

These Terms and Conditions apply only to Goods and Services acquired under Tabcorp's purchase order for its Non-Casino Businesses.

1 General

- 1.1 By supplying any Goods or Services to Tabcorp, the Supplier agrees to be bound by the terms of the Purchase Order (which includes the Terms and Conditions applicable at the time the Purchase Order is provided to the Supplier).
- 1.2 Unless otherwise agreed in writing by Tabcorp, the Purchase Order constitutes the entire agreement between Tabcorp and the Supplier regarding the supply of the Goods and Services (and its subject matter supersedes all previous understandings and arrangements between the Parties, including other terms and conditions of purchase).
- 1.3 Tabcorp is not obliged to order any Goods or Services from the Supplier and Tabcorp may obtain similar goods or services from other suppliers.

2 Purchase Orders

- 2.1 Except to the extent otherwise agreed under clause 2.2, a Purchase Order is valid only if it bears an order number and is issued by a Tabcorp employee authorised to issue the Purchase Order. Tabcorp will only be bound by a valid Purchase Order.
- 2.2 In its absolute discretion Tabcorp may require a Supplier to trade electronically with Tabcorp (including accepting electronic Purchase Orders and delivering electronic invoices) on terms agreed between Tabcorp and the Supplier.

3 Delivery of Goods

- 3.1 The Supplier must:
- (a) deliver the Goods during normal business hours to the address nominated on the Purchase Order and on the date or dates (if any) specified on the Purchase Order; and
 - (b) at the time of delivery:
 - (i) provide Tabcorp with a delivery docket (or other similar

documentation) which includes a description of the Goods supplied and quotes the number of the Purchase Order to which the Goods relate; and

- (ii) obtain the signature of an authorised Tabcorp employee on the delivery docket (as confirmation of delivery).

4 Acceptance of Goods and Deliverables

- 4.1 Tabcorp will inspect the Goods within a reasonable time after delivery. Payment for the Goods or the signing of delivery dockets before inspection of the Goods does not constitute acceptance of the Goods.
- 4.2 If the Supplier delivers to Tabcorp:
- (a) less than the number of Goods specified in the Purchase Order, Tabcorp may elect to accept or reject the Goods; or
 - (b) more than the number of Goods specified in the Purchase Order, Tabcorp may elect to accept the entire delivery, to accept only the ordered number of Goods and reject the rest, or to reject the entire delivery; or
 - (c) the Goods mixed with other goods, Tabcorp may elect to reject the entire delivery or may accept the Goods and reject the rest; or
 - (d) Goods or Deliverables that do not otherwise conform with the description of the Goods or Deliverables on the Purchase Order ("Defective Items"), Tabcorp may accept or reject the Defective Items or accept the Defective Items at a reduced price (or on other terms) agreed with the Supplier.

- 4.3 If required by Tabcorp the Supplier must, at its own expense, re-supply, replace or repair any Defective Items to Tabcorp's reasonable satisfaction.
- 4.4 Tabcorp will only pay for the quantity of Goods accepted by Tabcorp. Any goods which are rejected by Tabcorp will be returned by Tabcorp to the Supplier at the Supplier's risk and expense.
- 4.5 On request by Tabcorp, the Supplier must refund any payments made by Tabcorp for rejected Goods.

5 Goods: Risk and Title

- 5.1 Title to and risk of loss or damage to the Goods passes to Tabcorp when the Goods are inspected and accepted by Tabcorp in accordance with the Purchase Order.

6 Price

- 6.1 Subject to clause 4.4, Tabcorp agrees to pay the amount for the Goods and Services specified on the Purchase Order ("**Purchase Price**"). The Purchase Price may not be increased without Tabcorp's prior written consent.
- 6.2 Unless otherwise agreed in writing by Tabcorp, the Purchase Price includes:
- (a) all charges for packaging, packing, insurance, shipping, carriage and delivery of the Goods;
 - (b) all charges for any items (including Deliverables) used or supplied in connection with the Services; and
 - (c) all taxes and duties applicable to the supply of the Goods or Services, other than GST.

7 GST

- 7.1 Unless otherwise specified, the consideration specified in a Purchase Order is inclusive of GST.

7.2 If a taxable supply is made pursuant to this agreement, the Party that makes the supply must give the recipient of that supply a Tax Invoice.

