

SUPPLIER TERMS AND CONDITIONS
SILK CONTRACT LOGISTICS PTY LTD
ABN 56 006 444 355

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| <p>1. Definitions</p> <p>In these Terms, the following definitions apply:</p> <p>1.1 Agreement means any agreement made between Silk and the Supplier by duly authorised signatory;</p> <p>1.2 Business Days means a day that is not a Saturday, Sunday or public holiday in the State the Services are provided;</p> <p>1.3 Business Hours means between 9.00 am and 5.00 pm on a Business Day;</p> <p>1.4 Confidential Information means these Terms and any relevant Agreement; and all information, know-how, ideas, concepts, technology, industrial, marketing and commercial knowledge of a confidential nature (whether in tangible or intangible form) relating to, disclosed by, or developed in connection with or in support of the business of either party to these Terms or a Related Body Corporate (within the meaning of the Corporations Act 2001 (Cth) of that party which is disclosed, communicated or delivered to, learnt by, or which otherwise comes to the knowledge of or into the possession of the other party to an Agreement under or in connection with an Agreement, but does not include:</p> <p>(a) information which is or becomes generally available in the public domain (other than through any breach of confidence);</p> <p>(b) information rightfully received by a party to these Terms from a third person who is under no obligation of confidentiality in relation to the information and who has not obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the other party to these Terms; or</p> <p>(c) information which has been independently developed by a party to these Terms.</p> <p>1.5 Fee means the fees and charges for Goods or Services as agreed between Silk and the Supplier in the relevant Agreement;</p> <p>1.6 GST Law means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);</p> <p>1.7 Goods means any goods supplied by the Supplier as described in the relevant Agreement;</p> <p>1.8 Personnel means all employees, agents and contractors engaged to provide Goods or Services;</p> <p>1.9 Services means any services supplied by the Supplier as described in the relevant Agreement;</p> <p>1.10 Silk means Silk Contract Logistics Pty Ltd ABN 56 006 444 355 and its related bodies corporate within the meaning of that expression in section 9 of the <i>Corporations Act 2001</i> (Cth) and their officers, employees, agents and Subcontractors;</p> <p>1.11 Site means the location where Goods or Services are provided in accordance with an Agreement;</p> <p>1.12 Supplier means the party which will provide the Goods or Services in accordance with these Terms and any relevant Agreement;</p> <p>1.13 Terms means these terms and conditions;</p> | <p>1.14</p> <p>2.</p> <p>2.1</p> <p>2.2</p> <p>2.3</p> <p>2.4</p> <p>2.5</p> <p>3.</p> <p>3.1</p> <p>3.2</p> <p>3.3</p> <p>3.4</p> <p>4.</p> <p>4.1</p> | <p>WHS Act means the <i>Work Health and Safety</i> legislation including regulations applying in the location in which the Site is situated.</p> <p>Interpretation</p> <p>In being accepted as a supplier for Goods or Services by Silk, these Terms will prevail over any and all other agreements in place.</p> <p>Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of these Terms.</p> <p>The words "includes" and "including" or words of similar effect are not words of limitation.</p> <p>The singular includes the plural and vice versa and any gender includes any other gender.</p> <p>A reference to "goods and services" includes reference to "goods or services" and vice versa.</p> <p>Supply of Goods and Services</p> <p>The Supplier must supply the Goods and Services:</p> <p>(a) detailed in and in accordance with any relevant Agreement;</p> <p>(b) by the date specified in and in accordance with any relevant Agreement;</p> <p>(c) to the address(es) notified by Silk in any relevant Agreement;</p> <p>(d) and, if applicable, by the methods and delivery instructions specified by Silk, all in accordance with these Terms at all times.</p> <p>The Supplier is responsible for payment of all costs (including any levies, duties or taxes) associated with the manufacture, importation, packaging, storage, transportation, delivery and (if required by Silk) installation, of Goods supplied.</p> <p>The Supplier must ensure that each packaging slip, bill of lading and invoice bears the applicable purchase order number (or other identification) issued by Silk and the location at which Goods are to be delivered and Services to be provided (as applicable).</p> <p>The Supplier must, in relation to the provision of Goods and Services to Silk, provide those Goods in accordance with any standards or requirements notified by Silk and perform those Services in a professional manner and in accordance with any standards or requirements notified by Silk.</p> <p>General Supplier Obligations</p> <p>The Supplier must:</p> <p>(a) comply with any reasonable directions given by Silk from time to time in respect of the nature and scope of Goods and Services to be supplied;</p> <p>(b) observe all applicable policies and procedures of Silk, as provided to the Supplier from time to time;</p> |
