

# Thinxtra General Terms & Conditions For the Purchase of Goods & Services By Thinxtra

**Thinxtra Ltd** - ABN: 79 606 156 325

Suite 6.01, 53 Berry Street, North Sydney, NSW 2060, Australia

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## 1 General

All new and used goods, materials, components, parts (Goods) and labour or other services (Services) sold or supplied by you (the Supplier) to Thinxtra Pty Ltd ACN 606 156 325 or its related entities (Thinxtra) are supplied on these terms and conditions (Terms).

## 2 Information

Except to the extent expressly provided otherwise, Thinxtra:

- a) has endeavoured and will continue to endeavour to ensure the accuracy of any information provided to, or obtained by, the Supplier; and
- b) does not warrant or guarantee the accuracy, sufficiency or otherwise of such information and disclaims all responsibility for it.

## 3 Contract

3.1 Thinxtra may only order Goods or Services from the Supplier by issuing the Supplier with an order:

- a) specifying the Goods and Services to be provided;
- b) which is marked and shown to be expressly a "Purchase Order" from Thinxtra (a Purchase Order); and
- c) has a Thinxtra designated and specific Purchase Order number.

3.2 The Supplier only accepts and is deemed to accept a Purchase Order on the earlier of:

- a) signing and returning a copy of the Purchase Order to Thinxtra;
- b) communicating to Thinxtra that it accepts the Purchase Order in writing;
- c) delivering any of the Goods ordered in accordance with these Terms;
- d) commencing to carry out the Services the subject of the Purchase Order; and
- e) 7 days after receipt of the Purchase Order unless rejected earlier in writing by the Supplier.

3.3 If the Supplier accepts a Purchase Order under clause 3.2, a contract comes into existence (Contract) comprising:

- a) a Thinxtra standing offer (if any) to which these Terms are attached;

- b) any other Thinxtra purchasing document or letter of agreement to which these Terms are attached;
- c) the Purchase Order;
- d) these Terms; and
- e) any other documents attached to these Terms by Thinxtra, which will take precedence in the order listed above with the first taking the highest priority and so on.

3.4 In relation to any other terms and conditions attached to or included within an invoice, document or communication of the Supplier related to the Goods and Services whether issued before or after the date of this Contract:

- a) this Contract prevails to the extent of any inconsistency; and
- b) the Supplier warrants not to assert or to claim that any of those terms and conditions apply.

3.5 This Contract is deemed to apply to the early performance of the Services or supply of the Goods under this Contract which has taken place prior to the formation of the Contract in accordance with clause 3.3.

## 4 No Exclusivity

- 4.1 Neither this Contract nor any Terms confer on the Supplier any right to be a sole or exclusive Supplier of the Goods or Services or similar goods or services.
- 4.2 Nothing in the Contract or these Terms obliges Thinxtra to request, procure or acquire any minimum level, or expected level, of Goods or Services from the Supplier.

## 5 Price and Payment

- 5.1 The rates or prices for the Goods or Services including any deposits and other payments as specified in the Contract (the Price) are fixed for the term of this Contract.
- 5.2 The Price includes all things necessary and incidental to the supply of the Goods and Services including packaging, travel, freight, insurance, duties, tolls, taxes (excluding GST) and, charges and consumables.
- 5.3 At the time(s) specified in the Contract, or if none specified, upon acceptance by Thinxtra of the Goods and Services, the Supplier may submit to Thinxtra a claim for payment.
- 5.4 Any claim for payment by the Supplier must:
  - a) attach a valid tax invoice;
  - b) include a detailed description of the Goods and Services performed itemised to show:

- i) the rates or pricing charges by reference to those set out in the Purchase Order;
    - ii) the work carried out by reference to the hours for Services or quantity of Goods provided;
    - iii) the amounts attributable to any other taxes, duties, costs or charges; and
    - iv) any other details required by the Contract;
  - c) refer to the correct Purchase Order number issued by Thinxtra; and
  - d) be sent to and received by Thinxtra at [finance@thinxtra.com](mailto:finance@thinxtra.com)
- 5.5 Thinxtra may offset or deduct from a payment claim any amount which it considers, acting reasonably, is due or may become due from the Supplier to Thinxtra or withhold any disputed portion of a payment claim.
- 5.6 Save to the extent offset under clause 5.5, Thinxtra will pay payment claims within thirty (30) days from the end of the month in which the payment claim was received (provided it complies with the terms of the Contract).
- 5.7 Any payment for Goods and Services does not constitute acceptance or completion nor waive or prejudice any rights Thinxtra may have under the Contract.
- 5.8 Thinxtra will pay interest on any late payment at the rate of the Reserve Bank of Australia cash target rate plus 4% which shall not be compounded.