7.3 If a Party is entitled to be reimbursed or indemnified under a Purchase Order or these Terms and Conditions, the amount to be reimbursed or indemnified does not include any amount for GST for which the Party is entitled to an Input Tax Credit.

8 Invoicing, payment and set off

8.1 All invoices rendered by a Supplier must:

- (a) be provided with sufficient records or information to enable Tabcorp to calculate and verify the amount of the invoice; and
- (b) specify the Purchase Order number to which the invoice relates.

8.2 Tabcorp will pay each valid and undisputed tax invoice within 30 days of the date of receipt. If Tabcorp disputes an invoice, it will pay the undisputed portion of the invoice and dispute the balance.

8.3 If Tabcorp disputes the whole or part of an invoice, that dispute will be resolved in accordance with clause 15. Payment of an invoice (in whole or in part) will not preclude Tabcorp from disputing that invoice at a later stage.

8.4 No interest is payable by Tabcorp in respect of an invoice that is due but unpaid.

8.5 Tabcorp may set off against any amount due for payment by Tabcorp to the Supplier any amount the Supplier owes Tabcorp. This clause does not limit Tabcorp's right to recover those amounts in any other way.

9 Termination of the Purchase Order

9.1 Tabcorp may cancel the whole or part of the Purchase Order by notice to a Supplier if:

- (a) the Supplier:
 - (i) fails to deliver any Goods or Services in accordance with the Purchase Order; or

- (ii) breaches any other material term of the Purchase Order,

and the failure or breach is not capable of remedy or, if it is, the Supplier does not remedy that failure or breach within 5 business days of notice from Tabcorp; or

- (b) there is a change in Control of the Supplier, which:

- (i) is not approved in advance by Tabcorp; or
- (ii) in Tabcorp's reasonable opinion, adversely affects Tabcorp's interests or the Supplier's ability to perform its obligations under the Purchase Order.

9.2 Either Party may cancel the Purchase Order by written notice to the other Party if the other Party (or a parent entity of that Party) is, or becomes, Insolvent.

9.3 Cancellation of the Purchase Order in accordance with this clause will not affect:

- (a) the rights of Parties under the Purchase Order which may have accrued before the termination; or
- (b) the terms of the Purchase Order which by their nature survive termination.

10 Warranties in relation to Goods and Services

10.1 The Supplier warrants and represents to Tabcorp that:

- (a) the Supplier has the capabilities, skill, facilities and resources to perform its obligations under the Purchase Order;
- (b) the Supplier will perform its obligations under the Purchase Order with due care and skill;
- (c) in performing its obligations under the Purchase Order, the Supplier will comply with all relevant laws, industry codes and standards (including those notified to the Supplier by Tabcorp);

- (d) the performance of its obligations under the Purchase Order will not conflict with, or result in the breach of or default under, any provision of the Supplier's constitution or any material term or provision of any agreement to which the Supplier is a party;

- (e) to its knowledge, there are no actions, claims, proceedings or investigations pending or threatened against the Supplier or by it which may prevent or limit the Supplier from supplying the Goods or Services to Tabcorp; and

- (f) the Supplier has all rights, licences and authorisations necessary for it to perform its obligations under the Purchase Order.

10.2 The Supplier warrants and represents to Tabcorp that:

- (a) the Goods and the Deliverables will conform with the requirements of, and the description of the Goods and the Deliverables in, the Purchase Order (and any other agreement between the Parties), and if the Supplier gave Tabcorp any sample of the Goods or the Deliverables, the Goods and the Deliverables will correspond with that sample;
- (b) the Goods and the Deliverables will be free from any defects in design, manufacture, performance and workmanship;
- (c) the Goods and the Deliverables will comply with any relevant laws, industry codes and standards (including those notified to the Supplier by Tabcorp);
- (d) the Goods and the Deliverables will be fit for the purpose for which goods or materials of the same kind are commonly supplied and for any other purpose which Tabcorp has

