



Master Service Agreement - Terms and Conditions of Sale

MASTER SERVICE AGREEMENT

TERMS AND CONDITIONS OF SALE

The defined terms and phrases that are set out in the General Terms and Conditions apply to these Terms and Conditions of Sale.

In addition “we”, “our” or “us” means Blue Apache Pty Ltd and “you”, “your”, or “yourself” has the same meaning as “Customer” in the General Terms and Conditions.

1 APPLICATION

1.1 These terms and conditions are incorporated in every contract for the supply of Goods and/or Services by blueAPACHE to its Buyers. Whenever a Buyer orders or accepts Goods and/or Services from blueAPACHE, it does so on these terms and conditions, which can only be altered if endorsed in writing by blueAPACHE.

2 INTERPRETATION

2.1 In these terms and conditions:

“blueAPACHE” means BLUE APACHE ACN 083 664 224 and any related body corporate as defined in the Corporations Law (unless that body corporate is also the Buyer).

“Buyer” means the person acquiring Goods and/or Services under these terms and conditions.

"Delivery" means the collection of the Goods from blueAPACHE's premises by the Buyer or shipment to the Buyer's delivery address. "Ex Warehouse" means the Buyer, or the Buyer's carrier, must collect the Goods from premises nominated by blueAPACHE and must pay all freight expenses.

"Goods" means products supplied or to be supplied by blueAPACHE. "Indent Order" means an order placed by the Buyer with blueAPACHE in which blueAPACHE must purchase Goods from a third party and not supply blueAPACHE's Standard Goods.

"Price" means the quoted price that appears on a quotation from blueAPACHE for the supply of the Goods and/or Services.

"Return of Materials Authorisation" means a notice issued by blueAPACHE authorising the return of specified Goods by the Buyer to blueAPACHE.

"Sales Contract" means these terms and conditions and the quotation relating to the sale of Goods and/or Services to the Buyer.

"Services" means services performed or to be performed by blueAPACHE.

"Standard Goods" means products usually stocked by blueAPACHE, which are not supplied in accordance with the Buyer's own specifications or requirements.

2.2 In these terms and conditions clause headings are inserted for ease of reference only and do not affect the interpretation of the terms and conditions.

3 PRICE

3.1 Unless otherwise expressly agreed to in writing by blueAPACHE, the Price is valid for the date appearing on the quotation from blueAPACHE.

3.2 Unless otherwise expressly agreed to in writing by blueAPACHE, the price of Goods and/or Services supplied by blueAPACHE will be blueAPACHE's list price for the Goods and/or Services at the time the Goods are delivered, and/or the Services performed, less any prior agreed discounts.

3.3 Prices quoted are current at the date of issue and based on rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, wages, cost of materials and other charges affecting the cost of production. If the Goods have not been delivered and/or the Services not performed and the cost of any of the items listed in this paragraph increase then blueAPACHE may increase the quoted Price to allow for the increased cost to blueAPACHE.

3.4 If the Buyer thinks that an incorrect charge has been made for Goods and/or Services, the Buyer must advise blueAPACHE within two days of receipt of an invoice. Buyers must otherwise submit payment for the whole of the invoiced amount together with a written request for credit for the disputed amount within 14 days of the date of the invoice. blueAPACHE may, in its absolute discretion, refuse to give credit for the disputed amount if the request is not received within 14 days of the date of invoice, and is not supported by a copy of a purchase order.

4 PACKAGING

4.1 All prices quoted include standard packaging. Any special packaging required by the Buyer will be charged to the Buyer at current prices.

5 CREDIT

5.1 A Buyer's application to open a credit account must be submitted on an approved Company Credit Application form. Information disclosed by the buyer on this form must be accurate. The Buyer must immediately notify blueAPACHE of any subsequent material change to the details. blueAPACHE may refuse credit at its absolute discretion or may allow credit on terms that blueAPACHE considers appropriate. Payment of credit accounts must be received strictly within 14 days after the date of invoice unless otherwise expressly agreed to in writing by blueAPACHE. If the Buyer is in default of these payment terms, blueAPACHE may take the following actions against the Buyer:

- (a) Withhold supply and dispose of Goods to be supplied to the Buyer;
- (b) Institute legal action for recovery of outstanding amounts;
- (c) Terminate credit facilities and cancel any sales contracts;
- (d) Charge interest on all undisputed overdue invoices at one percent above the rate set by the Commonwealth Bank, on overdrafts over one hundred thousand dollars (\$100,000) compounded daily; as from initial due date.
- (e) Take other steps available to it under these terms and conditions or otherwise refuse to perform any Services.

5.2 blueAPACHE will not be liable to the Buyer for any loss, damage, or expense arising directly or indirectly from blueAPACHE taking these actions and the Buyer must indemnify blueAPACHE against all loss, damage and expense including solicitors' fees incurred by blueAPACHE in taking such actions.