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| (c) | ensure that it does not engage in any conduct or activity that: | 5.1 | In consideration of the provision of the Goods or Services in accordance with any Agreement, Silk will pay, and only be liable to pay to the Supplier, the Fee. |
| | (i) will harm, or is likely to harm, the name or reputation of Silk; | 5.2 | Silk acknowledges that the Fee is exclusive of any GST that may be charged by the Supplier to Silk, and therefore, the Supplier will be entitled to add on GST. |
| | (ii) is offensive, corrupt or disreputable; | 5.3 | The Supplier must provide Silk with a tax invoice in accordance with the GST Law in relation to the remuneration payable under this clause and in accordance with any payment terms specified in any relevant Agreement. |
| | (iii) may bring Silk, into disrepute, contempt, scandal or ridicule; or | 5.4 | The invoice referred to in clause 5.3 must include the following details before payment is approved by Silk: |
| | (iv) contravenes or is contrary to the requirements, principles and standards notified by Silk from time to time. | | |
| (d) | ensure that all Personnel are competent and have the skills and experience required to provide the Goods and to perform Services to the standard required by Silk; | (a) | Silk's purchase order number; |
| | | (b) | date of supply of the Goods or Services; |
| | | (c) | name of Personnel provided by the Supplier |
| (e) | ensure that all Personnel consent to any routine background checks and, where requested by Silk, remove any Personnel who, in Silk's opinion, are not suitable to provide the Goods or Services and replace such Personnel with a person acceptable to Silk; | (d) | description of the Goods or Services provided; |
| | | (e) | time allocated per task; and |
| | | (f) | the ABN of the Supplier. |
| (f) | assume responsibility for the acts or omissions of all Personnel in respect of the supply of Goods or Services to Silk; and | 5.5 | The Supplier will not charge, and Silk will not be liable, for any expenses, charges, costs, termination or exit fees except the Fee for the provision of Goods or Services as set out in any Agreement. |
| (g) | where the Supplier is providing Goods or Services to Silk at the Site: | | |
| | | 6. | Protection of People and Property |
| | (i) ensure that it complies with any Site conditions that are notified by Silk, including conditions relating to access, safety, Site control, working hours; | 6.1 | The Supplier acknowledges that the Site is located within an industrial use building which will be leased, occupied and used as a warehouse and distribution facility. |
| | (ii) provide Silk with a list of all major equipment which it proposes to use on Site and ensure that such equipment complies with all applicable Australian standards and safety requirements; | 6.2 | The Supplier shall take measures necessary to protect people and property and prevent nuisance and unreasonable noise and disturbance. |
| | (iii) ensure that any necessary licences and permits are obtained in order to provide the Goods or Services, including operation of any vehicle or equipment used in provision of the Goods or Services; | 6.3 | The Supplier must ensure so far as reasonably practicable the health and safety of workers (including sub-contractors) and without limiting the generality of this obligation: |
| | (iv) rectify any damage to the Site caused by the provision of the Goods or Services; and | (a) | comply with the provisions of the WHS Act and any safety requests, policies and/or procedures advised by Silk, acting reasonably; |
| | (v) where the supply of Goods to Silk is of pre-packaged goods acquired by the Supplier for on-sale, use its best endeavours to procure the benefit of the product warranties provided in respect of such pre-packaged goods in favour of Silk. | (b) | comply with Silk's Chain of Responsibility policy; |
| | | (c) | in a timely manner, consult, co-operate and co-ordinate activities with all other persons on the Site or engaged in activities that support the completion of the works that have duties under the WHS Act; and |
| | | (d) | have in place and diligently apply a systematic approach to the assessment, communication, minimisation and management of risks and hazards. |
| | | 6.4 | The Supplier will promptly notify Silk in writing of: |
| | | (a) | any matter, thing or circumstance which may constitute a breach of, or which may give rise to a risk of breaching, clause 6.2 or 6.3 on or |