- made known to the Supplier;
- (e) the Goods and the Deliverables will be new and of merchantable quality, free from any contamination and (if applicable) are fit for human consumption;
 - (f) the Goods and the Deliverables will be provided free from any liens, charges and encumbrances and Tabcorp will be entitled to clear, complete and quiet possession of the Goods and the Deliverables;
 - (g) the Services will conform with the requirements of, and the description of the Services in, the Purchase Order (and any other agreement between the Parties), and if the Supplier gave Tabcorp a demonstration of (or showed a result achieved by) the Services, the Services will correspond with that demonstration (or correspond in nature and quality with the Services that achieved that result);
 - (h) the Services will be provided by appropriately qualified and trained personnel;
 - (i) the Services will be fit for the purpose for which services of the same kind are commonly supplied and for any other purpose which Tabcorp has made known to the Supplier;
 - (j) any items used in connection with the Services must be of merchantable quality, be fit for their usual purpose, and comply with all applicable laws, industry codes or standards (including those notified to the Supplier by Tabcorp);
 - (k) the Goods, the Services and the Deliverables, and the supply to or use by Tabcorp of the Goods or the Deliverables, will not infringe the Intellectual

Property Rights of any third party.

10.3 Subject to clause 10.4, all express or implied warranties under legislation or common law including as to merchantability, description or sample, quality, suitability, fitness for purpose or title apply to Goods or Services supplied by a Supplier under the Purchase Order.

10.4 Any terms, conditions or warranties that, but for this clause, would be implied by the UN Convention of the International Sale of Goods into contracts for the sale of goods, are excluded from the terms of the Purchase Order.

11 Limitation of liability and indemnities

11.1 Subject to this clause 11, the Supplier indemnifies Tabcorp, its Related Bodies Corporate and the Representatives of each of them (each an “**Indemnified Person**”) against any Loss suffered or incurred by the Indemnified Person as a result of:

- (a) any illness, injury or death to any person, or any loss or damage to any property, arising out of or in connection with the supply or use of the Goods or Services or any Deliverable;
- (b) any negligence or any wilful act or omission by the Supplier or its Representatives, or any failure by any of them to comply with any relevant law; and
- (c) any claim or action against an Indemnified Person that the Goods, Services or any Deliverable, or their supply to or use by Tabcorp or its Representatives, infringes the Intellectual Property Rights of any person.

11.2 Each indemnity in the Purchase Order is a continuing obligation separate and independent from any other obligation and survives termination or expiry of the Purchase Order.

11.3 Neither Party will be liable to the other, whether in contract, tort

(including negligence) or otherwise, for any Indirect Loss.

12 Insurance

12.1 If requested by Tabcorp, the Supplier must:

- (a) insure (with a reputable insurer reasonably acceptable to Tabcorp) the Goods and the Deliverables up to the time risk passes to Tabcorp for an amount not less than their replacement value;
- (b) maintain professional indemnity insurance, public liability insurance and/or product liability insurance; and
- (c) produce evidence (to Tabcorp’s reasonable satisfaction) that the Supplier is maintaining the insurance required by this clause.

13 Intellectual Property

13.1 The Supplier and its licensors will own all Intellectual Property Rights in and to the Goods which is not Developed IP (“**Pre-existing IP**”).

13.2 The Supplier grants to or will procure for Tabcorp an irrevocable, non-exclusive, world-wide, royalty free, perpetual licence (with a right to sub-license) of the Pre-existing IP to enable Tabcorp or persons authorised by Tabcorp to use, distribute, modify, adapt and repair the Goods.

13.3 Tabcorp will own all Intellectual Property Rights:

- (a) in any modifications or enhancements to the Goods which are created or developed by or on behalf of the Supplier to meet Tabcorp’s requirements under this Purchase Order;
- (b) in the IT Goods; and
- (c) in the Deliverables and in any other material created or developed by or on behalf of the Supplier in the course of providing the Services,

(the “**Developed IP**”) from the time the Developed IP comes into existence.

- 13.4 The Supplier assigns, and will procure at its own cost that its Representatives assign, to Tabcorp all of their rights in the Developed IP from the time the Developed IP comes into existence.
- 13.5 The Supplier must obtain from each author of the Developed IP, or a person representing the author, an unconditional and irrevocable waiver of all moral rights and genuine consent in writing authorising Tabcorp, its successors, assigns and licensees to deal with the Developed IP in any way Tabcorp chooses. The Supplier must provide these documents to Tabcorp on request.