## 6 Access

- 6.1 The Supplier must give Thinxtra at least 7 days' notice (unless otherwise agreed) if access is required to Thinxtra or third party land (the Site), including any facilities or services which may be required.
- 6.2 Thinxtra will give the Supplier access to its Site as is reasonably necessary for the Supplier to supply the Goods and carry out the Services during ordinary business hours.
- 6.3 Each party must ensure that its personnel do not unduly interfere with any of the movements or operations of the other or the activities on Sites.
- 6.4 The Supplier must comply with, and ensure that its personnel comply with, Thinxtra's policies and rules and any reasonable directions given by Thinxtra.
- 6.5 The Supplier must allow Thinxtra at any time on giving reasonable notice to:
- a) verify the Supplier's compliance with the Contract;
  - b) inspect, examine and witness tests on the Goods and the performance of the Goods;
  - c) inspect, examine and witness tests on the Services and the results of the Services; and
  - d) carry out site inspections, at the Supplier's premises or the Supplier's subcontractors' premises or anywhere else as necessary.
- 6.6 Thinxtra may, in its sole discretion require the Supplier, its personnel or any contractor of the Supplier to:

- a) leave the Site immediately; and
- b) remove any material or substance brought to Site from or through the Supplier immediately, and the Supplier must do so.

## 7 Delivery

- 7.1 The Goods are taken to be delivered when the Goods arrive at the point nominated in the Purchase Order (Delivery).
- 7.2 Delivery of the Goods must be achieved by the date for Delivery specified in the Contract (Date for Delivery).
- 7.3 If no Date for Delivery is specified, the Goods must be delivered promptly, expeditiously, with due diligence and without delay.
- 7.4 The Goods must be:
  - a) packed and protected having regard to industry accepted methods of carriage, handling and weather conditions;
  - b) provided and fitted with adequate handling devices required for lifting and handling; and
  - c) packed and marked as being for Thinxtra, and showing the correct Purchase Order or Contract number.
- 7.5 The Supplier must notify Thinxtra promptly of the date of despatch of the Goods and the estimated date of arrival at the point of delivery for each consignment.

## 8 Acceptance

- 8.1 The Goods and Services must achieve Acceptance by the date for acceptance specified in the Contract (Date for Acceptance). If no Date for Acceptance is specified, the Goods and Services must be supplied promptly, expeditiously, with due diligence and without delay.
- 8.2 Under this Contract, Acceptable means that stage in the carrying out and completion of the supply of Goods and Services when:
  - a) the Goods and Services comply in all respects with the requirements of the Contract including all warranties;
  - b) all tests and re-tests required by the Contract to be carried out and passed have been carried out, passed and accepted by Thinxtra; and
  - c) all original equipment manufacturer manuals and warranties, documents and any other information reasonably requested by Thinxtra have been supplied.

