

Please note that Qenos has changed its standard Terms and Conditions effective 26/11/2015. The changes represent a simplification of Qenos's Terms and Conditions. You will see that we have now combined Goods and Services in the same form. The amendments will simplify our dealings with you. If you have any queries please contact your Qenos Procurement contact.

Qenos Terms and Conditions for the Supply of Goods and/or Services

1. Definitions

Contract means this contract for the supply of Goods and/or Services consisting of these Conditions, the Specifications and the Order.

Conditions are these Terms and Conditions for the Supply of Goods and/or Services.

Delivery Address is the address in the Order where the Goods will be delivered and/or the Services provided, or where we will pick up the Goods.

Delivery Date is the date and time (if relevant) stated in the Order when the Goods and/or Services must be provided by you to us.

Delivery Document means a bill of lading or such other document required by the Incoterm, including any document required as proof of delivery.

Estimated Price is the price specified in the Order if the price is expressed to be an estimate.

Goods means the goods specified in the Order.

Incoterm means the Incoterm that is specified on the Order, if any, defined by reference to the International Chamber of Commerce rules for the use of domestic and international trade terms known as Incoterms 2010.

Intellectual Property Rights includes all copyright and proprietary rights relating to inventions (including patents), trademarks, confidential information, designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields whether registered or not and whether capable of registration or not.

Key Personnel means your personnel specified as such in the Order.

Order means the purchase order these Conditions are attached to.

Price means the price for the Goods and/or Services stated in the Order or as determined in accordance with clause 5.

Service Levels means the service levels annexed to these Conditions or the Order.

Services are the services specified in the Order.

Specification means the specifications attached to the Order or as provided to you by us in writing. **Specified** has the same relevant meaning.

We, us and our means Qenos Pty Ltd ACN 054 196 771 or our agent.

You and your means the person or entity (or an agent) stated in the Order.

2. Orders

If we place an Order, it is binding on you. We may request that the Delivery Date change and you will act reasonably in relation to that request.

3. Supply, delivery, acceptance and performance

3.1. You must:

- (a) supply the Goods and/or Services to us:
 - i. for the Price and by the Delivery Date;
 - ii. according to the Contract and the Specifications, and to a standard which meets the Service Levels;
 - iii. in a proper and efficient manner using a standard of skill, diligence, prudence and foresight that would reasonably be expected from an experienced supplier like you;
 - iv. along with information regarding any potential hazards or special requirements relating to transportation, packaging, storage, handling or use, and all necessary Certificates of Conformance, Certificates of Analysis and/or Test Certificates;
- (b) act in our best interests and not do anything which may harm our reputation or goodwill;
- (c) ensure the Key Personnel perform or supervise the Services;
- (d) comply with and you must ensure your employees, agents, workers and sub-contractors comply with our directions and the law;

- (e) deliver the Goods and any Delivery Document to the Delivery Address by the Delivery Date; and
- (f) label the Goods with the Order number, Delivery Address, contents and weight, and reference this Contract.

- 3.2. Upon reasonable notice, we may attend your premises to inspect and test the Goods, or witness you do these things. You must provide us (at your cost) with all necessary assistance and, if we require it, certifications of inspection or the test results.
- 3.3. Risk in the Goods will pass to us upon receipt by us (or, if applicable, in accordance with the Incoterm), and title will pass to us upon delivery or when we pay you, whichever occurs first.
- 3.4. Any Goods and/or Services that are hazardous or dangerous must, clearly and obviously:
 - (a) be marked with the appropriate international danger symbol(s) or in accordance with the relevant codes and regulations; and
 - (b) display the name of the material, and include Material Safety Data Sheets and emergency instructions in English.
- 3.5. Any Goods delivered in excess of the quantity ordered may be returned at your expense.

4. Warranties

- 4.1. You warrant the Goods and/or Services (where relevant):
 - (a) will be free from all defects relating to materials, workmanship, design and performance;
 - (b) are of merchantable quality and fit for their Specified purpose and, if not Specified, their ordinary purpose;
 - (c) will be performed by people who have the requisite knowledge, skill and expertise;
 - (d) are free from all liens and encumbrances;
 - (e) do not infringe anyone else's rights (including Intellectual Property Rights) and our use will not infringe those rights; and
 - (f) will be packed, stored and transported according to the law and the Specifications.
- 4.2. These warranties are in addition to any warranties contained in the Order, implied by law, or provided by you or any third party.

5. Price and payment

- 5.1. If the Order specifies a Price, the Price is fixed and includes all costs that you incur in manufacturing and delivering the Goods or Services to us.
- 5.2. All prices in an Order are exclusive of GST unless stated otherwise.
- 5.3. If the Order specifies an Estimated Price, you warrant that it is a bona fide and reasonable estimate, and the Estimated Price will be the Price unless the actual Goods and/or Services supplied by you are less than estimated, or you have our written approval. If the Price includes the cost of materials that you purchased, we may require you to provide us evidence of the cost of those materials.
- 5.4. You must provide us with a valid tax invoice for the Goods and/or Services, which includes the Order number, our representative's name, your bank details, sufficient detail relating to the supply, and be supported by such evidence as we reasonably require (including any Delivery Documents). We are not required to pay you on account of GST until you provide us with a valid tax invoice or a Recipient Created Tax Invoice is created.
- 5.5. Unless the Order says otherwise and provided you comply with this Contract, we will pay you 63 days after the end of the month in which we receive your tax invoice. If you (or a related party) owe us any money, we may set off that amount from the payment owed to you.
- 5.6. If we dispute an invoice, we may not pay the disputed portion until the dispute is resolved. If we have paid an invoice, we still may dispute it and require you to correct the error or resolve the dispute, and this does not affect our rights or your obligations in this Contract.
- 5.7. You are required to keep all relevant documents relating to Goods and/or Services supplied for 3 years after the date of invoice. We may audit you and your records (with your reasonable assistance) to ensure compliance with this Contract.