5. Fee

SUPPLIER TERMS AND CONDITIONS
SILK CONTRACT LOGISTICS PTY LTD
ABN 56 006 444 355

- around the Site, which a reasonable supplier ought to reasonably be aware of;
- (b) any complaint, demand, notice, order or the like in respect of any non-compliance with the requirements of the WHS Act or in respect of any nuisance, noise or other disturbance; and
- (c) the provision of the Goods or Services including, without limitation, defective Goods and Services; or
- (d) the Supplier's breach of these Terms or any relevant Agreement including any warranty, or negligence by the Supplier.
- 7. Warranty**
- 7.1 The Supplier warrants that:
- (a) at all times it shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the supply of the Goods and Services;
- (b) all Goods and Services supplied:
- (i) conform to the specifications, drawings, samples, Silk's packaging and environmental considerations as notified by Silk from time to time, or other descriptions furnished by Silk;
- (ii) are fit and sufficient for the purpose intended;
- (iii) (in the case of Goods) are new, of merchantable quality and in good order and condition;
- (iv) (in the case of Services) are provided with acceptable care and skill or technical knowledge and all necessary steps to avoid loss and damage have been taken;
- (v) are free from defect or default of any kind;
- (vi) are free from any charge, security or other encumbrance;
- (vii) comply with all applicable laws, regulations, local requirements and other applicable Australian standards and industry regulations; and
- (viii) (in the case of Goods intended for human consumption) that the Goods are not adulterated or contaminated in any way and best practice food storage and handling procedures are complied with.
- 8.2 The Supplier's responsibility to indemnify Silk under these Terms will be reduced to the extent that any negligent act or omission of Silk, or its consultants, agents, separate contractors or other contractors (not being employed by the Supplier) may have contributed to the loss, damage, injury or death.
- 8.3 Each indemnity in these Terms is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of an Agreement.
- 8.4 The amount of the Supplier's liability under this clause 8 is a debt due and payable from the Supplier to Silk for service provided under an Agreement only.
- 8.5 Silk's rights under this clause are in addition to and shall not prejudice any other right to recover damages or exercise any other right.
- 8.6 Neither party shall be liable for indirect, incidental or consequential loss or damages including loss of profit, loss of revenue, loss of goodwill, loss of business, loss of sales, loss of capital or punitive or exemplary damages.
- 9. Oversupply and Early Supply**
- 9.1 Silk bears no responsibility for Goods delivered or Services provided in excess of written instructions by Silk. Deliveries in excess of those authorised by Silk may be returned to the Supplier and the Supplier must pay Silk for all packaging, removing, handling, sorting and transportation expenses incurred in connection with such deliveries.
- 9.2 Silk is not obliged to accept early delivery of Goods and the Supplier is responsible for holding and storing the goods until the time of delivery.
- 10. Rejection**
- 10.1 A claim that the Goods or Services are below the requisite standards may be made by Silk on delivery, or in the case of Goods for human consumption, until the Goods are actually consumed. Acceptance on delivery of the Goods or Services or payment by Silk does not constitute an agreement that the Goods or Services meet the requisite standards.
- 10.2 If Silk reasonably determines that Goods delivered or Services provided (or both the Goods and Services provided) by Supplier are defective in material or workmanship (including not satisfying any installation requirements of Silk) or otherwise fail to meet Silk's requirements, Silk may at its discretion and without limitation to any other right or remedy:
- (a) reject those Goods or Services or both and the Supplier must repay on demand all moneys paid by Silk to Supplier for those Goods and Services; or
- 8. Indemnities**
- 8.1 The Supplier shall indemnify Silk against:
- (a) loss of or damage to Silk's property and any existing property; and
- (b) any liability to or claim by any other person against Silk,
- arising out of or in connection with;