- 8.3 When the Supplier believes that the Goods and Services are Acceptable, it must promptly notify Thinxtra in writing.
- 8.4 Following notice in accordance with clause 8.3, Thinxtra will promptly inspect or test the Goods and Services and then, by written notice referring expressly to this clause, Thinxtra may (acting reasonably) either:
- a) if the Goods and Services are Acceptable, accept the Goods and Services (Acceptance) or part of them;
  - b) if the Goods and Services are not Acceptable;
    - i) reject the Goods and Services or part of them and rely on the remedies in clause 8.5; or
    - ii) accept the Goods and Services or part of them and offset a reasonable amount from the Price.
- 8.5 If any Goods and Services are rejected, Thinxtra may, at its option:
- a) require the Supplier to collect the Goods and / or demobilise any Services at its own cost;
  - b) require the Supplier to rectify, at its own cost, the Goods and Services and resubmit them; and / or
  - c) appoint a third party to complete or re-perform the supply of the Goods and Services.
- 8.6 Unless the Goods and Services are rejected, Acceptance is deemed to occur on the date of Thinxtra's notice issued under clause 8.4(a) (being the Date of Acceptance).
- 8.7 Any delivery or acknowledgement of receipt of Goods and Services, including by signing 'acceptance' forms or similar, does not constitute Delivery or Acceptance.
- 8.8 Any inspection, testing, approval or Acceptance of all or some of the Goods and Services does not waive or relieve the Supplier of its obligations under the Contract.

## 9 Warranty

- 9.1 The Warranty Period means a minimum of twelve (12) months commencing upon Acceptance of the Goods and the Services.
- 9.2 The Goods must on Acceptance and for the Warranty Period:
- a) if the Supplier showed a sample of the Goods to Thinxtra, conform to the sample shown;
  - b) be free from defects in materials and workmanship, fit for purpose and of merchantable quality; and
  - c) unless specified otherwise, be new and not second-hand, used, reconditioned or rebuilt.
- 9.3 The Services must at all times and for the Warranty Period following Acceptance:
- a) conform with the demonstration shown (if the Supplier demonstrated the Services);
  - b) be performed by competent, appropriately qualified and trained Personnel;
  - c) be carried out with due care, skill, competence and diligence; and

- d) use tools and equipment which comply with applicable laws and are in a safe working condition.
- 9.4 The Supplier must obtain and assign to Thinxtra the benefit of all warranties from its contractors, suppliers or consultants in relation to the Goods and Services.
- 9.5 If, during the Warranty Period, Thinxtra discovers a defect(s), in the Goods and Services, Thinxtra may direct the Supplier to rectify the defect(s) within a reasonable time.
- 9.6 If the Supplier fails to rectify a defect in accordance with Thinxtra's direction and fails to promptly (and at the latest within 7 days) show cause why the defect(s) were not rectified, Thinxtra may require the Supplier to:
- a) collect the Goods and demobilise any personnel carrying out the Services; and/or
  - b) re-supply any Goods and Services, or otherwise rectify them and submit them again for Acceptance, within such time or times, as Thinxtra may (acting reasonably) direct, without limiting any other remedies available to Thinxtra.
- 9.7 If the Supplier fails to rectify the defects in accordance with clause 9.5, Thinxtra may do any one or more of the following:
- a) promptly rectify the defects itself or engage a third party to do so;
  - b) sell any defective Goods or return them to the Supplier; and/or
  - c) elect to accept any defective Goods and Services as a variation and adjust the Price accordingly, and recover its additional costs and expenses incurred in doing so from the Supplier as a debt due and payable to Thinxtra.

## 10 Delay / Accelerate

10.1 Thinxtra may at any time, in its sole discretion request the Supplier to:

- a) suspend; or
- b) accelerate,

the supply of the Goods and Services, or any part thereof.

10.2 If the Supplier considers that it will, or may be delayed in supplying any Goods and Services, the Supplier must notify Thinxtra within 14 days of becoming aware, or ought reasonably to have been aware, of the likely delay.

10.3 Provided that notice has been given under clause 10.2, to the extent that the Supplier is delayed in achieving Delivery and/or Acceptance by the Date for Delivery and/or the Date for Acceptance due to:

- a) any fact, event, matter or circumstance beyond its reasonable control; or
- b) any breach, act or omission of Thinxtra, its agents or contractors,

then, to the extent of that delay, the Supplier will be entitled to, and Thinxtra will allow the Supplier, an extension to the Date for Delivery and/or Acceptance.

10.4 To the extent the Supplier is entitled to extra time under clause 10.3(b), Thinxtra will pay or allow the Supplier its reasonable, additional and proven delay costs.

10.5 Except as otherwise provided by this clause, the Supplier has no entitlement to:

- a) extra time or costs due to a delay or disruption to; or
- b) extra costs due to a request to accelerate,

the supply of the Goods and Services.

