Warranty Period (if any).

8. All Goods delivered are subject to Rocky Bay's inspection and testing within 2 business days after delivery at the Delivery Address. If, upon inspection or testing, Rocky Bay finds any of

the Goods to be defective, of poor quality or otherwise not in accordance with the Terms, the Supplier must, after receiving notice from Rocky Bay that the Goods are rejected, collect the Goods at the Supplier's expense. Rocky Bay has no liability to pay for Goods that have been rejected under this clause 8 and the Supplier is not entitled to any costs or damages from Rocky Bay by reason of such rejection.

9. Without limiting Rocky Bay's rights under clause 8, if Rocky Bay identifies any defect in design, quality, materials or workmanship during the Warranty Period, it may give notice of this occurrence to the Supplier. On receipt of notice the Supplier must on request collect the Goods or, if Services are concerned, rectify the defect at the Supplier's expense. Any Goods collected under this clause (and not rejected by Rocky Bay under clause 8) must be repaired or replaced as soon as possible at the Supplier's cost. Alternatively Rocky Bay may, at its option, retain the Goods but withhold from payment an amount reasonably determined by Rocky Bay as compensation for the defect.

Warranties as to ownership

10. The Supplier represents and warrants that as at the Date for Delivery it is the legal and beneficial owner of the Goods and no person other than the Supplier holds or is entitled to hold any interest in the Goods.

11. The Supplier represents and warrants that as at the Date for Delivery there are no encumbrances or liens over the Goods.

Risk and insurance

12. The Supplier is responsible for all losses or damage to the Goods until they are delivered to Rocky Bay at the Delivery Address in accordance with the Terms.

13. The Supplier must, at its cost, ensure that the Goods are insured against all risks to the point of delivery at the Delivery Address and, if the Goods are rejected or returned by Rocky Bay under clauses 8 or 9 respectively, from the time the Supplier collects the Goods from Rocky Bay.



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Title

14. Title to the Goods passes from the Supplier to Rocky Bay upon delivery in accordance with the Terms.

Compliance and reporting

15. The Supplier must at its own expense comply with all State, Federal and local laws, regulations or orders applicable to the purchase, manufacture, processing, delivery and pricing of the Goods and provision of the Services.

16. The Supplier must provide Rocky Bay with such reasonable assistance as requested by Rocky Bay in order for Rocky Bay to satisfy and comply with any laws applying to Rocky Bay and relating to the Terms.

17. The Supplier must comply with any direction given by Rocky Bay or any of its agents or employees when on Rocky Bay's site, including when delivering the Goods and generally regarding the performance of the Services.

18. From time to time, Rocky Bay may request the Supplier to provide a written report setting out in detail such information about the Goods, or any other obligations of the Supplier under the Terms, as Rocky Bay may require, and the Supplier must provide the report to Rocky Bay within 10 Business Days of that request, unless another timeframe is stipulated in Rocky Bay's request.

Drug and Alcohol Management

19. The Supplier must ensure that its employees and contractors, at all times when on Rocky Bay's premises or sites, are free from impairment from Drugs and Alcohol.

20. Rocky Bay may refuse entry to, or remove from, any of its premises or sites any employee or contractor of the Supplier that it believes are impaired due to the influence of Drugs and Alcohol, and the Supplier will not be entitled to an extension of time to the Date of Delivery or any other compensation with respect to any delay caused.

Specific terms in relation to Services

21. The Supplier must provide the Services in accordance with the Service Levels.

22. The Supplier warrants that it and any Personnel engaged to perform the Services are competent and have all the necessary skills, training and qualifications to carry out the Services in accordance with the Terms.

23. The Supplier has sole responsibility for providing all resources and equipment necessary to perform the Services, whether they are carried out at Rocky Bay's premises or elsewhere.

24. The Supplier must keep clean and tidy all locations on which the Services are performed.

25. The Supplier acknowledges and agrees that upon creation of the relevant subject matter, the unencumbered ownership of all Contract IP vests in Rocky Bay. The Supplier hereby assigns the unencumbered ownership of all Contract IP to Rocky Bay.

26. The Supplier must take all steps reasonably necessary to give effect to the requirements of clauses 25.

27. The Supplier must, within 60 minutes of its occurrence, report to Rocky Bay all incidents, injuries or damage to property or the environment and take all reasonable steps to rectify the incident, injury or damage. Incidents must be reported to Safety & Risk Coordinator on 0415 383 268 and/or jamesb@rockybay.org.au.

Insurance

28. The Supplier must for the Term (at its own cost) effect the following insurance policies and any further policies listed in the Order, and for the higher of the cover amounts stated below and any cover amount stated in the Order, from one or more insurers from an agency acceptable to Rocky Bay:

(a) Employee Insurance: Insurance against any claim in respect of any personal injury to or death of any person employed or engaged by the Supplier which arises out of, or is caused or contributed to by, the performance or non-performance of the Services by the Supplier or its subcontractors, agents or employees. Required insurance amount: Such amount as prescribed from time to time by the *Workers' Compensation and Injury Management Act 1981 (WA)* or any other applicable legislation.