**SUPPLIER TERMS AND CONDITIONS
SILK CONTRACT LOGISTICS PTY LTD
ABN 56 006 444 355**

- (b) elect to accept those Goods or Services or both and recover from Supplier damages suffered by reason of Supplier's failure to deliver Goods or provide Services in accordance with Silk's requirements.
- 10.3 Supplier will be liable for all expenses incurred by Silk in returning, correcting or replacing defective or faulty Goods or Services (as applicable).
- 11. Title and Risk**
- 11.1 In the case of purchase of Goods by Silk, title to the Goods will pass to Silk upon payment by Silk and responsibility for any loss or damage to the goods will pass to Silk on delivery of such Goods to the address notified by Silk.
- 11.2 Where Supplier conducts any repair, installation and/or maintenance activities in respect of the Goods, the Supplier will be responsible for any loss of or damage to the Goods as a result of such maintenance, installation or repair.
- 12. Insurance**
- 12.1 **Public Liability and Products Liability** – in the provision of Services, the Supplier shall effect and maintain for the duration of an Agreement, a Public Liability Policy, for an amount in respect of a single event of not less than the amount specified in the signed Agreement but no less than \$20,000,000.
- 12.2 **Employees** – the Supplier shall insure against liability (including its common law liability for the maximum allowed by law) for death of or injury to persons employed by the Supplier for an amount in respect of a single event of not less than any amount prescribed by any applicable workers' compensation legislation. To the extent allowed by law, the policy must include a waiver of subrogation in favour of Silk.
- 12.3 **Motor vehicle** – the Supplier shall effect and maintain comprehensive motor vehicle insurance for (third party liability) for an amount in respect of a single event of not less than \$20,000,000 and sufficient to cover all motor vehicles used by the Supplier, at any time in connection with the work the Supplier is to do under or in connection with an Agreement and any such activity of the Supplier that may give rise to a claim by any third party (including Silk) including third party property damage, personal injury and death.
- 12.4 **Subcontractors** – the Supplier must ensure that any subcontractor, before commencing work, are covered by or effect and maintain the insurances in 12.1, 12.2 and 12.3.
- 12.5 The Supplier before providing the Goods and Services and whenever requested by Silk must provide to Silk evidence of insurance required to be in place because of this clause, including without limitation a certificate of currency in respect of the insurances required under this clause 12.
- 13. Termination**
- 13.1 Silk may, for its sole convenience, terminate any Agreement, following which Silk will, without prejudice to any other rights or remedies it may have, pay the Supplier that part of the Fee properly due for the Goods or Services supplied by the Supplier to the date of termination.
- 13.2 Silk may immediately terminate an Agreement by sending the Supplier written notice of termination if the Supplier fails to refuse to make delivery of the Goods and Services in accordance with an Agreement.
- 13.3 Either Silk or the Supplier may immediately terminate any Agreement by sending the other party written notice of termination if:
- (a) the other party suspends payment of its debts and/or becomes unable to pay its debts as and when they fall due and/or is insolvent;
- (b) the other party enters or threatens to enter into bankruptcy, liquidation or any other form of administration, external management or receivership;
- (c) the other party enters into a scheme of arrangement with its creditors;
- (d) the other party ceases, or threatens to cease, to conduct business, in a manner which in the first mentioned party's reasonable opinion will hinder the other party from fulfilling its obligations under an Agreement;
- (e) the other party fails to remedy a breach of any material provision of these Terms or an Agreement (which can be remedied) within 10 business days after receipt of a written notice requiring the party to remedy that breach; or
- (f) the other party breaches any material provision of an Agreement and the breach cannot be remedied.
- 13.4 Any termination or expiry of an Agreement will not prejudice any right, cause of action or remedy which may have accrued to either party prior to the termination or expiry of an Agreement.
- 14. Dispute Resolution**
- 14.1 If a dispute arises in relation to the Goods or Services or both, an Agreement or these Terms, the parties to the dispute expressly agree to endeavour to settle the dispute by mediation administered by the Australian Disputes Centre (ADC) before having recourse to litigation.
- 14.2 The mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation (Guidelines) which are operating at the time the matter is referred to the ADC.
- 14.3 The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved.
- 14.4 The terms of the Guidelines are hereby deemed incorporated into these Terms.
- 14.5 This clause shall survive termination of the Services.
- 14.6 During the period in which the dispute is being resolved, the parties must continue to perform all of their obligations under these Terms or any relevant Agreement which are