## 11 Variations And Extras

11.1 Thinxtra may, at any time, only by giving written notice expressly referring to this clause, add, delete, omit or change the nature, quality or quantity of the Goods and Services under the Contract (a Variation).

11.2 Prior to directing a Variation under clause 11.1, Thinxtra may request, and the Supplier must promptly notify Thinxtra, whether a proposed Variation can be effected, together with, if it can be effected, the Supplier's estimate of the:

- a) effect on the work plan or program (including on any Date for Delivery and Date for Acceptance); and
- b) cost (including all additional time-related costs, if any) of the proposed Variation.

11.3 The Supplier may request Thinxtra to direct a Variation for the convenience of the Supplier and Thinxtra may do so in its sole and absolute discretion.

11.4 Thinxtra will promptly price each Variation using the following order of precedence:

- a) prior agreement;
- b) applicable rates or Prices in the Contract;
- c) rates or Prices in a priced schedule of rates to the extent that it is reasonable to use them; and
- d) reasonable rates or prices, which shall include a reasonable amount for profit and overheads,

and any deductions shall deduct a reasonable amount for profit and overheads. That price as assessed by Thinxtra acting reasonably, will be added to or deducted to the Price.

11.5 If the Supplier considers a direction from Thinxtra to constitute a variation but which does not comply with this clause, it must notify Thinxtra within 7 days of that direction.

11.6 If the Supplier fails to notify Thinxtra in accordance with clause 11.5, then the Supplier:

- a) must comply with the direction;
- b) waives any entitlement to additional payment in respect of the direction (whether or not it constitutes a Variation or not); and
- c) releases Thinxtra from any claim for additional payment in respect of the direction.

## 12 Risks and Title

- 12.1 Risk in connection with the Goods passes on Delivery in accordance with these Terms.
- 12.2 Title, property and ownership in the Goods passes to Thinxtra on payment of the Price.
- 12.3 Prior to title passing, the Supplier may register a security interest under the Personal Properties Securities Act 2009 (Cth) (PPSA) in relation to the Goods provided that such security interest is promptly removed after title has passed in accordance with clause 12.2.
- 12.4 After title passes, the Supplier must remove and Thinxtra may register a security interest in relation to the Goods.
- 12.5 Each party waives its rights to any verification statements and any other notices required under the PPSA to the extent permitted at law.
- 12.6 Neither party may register, sell, hire, lease, assign rights to or dispose of any security interest in relation to Goods other than as permitted by this Contract.

## 13 Termination for Cause

- 13.1 Either party may terminate the Contract effective immediately, by notice in writing to the other party, if:
- a) a party breaches a material obligation and fails to rectify that breach within 14 days of a written request by the other party to do so; or
  - b) a party becomes bankrupt, insolvent, has an external administrator appointed or fails to set aside or have revoked (within the time required) a statutory demand.
- 13.2 If a party terminates under clause 13.1, each party will be entitled to their remedies at law as if the other party had repudiated the Contract and the terminating party had accepted that repudiation and elected to terminate.
- 13.3 Upon receipt of a notice of termination under this Contract, the Supplier must cease the supply of the Goods and Services and as soon as practicable and in any event, not later than 7 days after receipt of the notice of termination:
- a) remove and demobilise all of the Supplier's equipment, debris and other property and leave the site in a tidy and safe condition;
  - b) take all reasonable action to mitigate any claims and costs that may be incurred by the Supplier as a result of the termination; and
  - c) provide Thinxtra with a report in relation to the Goods and Services performed up to and including the date of termination.

## 14 Termination for Convenience

14.1 Thinxtra may, without cause in its sole discretion and for its own convenience terminate the Contract, or any part of it, on 14 days' written notice.

14.2 If Thinxtra terminates the Contract, or any part of it, for convenience under clause 14.1, the Supplier will be entitled to be paid:

- a) the Price for any Goods supplied and Services performed in accordance with the Contract up to and including the date of termination;
- b) the cost of Goods reasonably ordered and which cannot be cancelled or otherwise sold, provided they become the property of Thinxtra on payment; and
- c) the reasonable costs of demobilisation.