6. Insurance

- 6.1. Unless an Order says otherwise, you must have the following minimum insurance with reputable insurers:
 - (a) public liability on an occurrence basis for at least \$20 million per event;
 - (b) workers' compensation and employers' liability according to the law;

- (c) product liability relating to the Goods, including product recall cover, on an occurrence basis for at least \$20 million per event; and
 - (d) carriers' liability on an occurrence basis for at least \$1 million per event.
- 6.2. You must have this insurance for 2 years after the Delivery Date and, if we ask, you must provide us with the certificates of currency.

7. Liability and indemnity

You are liable for and indemnify us against any loss, damage, claim, action, cost or expense (including legal costs) that we suffer in connection with:

- (a) any negligent act or omission by you or your employees, agents, workers or sub-contractors;
- (b) a breach of the Contract by you;
- (c) any warranty you have provided being incorrect or misleading; and
- (d) any demurrage or other charge, levy or penalty claimed by any third party in respect of delays in the loading or unloading of the Goods,

except to the extent that we assumed responsibility under this Contract (including any applicable Incoterm) for such claims upon loading or unloading, or we have been negligent and, if so, your liability and indemnity is reduced only in proportion to our negligence.

8. Intellectual property and confidential information

- 8.1. Any Intellectual Property Rights in anything supplied by us to you will remain our property. Any invention or improvement made by you to those things will become our property at no additional charge.
- 8.2. All Intellectual Property Rights in anything created by you in connection with the Order will become our property at no additional charge.
- 8.3. You must immediately tell us if any Intellectual Property Rights are made or conceived in connection with the Order.
- 8.4. We may require you to assign to us your entire right, title and interest in and to any or all Intellectual Property Rights at no additional charge to us.
- 8.5. Each party will keep confidential any information derived from the other party or in relation to this Contract (**Confidential Information**). This clause does not apply to Confidential Information which is lawfully obtained from a third party, is public knowledge, is already known or is otherwise independently developed by a party.

9. Default and termination

- 9.1. If you fail to supply the Goods and/or Services in accordance with this Contract:
- (a) we may require you (at your cost) to remedy the default, re-supply or repair the Goods and/or Services; or
 - (b) if the default is not capable of being remedied, the Goods and/or Services are not capable of being re-supplied, or you fail to remedy the default within the time we stipulate, we may have the default remedied and you must pay our reasonable costs, or we may terminate this Contract.
- 9.2. If the Goods and/or Services are not provided by the Delivery Date, (or if no Delivery Date is specified, within a reasonable time) we may terminate all or part of the Contract, or require you to provide the Good and/or Services immediately with any additional costs borne by you.
- 9.3. Inspection of the Goods and/or Services or payment by us does not affect our rights or relieve you from your obligations in this Contract. If we accept Goods, that does not prejudice our right to reject them or have you repair or replace them if they do not comply with this Contract
- 9.4. A party may terminate this Contract if the other party:
- (a) fails to remedy a breach of this Contract within 14 days written notice from the other party; or
 - (b) enters or threatens to enter into bankruptcy, liquidation or any other form of insolvency, administration, management or receivership.
- 9.5. We may terminate this Contract at any time by providing 2 weeks written notice to you and, if we do this, we will pay for your reasonable out of pocket costs already incurred by you arising directly from the termination.
- 9.6. Termination of this Contract will not affect the rights, powers, remedies, obligations, duties and liabilities of either party under this

Contract which have accrued prior to the termination date and which continue to be enforceable.

10. Miscellaneous

- 10.1. **Ethics:** you will deal with us in an ethical and honest manner.
- 10.2. **Time:** time is of the essence in this Contract.
- 10.3. **Conflict:** if any of these Conditions are inconsistent with terms and conditions in an Order, the Contract shall be interpreted in this order of precedence: the Order; the Conditions; and the Specifications.
- 10.4. **Non-waiver and remedies:** a waiver of a breach of any of the provisions of the Contract shall not be construed as a waiver of any subsequent breach of such provision or of any other term or condition of the Contract. Rights and remedies in the Contract are in addition to all other rights and remedies available at law.
- 10.5. **Entire agreement:** the Contract constitutes the entire agreement between the parties.
- 10.6. **No security:** you are prohibited from taking a security over us or our assets in connection with this Contract.
- 10.7. **Assignment, change of control and subcontracting:**
- (a) You cannot assign or subcontract this Contract or any right or obligation in it, without our written consent.
 - (b) If we allow assignment and/or subcontracting, you are still responsible for those obligations and performance of the Contract, and you will be liable for all acts and omissions of a subcontractor or assignee.
 - (c) If you have a change of control, you require our written consent to continue or we may terminate this Contract. "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.
- 10.8. **Survival of terms:** intellectual property, confidentiality, warranty and indemnity clauses survive the termination or expiry of this Contract.
- 10.9. **Governing law:** this Contract is governed by the laws of the State of Victoria.