14 Confidentiality and privacy

14.1 The Supplier must keep Tabcorp’s Confidential Information confidential and must not:

- (a) use or reproduce any of Tabcorp’s Confidential Information otherwise than in performing its obligations under the Purchase Order or providing the Goods or Services; or
- (b) disclose any of Tabcorp’s Confidential Information to any person, except:
 - (i) with the prior written consent of Tabcorp;
 - (ii) to its Representatives who need to know it for the purposes referred to in clause 14.1(a);
 - (iii) if required by law, or by the listing rules of any stock exchange; or
 - (iv) if required in connection with legal proceedings relating to the Purchase Order.

14.2 If the Supplier discloses any of Tabcorp’s Confidential Information, it must take reasonable steps to ensure that the recipient of the Confidential Information does not use, reproduce or disclose that information except to the extent permitted by clause 14.1.

14.3 The Supplier must not use Tabcorp as a reference, or make any public statements about the Purchase Order or any related agreement between it and Tabcorp (including to any other actual or potential customers), without the prior consent of Tabcorp.

14.4 The Supplier must:

- (a) comply with all laws relating to the protection of personal information and privacy when performing its obligations under the Purchase Order; and
- (b) ensure that it does not put Tabcorp in breach of those laws.

15 Dispute Resolution

15.1 Any Party claiming that a dispute has arisen must, before commencing legal proceedings, give written notice (“**Dispute Notice**”) to the other Party setting out the nature of the dispute and all other information relevant to the dispute.

15.2 Within 7 days of receipt of a Dispute Notice, each Party will nominate a Representative with appropriate expertise and procure that those Representatives promptly meet and undertake discussions in good faith with a view to resolving the dispute as soon as practicable.

15.3 If, after complying with clause 15.2 the Parties have not resolved the dispute within 14 days after a Dispute Notice is given (or such other period as may be agreed between the Parties), the Parties may pursue other forms of dispute resolution (including commencing legal proceedings).

15.4 Nothing in these Terms and Conditions prevents a Party from commencing court proceedings to seek urgent interim or interlocutory relief at any time.

15.5 Despite the existence of a dispute, each Party must continue to perform its obligations under the Purchase Order unless those obligations are the subject of the dispute.

16 Financial security

16.1 Tabcorp may, as a condition of entering into the Purchase Order, require personal or parent

company guarantees in a form approved by Tabcorp (including the receipt of a guarantor’s certificate or a certificate of independent legal advice).

16.2 Tabcorp may conduct credit checks on the Supplier, a person who Controls the Supplier (if any) and the directors of any of them. Upon request by Tabcorp, the Supplier must promptly provide the necessary consents to enable Tabcorp to conduct these credit checks.

17 Other matters

17.1 Tabcorp’s rights under the Purchase Order can only be waived by Tabcorp in writing.

17.2 The terms of the Purchase Order may only be varied in writing.

17.3 Tabcorp may exercise a right, remedy or power in any way it considers appropriate and if it does not exercise a right, remedy or power at any time, this does not mean that it cannot exercise it later. Tabcorp’s rights, remedies and powers under the Purchase Order are in addition to any rights, remedies and powers provided by law.

17.4 The Supplier must notify Tabcorp immediately if there is a change in its trading address or a change in Control of the Supplier.

17.5 The Supplier must not, without the prior written consent of Tabcorp, sub-contract the performance of any of its obligations under the Purchase Order. The Supplier will remain responsible for the performance of any obligations that it sub-contracts.

17.6 The Supplier may not assign or otherwise deal with any of its rights or obligations under this Purchase Order without Tabcorp’s prior consent. Tabcorp may novate or assign its rights or obligations under this Purchase Order by notice to the Supplier and the Supplier must immediately execute any documents necessary to give effect to the novation or assignment.

17.7 Time is of the essence in respect of Goods and Services to be supplied pursuant to the Purchase Order.

18 Governing law

18.1 The Purchase Order is governed by the laws of the state in which the Goods or Services are ordered, and the Parties agree to submit to the non-exclusive jurisdiction of the courts of that state.

19 Definitions and interpretation

19.1 The following terms have the meanings described unless the contrary intention appears:

Confidential Information of a Party means the terms of the Purchase Order and any other information relating to the business, finances, strategy, methods, processes, products, services or other affairs of that Party (“disclosing party”) which is disclosed to, learnt by or accessed by the other Party (“receiving party”) in connection with the Purchase Order, whether before or after the date of the Purchase Order, whether orally, electronically, in writing or otherwise, but excludes information which:

- (a) is or becomes part of the public domain otherwise than as a consequence of a breach of the Purchase Order or an obligation of confidence owed to the disclosing party;
- (b) the receiving party obtains from a source other than the disclosing party which source is entitled to disclose it; or
- (c) the receiving party developed or acquired independently before date of the Purchase Order.