14.3 The entitlement set out in clause 14.2. is the Supplier's sole and exclusive remedy in relation to a termination for convenience under clause 14.1 by Thinxtra and is not entitled to any other lost profits, revenues, opportunity or anticipated savings.

## 15 Indemnity and Insurance

15.1 Subject to clause 16.1, the Supplier must indemnify Thinxtra from and against all liability in respect of:

- a) the illness, injury or death of any person; and
- b) loss of or damage to the property of any person, caused or contributed to by the Supplier save to the extent caused or contributed to by Thinxtra.

15.2 Before commencing the supply of any Goods and Services, the Supplier must obtain and maintain until the end of the Warranty Period (without limiting subclause 15.2(g)):

- a) public and products liability insurance with a limit of not less than \$10,000,000 for any one occurrence in relation to public liability and \$10,000,000 for any one occurrence and in the annual aggregate in relation to products liability;
- b) workers' compensation and employers' liability insurance (including common law liability insurance for an amount of not less than \$50,000,000 per occurrence) or as otherwise required by law and where permitted by law, include a principal's indemnity extension at statute and common law and a waiver of subrogation in favour of Thinxtra;
- c) if Goods are being supplied, goods in transit insurance covering physical loss or damage for not less than the total invoice value of the Goods supplied;
- d) motor vehicle third party property liability insurance with a limit of not less than \$10,000,000 per claim;
- e) insurance covering physical loss or damage to the Supplier's own property, equipment and materials owned, hired, leased or used by the Supplier for their full replacement value;

- f) if professional services are being performed, obtain professional indemnity insurance with a limit of liability not less than \$5,000,000 per occurrence for a period of seven (7) years after expiry of the Warranty Period; and
- g) any additional insurance required by law.

15.3 The Supplier must:

- a) pay the deductible, excess or self-insured retention in connection with any claim made in respect of any insurance policy effected under clause 15.2;
- b) ensure that each insurance policy referred to in clause 15.2 is effected with an insurer or insurers of reputable standing and with a Standard & Poor's credit rating of no less than A;
- c) on request, provide Thinxtra with current insurance certificates from the relevant insurer or insurers or the Supplier's insurance broker for each insurance policy required under clause 15.2; and;
- d) promptly and without delay notify Thinxtra if an insurer gives a notice of cancellation or other notice in respect of any insurance policy.

15.4 The Supplier must ensure all of the Supplier's subcontractors effects and maintain insurance as required by clause 15.2 (including as to amounts of insurance and type of insurance).

## 16 Limitation of Liability

16.1 The Supplier shall not be liable to Thinxtra for any consequential, indirect or incidental loss, loss of profits, lost production, loss of anticipated savings and loss of opportunity arising from or in connection with its supply of the Goods and Services.

16.2 The total liability of the Supplier to Thinxtra arising out of, under or in connection with any other loss or damage arising under or in connection with this Contract, is limited, in aggregate, to 100% of the Price.

16.3 Both parties must notify the other of any claim arising under or in connection with this Contract within 12 months from the earlier of becoming aware, or when the party ought reasonably to have been aware, of the matters forming the basis of the claim.

16.4 If a party fails to give notice as required by clause 16.3, that party releases the other party from all liability in connection with the claim and the basis for it.

16.5 Clauses 16.2 to 16.4 inclusive do not apply in relation to a liability for an insured loss or loss that should have been insured as required by this Contract in connection with the destruction of any property, personal injury, illness, disease or death.

## 17 Confidentiality and Privacy

17.1 The parties must respect the privacy of personal information such as personal and contact information, an individual's name, company name, business street, postal and email addresses,

telephone and fax numbers, professional information, financial and bank account details (Personal Information).

17.2 The Supplier acknowledges, accepts and agrees:

- a) to Thinxtra's terms and conditions of privacy at [library.web.thinxtra.com/pages/privacy.aspx](http://library.web.thinxtra.com/pages/privacy.aspx);
- b) that Thinxtra may use Personal Information of the Supplier in accordance with those terms; and
- c) without using such information, Thinxtra may not be able to use the Goods and Services provided.