**SUPPLIER TERMS AND CONDITIONS
SILK CONTRACT LOGISTICS PTY LTD
ABN 56 006 444 355**

	not under dispute and which are able to be performed by the parties.		reasonably considers necessary for that purpose.
14.7	Nothing in this clause 14 prevents Silk from obtaining any injunctive or other interlocutory relief from a court of appropriate jurisdiction.	16.3	Each party must ensure that its representatives who have or may have access to the Confidential Information are aware of the confidential nature of the Confidential Information and treat the Confidential Information accordingly and must procure that any such representatives keep such information confidential.
15.	Notice		
15.1	Method of giving – a notice, consent, approval or other communication must be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:	16.4	The obligations under this clause 16 will continue after the expiry or termination of an Agreement for two years.
	(a) delivered to that person's address;	17.	Inconsistency
	(b) sent by registered pre-paid mail to that person's address; or	17.1	If there is any inconsistency between these Terms and/or any terms and conditions set out in an Agreement, these Terms will prevail to the extent of such inconsistency.
	(c) sent by email to that person's email address.	18.	No Waiver
15.2	Communications sent by email are deemed to be signed by the named sender.	18.1	Silk's failure or delay to exercise a power or right does not operate as a waiver of that power or right and the exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing and is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
15.3	Time of receipt – unless a later time is specified in a notice, the notice takes effect from the time it is received.		
15.4	A notice is deemed to be received if:	19.	Severance
	(a) delivered by hand, when so delivered;	19.1	If any provision of these Terms or any Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed and rendered ineffective as far as possible without modifying the remaining provisions, and shall not in any way affect any other circumstances of or the validity or enforcement of these Terms or any Agreement.
	(b) sent by pre-paid post, on the fifth clear Business Day after the date of posting; and		
	(c) sent by email at the time on the day that it is sent unless the sender receives within 12 hours of that time an automated message that the email has not been delivered.	20.	Force Majeure
15.5	Address for notices – for the purpose of this clause, the address or email address of a person is the address or email address set out in any Agreement or as notified by a party in writing.	20.1	"Force Majeure Cause" shall mean circumstances beyond the control of the party affected thereby (including its subcontractors) including, but not limited to, act of God, declared or undeclared war, riot, pandemic, civil commotion, restrictions or directions from any government or governmental body or authority, peril of the sea, earthquakes, explosion, fire, flood, storm, riot, strike or other industrial action (including without limitation strike or other industrial action by the employees of the party claiming the benefit of this clause), failure by any statutory undertaker, utility company, local authority or like body to provide services, any failure, shortage of power, fuel, raw material, goods bought from third parties or transport, and any act or omission of any third party to the extent that performance of any obligation of the party claiming the benefit of the clause relies thereon.
16.	Confidentiality	20.2	Neither party shall be liable to the other party for any failure or delay of performance if such failure or delay is due to a Force Majeure Cause, provided that such affected party shall inform the other party by written notice of the existence, expected extent, duration and consequences of the Force Majeure Cause as soon as reasonably possible.
16.1	Other than as permitted under clause 16.2, neither party may disclose to any person the Confidential Information.	20.3	During the duration of the Force Majeure Cause, but for no longer period, the obligations of the affected party shall be suspended to the extent as prevented from such Force Majeure Cause. The obligations of the other party shall be suspended in proportion to such extent and for the same
16.2	Each party may disclose the Confidential Information:		
	(a) to its representatives who need to know the Confidential Information for the purposes of performing that party's obligations under an Agreement subject to that party disclosing the Confidential Information taking reasonable steps to ensure that any such representatives are fully aware of the confidential nature of the Confidential Information before the disclosure is made; and		
	(b) which is required to be disclosed by law, provided that the disclosing party has:		
	(i) given the other party prior notice where practicable; and		
	(ii) provided all assistance and co-operation which the other party		

SUPPLIER TERMS AND CONDITIONS
SILK CONTRACT LOGISTICS PTY LTD
ABN 56 006 444 355

period of time, provided however that Silk shall not be allowed to retain payment of delivered Goods. The parties shall endeavour to mitigate the consequences of the Force Majeure Cause.

20.4 Under no circumstances shall the Supplier be obligated to purchase or acquire goods to replace supplies lost as a result of a Force Majeure Cause.

20.5 Notwithstanding any other clause of these Terms, if a party is affected by a Force Majeure Cause and therefore prevented from executing its obligations under an Agreement for more than thirty (30) consecutive days, the other party shall have the right to terminate an Agreement by written notice to the affected party providing fourteen (14) days' notice.

21. Exclusion of agency and partnership

21.1 Nothing in these Terms or an Agreement creates a relationship of:

- (a) employer and employee; or
- (b) partnership between any of the parties,

and no party may act, or purport to act, as the agent of, or in any way bind or release any other party, without their express written permission.

22. Acceptance

22.1 By engaging with Silk to provide Goods or Services or both, the Supplier is deemed to have accepted these Terms, and to have agreed that they apply to the exclusion of all others.

23. Jurisdiction

23.1 The parties irrevocably submit to the exclusive jurisdiction of the courts of the state that the Goods or Services are provided in.

24. Entire Agreement

24.1 These Terms, together with any applicable Agreement contain the entire agreement between the parties in relation to its subject matter, and there are no other oral or written representations, stipulations, warranties, agreements, or understandings which apply in respect of the Services.

24.2 Variation

Any variation or modification of these Terms must be in writing and agreed by both parties.

24.3 Assignment

No party may assign or transfer any of its rights or obligations under this document without the prior written consent of all other parties.