

**TERMS & CONDITIONS OF PURCHASE****Definitions**

- In these purchase terms and conditions (Terms\*) and the attached purchase order (Order\*) (together comprising a contract between FG\* and the Supplier\*) words ending with an asterisk (\*) are defined terms and have the meanings set out below;  
**A & D Policy\*** means the *FG Alcohol and Drug Management Standard* and the associated *Procedure Supporting the Western Power Alcohol and Drug Management Standard* which took effect from 1 July 2008;  
**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 FG\* and treated or designated as confidential by FG\* 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\*.  
**Existing IP\*** means the intellectual property rights owned by the Supplier\* prior to the commencement of the Services\*.  
**FG** means Freo Group Pty Ltd (ACN 009 325 124) of 4 McGrath Road, Henderson, Western Australia;  
**Goods\*** means the goods stated in the Order\* and includes Services\*.  
**Invoice\*** means an invoice that complies with clauses 37 and 38.  
**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.  
**Policies and Guidelines\*** means all of WP's policies and guidelines as varied from time to time.  
**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\*.  
**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 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 Deliver Address\*.

**Other Contracts**

- If at the time FG\* issues an Order\*, FG\* and the Supplier\* are parties to a contract covering supply of the Goods\*.

**Order\***

- Subject to any contract prevailing over the Terms\* under clause 2, by issuing the Order\* to the Supplier\*, FG\* offers to purchase 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\***

- 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 provide the Services\* during the Term\*.
- If the Supplier\* is unable to deliver the Goods\* by the Date for Delivery\*, the Supplier\* must immediately notify FG\*. FG\* 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 FG\*. The Supplier\* is not entitled to any payment, costs or damages from FG by reason of such cancellation.

**Quality, guarantee and defects inspection**

- 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.
- The Supplier\* warrants that the Goods\* will be free from defects in quality, design, materials and workmanship for the Warranty Period\* (if any).
- All Goods\* delivered are subject to FG\*'s inspection and testing within a reasonable time after delivery at the Delivery Address\*. If, upon inspection or testing, FG\* finds any of the Goods\* to be defective, or poor quality or otherwise not in accordance with the Terms\*, the Supplier\* must, after receiving notice from FG\* that the Goods\* are rejected, collect the Goods\* at the Supplier\*'s expense. FG\* 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 FG\* by reason of such rejection.
- Without limiting FG\*'s rights under clause 8, if FG\* 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

**TERMS & CONDITIONS OF PURCHASE**

Goods\* collected under this clause (and not rejected by FG\* under clause 8) must be repaired or replaced as soon as possible at the Supplier\*s cost. Alternatively FG\* may, at its option, retain the Goods\* but withhold from payment an amount reasonably determined by FG\* as compensation for the defect.

**Warranties as to ownership**

10. Except as to Services\* involving software, the Supplier\* represents and warrants that as the Date for Deliver\* 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\*. For Services\* involving software, the Supplier represents and warrants that FG\* shall be provided a royalty free license to use the software within its business operations.
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 FG\* 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 deliver at the Deliver Address\* and, if the Goods\* are rejected or returned by FG\* under clauses 8 or 9 respectively, from the time the Supplier\* collects the Goods\* from FG\*.
14. The Supplier\* agrees to INDEMNIFY AND KEEP INDEMNIFIED FG\* against any loss, damage, injury or death to any person (including Third Parties) caused as a result of the act, omission or negligence or otherwise of the Supplier\*, the Supplier\*s\* employees, servants and agents during the supply of Goods\*

**Title**

15. Title to the Goods\* passes from the Supplier\* to FG\* upon delivery in accordance with the Terms\*.

**Compliance and reporting**

16. 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\*.
17. The Supplier\* must provide FG\* with such reasonable assistance as requested by FG\* in order for FG\* to satisfy and comply with any laws applying to FG\* and relating to the Terms\*
18. The Supplier\* must comply with any discretion given by FG\* or any of its agents or employees when on FG\*\*s site, including when delivering the Goods\* and generally regarding the performance of the Services\*
19. From time to time, FG\* may request the Supplier\* to provide a written report setting out in details such information about the Goods\*, or any other obligations of the Supplier\* under the Terms\*, as FG\* may require, and the Supplier\* must provide the report to FG\* within 10 Business Days\* of that request, unless another timeframe is stipulated in FG's request.

**A & D Policy\***

20. The Supplier\* must ensure that its employees and contractors, at all times when on FG\*\*s premises or sites, comply with the objectives, terms and obligations of the A & D Policy\*  
{Note: the A & D Policy\* sets out accepted alcohol and drug Blood Alcohol Concentrations and drug detection levels, and includes a compulsory alcohol and drug testing regime}
21. FG\* may refuse entry to, or remove from, any of its premises or sites any employee or contractor of the Supplier\* that does not comply with the objectives, terms and obligations of the A & D Policy\*, 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\***

22. The Supplier\* must provide the Services\* in accordance with the Service Levels\*.
23. 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\*
24. The Supplier\* has sole responsibility for providing all resources and equipment necessary to perform the Services\*, whether they are carried out at FG\*\*s premises elsewhere.
25. The Supplier\* must keep clean and tidy all locations on which the Services\* are performed.
26. The Supplier\* must, within 12 hours of its occurrence, report to FG\* all incidents, injuries or damage to property or the environment and take all reasonable steps to rectify the incident, injury or damage.

**Insurance**

27. 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.
  - (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.
  - (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\*. Required insurance amount: \$1 million for any one occurrence and unlimited as to the number of occurrences.

**TERMS & CONDITIONS OF PURCHASE**

- (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.
28. The Supplier\* must pay all premiums and all deductibles on the policies of insurance when due.
29. Copies of the certificates of currency for the policies must be provided by the Supplier\* to FG\* within 5 Business Days\* of a written request by FG\*

**Cancellation**

30. FG\* 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, FG\*'s only liability to the Supplier\* arising from this cancellation is to pay for the Goods\* delivered prior to the date of cancellation.
31. FG\* may, at its option and at any time, cancel any Services\* ordered prior to performance. FG\*'s only liability to the Supplier\* arising from this cancellation is to pay for the Services\* performed prior to the date of cancellation.

**Payment**

32. In consideration of the Supplier\* delivering the Goods\*, FG\* must, subject to the Terms\*, pay the Supplier\* the Purchase Price\*.
33. The Supplier\* must provide FG\* with an invoice for the Purchase Price\* as required by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
34. The invoice must be addressed to:  
Accounts Payable, Freo Group Pty Ltd  
Jakovich Centre  
McGrath Road  
Henderson, WA 6166
- 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 33.
35. FG\* will pay the Supplier\* the amount set out in the Invoice\* within the agreed credit terms. FG\* 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 FG\* under the Terms\* or otherwise.
36. Supplier\* must adjust the Purchase Price\* to give FG\* the full benefit of all concessions, determinations, reductions and refunds, obtained or which can be claimed.

**Confidentiality and media**

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

**General**

38. 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.
39. 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.
40. The Supplier\* may not assign or subcontract any rights or obligations under the Terms\* without FG\*'s prior written consent.
41. A waiver of a breach of any provision of or variation to the Terms\* must be in writing.
42. If FG\* 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 FG\* under the Terms\* are assigned to and assumed by the appropriate legal entity as determined by FG\* or the successors of FG\* under the restructure.
43. FG\* 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)*
44. 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.