17.3 Thinxtra may store, use and disclose Personal Information of the Supplier to Thinxtra's affiliates, SIGFOX and its affiliates and related parties.

17.4 Other than as permitted by this clause 17, neither party may disclose, or allow any person to disclose, confidential information to third parties including:

- a) the subject matter of and contents of this Contract (but not its existence);
- b) the subject matter and the existence of any dispute or difference in connection with this Contract; and
- c) the Price and any discounts, rebates or cost savings.

17.5 The obligations to maintain confidentiality under clause 17.4 apply except for a disclosure:

- a) permitted with the prior written consent of the other party;
- b) required by law, any stock exchange or court order; or
- c) as reasonably necessary for any professional advice.

17.6 Thinxtra may collect, store, use and disclose confidential information to Thinxtra's affiliates, Caterpillar Inc. (USA) and its subsidiaries, affiliates and related parties.

17.7 The Supplier must not make any public announcements or disclosures in relation to this Contract, including its existence, without the prior written consent of Thinxtra.

## 18 Intellectual Property

18.1 Each party owns and retains title to all intellectual property created prior to, or independently of, the purpose of supplying the Goods and Services under this Contract.

18.2 All intellectual property created or developed for the dominant purpose of supplying the Goods and Services to Thinxtra vests in and becomes the property of Thinxtra.

18.3 Each party licences its intellectual property to the other as is reasonably necessary to perform the obligations under or in connection to this Contract.

18.4 Each party indemnifies the other from and against all liabilities in respect of any actual or alleged infringement of the intellectual property rights of any person in connection with this Contract.

## 19 Complaints and Disputes

19.1 If either party wishes to raise a dispute or difference in connection with the Contract, it must promptly give the other notice in writing.

19.2 Within 14 days of a party giving notice under clause 19.1, the other party must provide to the first party a written response stating its position and thereafter:

- a) within 7 days of that response, the respective managers must meet in person at least once to try to resolve the dispute in good faith in a first meeting;
- b) failing a resolution within 7 days of that meeting, within a further 7 days, supervisors of each manager must meet in person to try to resolve the dispute in good faith in a second meeting;
- c) failing a resolution within 7 days of the second meeting, then within a further 7 days, the managing director of the Supplier and a delegated executive of Thinxtra must meet in person to try to resolve the dispute in good faith in a third meeting.

19.3 As a condition precedent to the commencement of any court or tribunal proceedings, if a dispute or difference arises under or in connection with this Contract and the aggregated amount of either party's claims (excluding interest and costs) exceeds \$75,000 (excl. GST), the dispute or difference shall be, and is hereby, referred to expert determination to be conducted in accordance with Institute of Arbitrators and Mediators Australia Expert Determination Rules.

## 20 Assignment and Subcontracting

20.1 The Supplier must not assign or subcontract any of its rights or obligations without the prior consent of Thinxtra.

20.2 The Supplier is responsible as agent for the acts and omissions of its contractors and their subcontractors.

20.3 Part 1F of the Civil Liability Act 2002 (WA) and Part 4. of the Civil Liability Act 2002 (NSW) are excluded.

## 21 Goods & Services Tax

21.1 Unless otherwise stated expressly, all rates and Prices under this Contract are exclusive of GST.

21.2 Thinxtra is not liable to pay any claim by the Supplier until it receives a valid tax invoice for the amount.

## 22 Law and Jurisdiction

22.1 The Contract is governed by the laws of the state or territory in which the supply takes place.

22.2 The Supplier must comply with all laws and relevant industry standards including:

- a) any standards specified in the Purchase Order;
- b) Australian Standards and the National Construction Code;
- c) any international standards generally accepted in the relevant industry or trade; and
- d) all Thinxtra policies and procedures.

## 23 Miscellaneous

23.1 All notices and other communications must be in writing and are effective on receipt. Oral notices and communications are ineffective unless confirmed in writing within 48 hours.

23.2 Any part or provision of the Contract which is invalid or unenforceable is to be read down or severed.

23.3 No failure or delay on the part of Thinxtra in exercising any right, power or remedy will operate as a waiver.

23.4 Each party must bear its own costs arising out of the negotiation, preparation and execution of the Contract.