6 DELIVERY

6.1 Dates and times provided by blueAPACHE for the supply of Goods and/or the performance of Services are estimates only and blueAPACHE will not be liable on any account for loss, damage or expense (consequential or otherwise) arising directly or indirectly out of any delay in supply or performance. blueAPACHE reserves the right to supply Goods by way of installments and each such installment will be deemed to be sold under a separate sales contract. Normal payment terms will apply to each installment. Any failure by blueAPACHE to supply or perform does not entitle the Buyer to terminate the Sales Contract.

7 ORDER RESPONSIBILITY

7.1 The Buyer bears all responsibility for all orders placed. blueAPACHE is not liable for any consequential loss arising from technical advice given prior to an order being placed. The Buyer agrees to pay for all Goods and/or Services ordered and supplied.

8 QUANTITIES

8.1 blueAPACHE is not liable for failure to deliver the exact number of Goods invoiced unless a written claim for short delivery is received by blueAPACHE within 7 days from the date of initial delivery. Requests for proof of Delivery and statements of short supply will only be considered by blueAPACHE if received in writing within 7 days.

9 CANCELLATION BY THE BUYER

9.1 With the prior written approval of blueAPACHE, the Buyer may cancel a Sales Contract in whole or in part before delivery or performance if the Buyer pays a cancellation fee equal to 20% of the value of the cancelled Sales Contract. A minimum fee of \$100 must be paid by the Buyer. The fee becomes immediately due and payable on cancellation. blueAPACHE need not approve the cancellation or alteration of any Indent Orders or other orders to be supplied by blueAPACHE involving Goods which are not Standard Goods.

10 CASH SALE ACCOUNTS

10.1 blueAPACHE will only order Goods and/or Services for cash once payment is received in advance by way of cleared funds, by payment via Cheque / Credit Card / Direct Deposit in blueAPACHE's account.

10.2 All orders placed by Cash Sale Customers will attract a 2% administration fee.

10.3 A small order fee of \$25 will apply to all orders valued at less than \$250.00.

11 RETURN OF GOODS

11.1 The Buyer may return Goods to blueAPACHE for a credit on the following conditions:

- (a) The Goods are Standard Goods and were not supplied in accordance with an Indent Order;
- (b) The Buyer has requested and obtained a Return of Materials Authorisation from blueAPACHE for the Goods;
- (c) The Return of Materials Authorisation number accompanies the Goods and the Goods correspond with those advised by the Buyer when obtaining the Return of Materials Authorisation;
- (d) The Buyer complies with the reasonable conditions specified by blueAPACHE in the Return of Materials Authorisation;
- (e) The Goods are returned within 30 days of their delivery;
- (f) The Goods are returned at the Buyer's expense, with all necessary freight and insurance prepaid, unless shipment occurred due to blueAPACHE's fault;
- (g) The Goods are returned in the same condition as when delivered;
- (h) The Buyer pays blueAPACHE a restocking fee of 20% of the invoiced value of the Goods;
- (i) blueAPACHE is entitled to deduct part or its entire fee from any credit given to the Buyer.

12 DEFAULT

12.1 blueAPACHE may by written notice and without prejudice to any of its accrued rights cancel any or all Sales Contracts with the Buyer if one or more of the following events occur:

- (a) The Buyer defaults in making any payment under any Sales Contract or fails to carry out any provision of any Sales Contract and the Buyer does not remedy that failure (where the failure is capable of remedy) within 7 days after written notice to the Buyer requesting it to do so;
- (b) Execution or other process of a court or authority is levied for an amount exceeding ten thousand dollars (\$10,000) on any of the Buyer's property and is not satisfied, set aside or withdrawn within 7 days of its issue;
- (c) An order for payment is made or judgment for an amount exceeding ten thousand dollars (\$10,000) is entered or signed against the Buyer, and is not satisfied within 7 days;
- (d) The Buyer convenes a meeting of its creditors, proposes, or enters a scheme of arrangement (except for the purpose of reconstruction or amalgamation) or a composition with any of its creditors;

- (e) An application to or order by a court to wind up the Buyer or a resolution is passed to wind up the Buyer, or notice of intention to propose a resolution to wind up the Buyer is given;
- (f) A receiver or receiver and manager, or other controller as defined in section 9 of the Corporations Law is appointed in respect of the Buyer or the whole or any part of its undertakings, property or assets or any steps are taken for the appointment of such a person;
- (g) The Buyer is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Law or suspends payment of its debts;
- (h) The Buyer commits an act of bankruptcy or takes advantage of the provisions of Part X of the Bankruptcy Act 1966;
- (i) An administrator of the Buyer is appointed under Part 5.3 of the Corporations Law.