Control of a corporation includes the direct or indirect power to directly or indirectly:

- (a) direct the management or policies of the corporation; or
- (b) control the membership of the board of directors,

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights, and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares

or stock of that corporation or otherwise.

Deliverable means any:

- (a) advice or other information; or
- (b) documents (hardcopy or electronic), materials, software or other things,

to be provided to Tabcorp in connection with the Services.

Developed IP has the meaning given in clause 13.3.

Goods means the goods described in the Purchase Order and includes any materials supplied with the goods (such as instruction manuals) and any ancillary services described in the Purchase Order.

GST has the same meaning as in the GST Act.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth), as amended from time to time.

Indirect Loss means Loss suffered or incurred by a Party as a result of a breach of the terms of the Purchase Order which may reasonably be supposed to have been in the contemplation of the Parties as the probable result of that breach, unless the Loss may fairly and reasonably be considered as arising naturally (ie according to the usual course of things) from the breach.

Input Tax Credit has the same meaning as in the GST Act.

A party is **Insolvent** if it:

- (a) is unable to pay its debts as they fall due, makes or commences negotiations with a view to making a general re-scheduling of its indebtedness, a general assignment, scheme of arrangement or composition with its creditors;
- (b) takes any corporate action, or any steps are taken or legal proceedings are started for:
 - (i) its winding up, dissolution, liquidation, or re-organisation, other than to reconstruct,

merge or amalgamate while solvent; or

- (ii) the appointment of a controller, receiver, administrator, official manager, trustee, or other similar officer, of it or of any of its revenues or assets; or

- (c) seeks or is granted protection from its creditors under any applicable legislation.

Intellectual Property Rights

means copyright and neighbouring rights (including moral rights), all rights in relation to inventions (including patents), registered and unregistered trade marks, business names, domain names, registered and unregistered designs, circuit layouts, confidential information, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

IT Goods mean software, databases and any other IT-related goods (except those expressly stated in the Purchase Order not to be IT Goods), and any manuals or ancillary goods required to use, operate and maintain the IT Goods.

Loss means any loss, liability, cost or expense (including legal expenses on a full indemnity basis).

Party means Tabcorp and the Supplier and “**Parties**” has a corresponding meaning.

Pre-existing IP has the meaning given in clause 13.1.

Purchase Order means the contract between Tabcorp and the Supplier for the purchase of the Goods or Services on the terms and conditions specified on the purchase order and in these Terms and Conditions (as amended from time to time).

Related Body Corporate has the same meaning as in the Corporations Act 2001 (Cwlth).

Representative of a Party means an employee, officer, director, auditor, advisor, or sub-contractor of that Party (except that the Supplier will not be taken to be a Representative of Tabcorp).

Services means the services described in the Purchase Order and includes any ancillary goods described in the Purchase Order.

Supplier means each supplier of the Goods and each provider of the Services as described in the Purchase Order.

Tabcorp means Tabcorp Holdings Limited (ABN 66 063 780 709) and any Related Body Corporate of Tabcorp Holdings Limited but does not include Star City Pty Ltd (ABN 25 060 510 410) or Jupiters Limited (ABN 78 010 741 045) or any subsidiary of Star City Pty Limited or Jupiters Limited.

Tax Invoice has the meaning set out in the GST Act.

Terms and Conditions means these terms and conditions.

19.2 Unless the contrary intention appears, a reference in these Terms and Conditions (or the Purchase Order) to:

- (g) anything (including any amount) is a reference to the whole and each part of it; and
 - (h) time is a reference to time of the capital city of the state in which the order was placed.
- (a) the Purchase Order or the Terms and Conditions or any other document includes any amendments to or replacement of them;
 - (b) the singular includes the plural and vice versa;
 - (c) the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any government agency;
 - (d) “use” of the Goods and the Deliverables includes exercising all of the rights of a copyright owner in those Goods and Deliverables;
 - (e) a statute, code, or other law includes regulations and other instruments made under any of them and consolidations, amendments, re-enactments or replacements of any of them;
 - (f) a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;