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- (b) Motor Vehicles and Equipment: Insurance against all loss and/or damage to all items of the Supplier's plant and equipment (whether owned, hired or leased) used in the performance of the Services. The Supplier must insure all vehicles with (i) compulsory motor vehicle third party insurance, and (ii) comprehensive motor vehicle and third party liability insurance. Required insurance amount: no less than \$10 million for any one occurrence and unlimited as to the number of occurrences.
- (c) Public and Product Liability Insurance: Insurance against any claim in respect of loss or destruction of, or injury or damage to, or loss of use of any real or personal property, or any personal injury to or death of any person, arising out of, or caused by the Goods or the performance or non-performance of the Services by the Supplier or its subcontractors, agents or employees or the quality, disposal or sale of products used by the Supplier in the performance of the Services. Required insurance amount: \$10 million in respect of any one claim and unlimited as to the number of claims.

29. The Supplier must pay all premiums and all deductibles on the policies of insurance when due.

30. Copies of the certificates of currency for the policies must be provided by the Supplier to Rocky Bay within 5 Business Days of a written request by Rocky Bay.

Cancellation

31. Rocky Bay may, at its option, cancel (in whole or part) any Order ordered prior to delivery of the relevant Goods. If the Order relates to the Supplier's standard stock merchandise, Rocky Bay's only liability to the Supplier arising from this cancellation is to pay for the Goods delivered prior to the date of cancellation.

32. Rocky Bay may, at its option and at any time, cancel any Services ordered prior to performance. Rocky Bay's only liability to the Supplier arising from this cancellation is to pay for the Services performed prior to the date of cancellation.

Payment

33. In consideration of the Supplier delivering the Goods, Rocky Bay must, subject to the Terms, pay the Supplier the Purchase Price.

34. The Supplier must provide Rocky Bay with a valid tax invoice for the Purchase Price as required by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

35. The invoice must be emailed to: accounts.payable@rockybay.org.au and must quote the Order Number. If an invoice does not quote the Order Number it will be returned to the Supplier and the Supplier must issue a replacement invoice that complies with this clause.

36. Rocky Bay will pay the Supplier the amount set out in the Invoice 30 days from end of month of the date of the Invoice. Rocky Bay may withhold payment when the Goods have not been supplied in accordance with the Terms and deduct from payment any money owed by the Supplier to Rocky Bay under the Terms or otherwise. Rocky Bay will pay the Supplier by Electronic Funds Transfer and requires the Supplier's banking account details before payment can be made.

37. (a) The Supplier must apply for and use its best endeavours to obtain the full benefit of all:

- (i) reductions or refunds of Customs Duty, whenever they become available (prior to delivery of the Goods); and
- (ii) tariff concession orders or ministerial determinations that Rocky Bay is or may be entitled to claim and has notified the Supplier.

(b) The Supplier must notify Rocky Bay, in writing, of each application made under subclause 37(a) and the outcome of that application, within 14 days of application and upon the determination of the application respectively.

(c) Rocky Bay must adjust the Purchase Price to give Rocky Bay the full benefit of all concessions, determinations, reductions and refunds, obtained or which can be claimed.

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Confidentiality and media

38. The Supplier must keep confidential, and not use or disclose, any Confidential Information, except as permitted by the Terms or with Rocky Bay's prior written consent. The Supplier must not make any public announcement, issue any media release or disclose for distribution through any communications media any information relating to the Terms, without Rocky Bay's prior written consent.

39. Rocky Bay has no liability to the Supplier whatsoever for giving a third party access to the Terms or documents relating to the Terms in accordance with the *Freedom of Information Act 1992 (WA)*.

General

40. The Terms will be construed and interpreted in accordance with the laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the courts of that State.

41. All notices and other documents given pursuant to the Terms must be in writing and must be delivered by hand, post, facsimile or email to the receiving party at its address in the Order or as otherwise notified by the receiving party to the sending party.

42. The Supplier may not assign or subcontract any rights or obligations under the Terms without Rocky Bay's prior written consent.

43. A waiver of a breach of any provision of or variation to the Terms must be in writing.

44. If Rocky Bay is restructured by law or through other means, including the use of a subsidiary or associated companies or transfer of assets, rights and liabilities, then the rights and obligations of Rocky Bay under the Terms are assigned to and assumed by the appropriate legal entity as determined by Rocky Bay or the successors of Rocky Bay under the restructure.

45. In carrying out its obligations under the Terms, each party is acting as an independent contractor to the other party. Nothing in the Terms creates a partnership, trust or agency between the parties or imposes any fiduciary duties on either party in relation to the other, unless expressly stated.

46. Insofar as any individual provision of these Terms, in whole or in part, is determined to be unenforceable for any reason in any specific case the determination will not affect the enforceability of any other provision of the Terms and the provision in question shall be modified insofar as is possible so as to be rendered enforceable under the applicable law to maintain the intent of the Terms.