13 INTELLECTUAL PROPERTY RIGHTS

13.1 The Buyer warrants that any design, specification or instructions furnished by the Buyer to blueAPACHE will not cause blueAPACHE to infringe any patent, design, copyright or trade mark in carrying out the Buyer's order. The Buyer indemnifies blueAPACHE and its employees, directors and agents against any liability, loss or expense, including solicitors' fees arising out of or concerning a breach of this warranty. The sale and purchase of Goods does not confer on the Buyer any license or rights under any patent, design, copyright or trade mark belonging to or used by blueAPACHE.

14 PERFORMANCE AND WARRANTY

14.1 Any figures or estimates given as to the performance of Goods and/or Services are based upon blueAPACHE's experience and are such as blueAPACHE would expect to obtain on test. blueAPACHE is only liable for failure of the Goods and/or Services to comply with figures or estimates when those figures or estimates are guaranteed in writing within specified margins.

14.2 blueAPACHE offers no warranty on all Goods and or Services supplied. blueAPACHE will pass on any warranty to the Buyer as provided and approved by the supplier or manufacturer of the Goods and or Services.

15 SUB-CONTRACTING

15.1 blueAPACHE reserves the right to sub-contract the manufacture and or supply of the whole or part of any Goods and/or Services to be supplied under a Sales Contract.

16 RESERVATION OF TITLE

16.1 Until the Buyer has paid all monies owed to blueAPACHE ownership of all Goods supplied by blueAPACHE to the Buyer under any Sales Contract or otherwise remains with blueAPACHE.

16.2 The Buyer:

- (a) must hold all such Goods in its possession or that of its employees or agents, as bailee of blueAPACHE;
- (b) must in the event that any of the Goods are sold by the Buyer, act as an agent for blueAPACHE and the Buyer must hold the proceeds of sale on behalf of blueAPACHE and must pay them to blueAPACHE on request and any agreement by blueAPACHE to extend credit to the Buyer or any other indulgence does not affect the Buyer's liability to account to blueAPACHE as aforesaid of the

ownership of the Goods by blueAPACHE;

(c) must store the Goods so as to show clearly that it is blueAPACHE's property and must keep the Goods fully insured at its own expense and hold the proceeds of any insurance claim in respect of the Goods (to the extent of the Buyer's indebtedness to blueAPACHE) in trust for blueAPACHE;

(d) upon any default by it in payment of any amount due to blueAPACHE, irrevocably authorises blueAPACHE by its servants or agents to enter any premises owned, leased or otherwise occupied by the Buyer, any agent or associate of the Buyer for the purpose of taking possession of the Goods and hereby authorises blueAPACHE by its servants or agents to use all reasonable force to obtain such possession.

16.3 Notwithstanding anything in this clause, risk in the Goods passes to the Buyer on delivery of the Goods by blueAPACHE to the Buyer, its employees or agents.

16.4 The above provisions apply despite any agreement or arrangement under which blueAPACHE gives the Buyer credit.

17 LIEN

17.1 In addition to any other lien to which blueAPACHE may be entitled, blueAPACHE has a general lien on all property belonging to the Buyer, which is in blueAPACHE's possession, for the full amounts of all Goods and/or Services supplied by blueAPACHE.

18. APPLICATION OF PPSA

18.1 in this clause (1), PPSA means the Personal Property Securities Act 2009. If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.

(a) This clause (1) applies to the extent that blueAPACHE's interest in any Goods or Services is a security interest.

(b) The Goods or Services are telecommunications, internet access, hardware & software, intellectual property, commercial goods.

(c) The Buyer acknowledges and agrees that blueAPACHE may apply to register a security interest in the Goods or Services at any time before or after delivery of the Goods or Services. The Buyer waives its right under s157 of the PPSA to receive notice of any verification of the registration.

(d) blueAPACHE can apply amounts it receives from the Buyer towards amounts owing to it in such order as blueAPACHE chooses.

(e) If the Buyer defaults in the performance of any obligation owed to blueAPACHE under these Conditions or any other agreement for blueAPACHE to supply Goods or Services to the Buyer, blueAPACHE may enforce its security interest in any Goods or Services by exercising all or any of its rights under these Conditions or the PPSA. To the maximum extent permitted by law, the Purchaser and blueAPACHE agree that the following provisions of the PPSA do not apply to the enforcement by blueAPACHE of its security interest in the Goods or Services; sections 95, 118, 121(4), 125, 130, 132(3), 132(4), 135, 142 and 143.

(f) The Buyer and blueAPACHE agree not to disclose information of the kind mentioned in s275(1) of the PPSA, except in circumstances required by sections 275(7)(b)-(e) of the PPSA.

(g) The Buyer must promptly do anything required by blueAPACHE to ensure that blueAPACHE's security interest is a perfected security interest and has priority over all other security interests in the Goods or Services

(h) Nothing in this clause (1) is limited by any other provision of these Conditions or any other agreement between the parties.

19 LIMITATION OF LIABILITY

19.1 Notwithstanding any other provision of the Sales Contract, the liability of blueAPACHE to the Buyer, whether arising under or in connection with the contract or the performance or nonperformance thereof or anything incidental thereto, and whether by way of indemnity, by statute (to the extent that it is possible to exclude such liability), in tort (for negligence or otherwise), or on any other basis in law or equity is hereby limited and excluded as follows:

- (a) blueAPACHE shall have no liability whatsoever to the Buyer for loss of use, production, profit, income, business, contract or anticipated saving, or for any delay (other than liquidated damages expressly provided for and limited in the contract), financing costs or increase in operating costs or any other financial or economic loss or for any special, indirect or consequential loss or damage;
- (b) The total aggregate liability of blueAPACHE to the Buyer is limited to the amount equal to the contract price.

19.2 The Trade Practices Act, 1974, implies warranties, terms and conditions in consumer contracts which cannot be excluded or modified except as permitted under that Act. In the event blueAPACHE may be in breach of any such warranty, term or condition as is implied in this contract, the liability of blueAPACHE shall be limited:

- (a) in respect of Goods, at blueAPACHE's option, to the repair or replacement of the goods or the cost of repairing or replacing the goods;
- (b) in respect of Services, at blueAPACHE's option, to the reperformance of the Services or the cost of reperforming the Services.

19.3 Except as otherwise expressly provided in this contract, and subject to clause 18.2, blueAPACHE excludes all statements, representations, warranties, conditions, promises, undertakings, covenants and other provisions, express or implied (and whether implied by law including Act of Parliament or otherwise) relating to the quotation, the Goods or the Services or their delivery or supply, being provisions that might otherwise form part of the contract or be collateral to or form part of any agreement that is collateral to the contract.

20 ENTIRE AGREEMENT

20.1 The Sales Contract, incorporating these terms and conditions, contains the entire agreement and understanding between blueAPACHE and the Buyer on the subject matter of these terms and conditions and supersedes any prior agreement or understanding on anything connected with that subject matter.

20.2 The Sales Contract will not be subject to the Buyer's own standard terms and conditions of purchase except to the extent that a General Manager of blueAPACHE or delegate has agreed in writing to adopt those terms and conditions.

21 VARIATION

21.1 An amendment or variation to these terms and conditions is not effective unless it is in writing and signed by a General Manager of blueAPACHE or delegate.

22 WAIVER

22.1 Failure or delay by blueAPACHE to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right by blueAPACHE 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 in the case of a waiver by blueAPACHE, signed by a General Manager of blueAPACHE or delegate. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

23 SEVERANCE

23.1 If anything in the Sales Contract is unenforceable, illegal or void then it is severed and the rest of these terms and conditions remain in force.

24 GOVERNING LAW

24.1 The law of Victoria governs the Sales Contract. blueAPACHE and the Buyer submit themselves to the exclusive jurisdiction of the courts of Victoria and the Federal Court of Australia and agree that any lawsuit must be heard in those courts.

25 GOODS AND SERVICES TAX (GST)

25.1 The price and all other amounts set out in blueAPACHE quotations or any other agreement, written or verbal, are exclusive of GST.

25.2 If GST is payable in respect of any supply made under or in connection with this agreement, the recipient of the supply must reimburse the supplier for the amount of that GST, provided that the supplier must first issue a tax invoice for the supply to the recipient of the supply.

25.3 If the amount payable for any supply made under or in connection with this agreement is calculated by reference to any cost or expense incurred by the supplier, the amount payable is to be calculated using the GST-exclusive amount of that cost or expense.

25.4 If there is an adjustment event in relation to a supply made under or in connection with this agreement:

- (a) the supplier must refund to the recipient of the supply the amount by which any GST reimbursed pursuant to clause 24.2 exceeds the adjusted GST; or
- (b) the recipient of the supply must pay to the supplier the amount by which the adjusted GST exceeds the GST reimbursed pursuant to clause 24.2.

25.5 In this clause, "GST" means goods and services tax levied pursuant to the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the expressions "supply", "tax invoice", "input tax credit" and "adjustment event" have the same meanings as in that Act.

26 NEW AND INCREASED TAXES

26.1 Any increase in the direct or indirect cost to blueAPACHE of supplying the Goods and/or Services pursuant to the Sales Contract as a result of any new tax, duty or other impost or any change in the rate of any tax, duty or other impost (including but not limited to a tax relating to goods and/or services)

which comes into force after the date of blueAPACHE's quotation shall be borne by the Buyer and the price (as per the "Sales Contract" definition) shall be adjusted accordingly.

SERVICES

Managed Services

Network and Internet

Cloud Solutions

Unified Communications

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