

## Purchase Order Terms and Conditions

1. DEFINITIONS	The following definitions shall be used for the purpose of interpreting the Purchase Order and these Purchase Order terms and conditions:
"Purchaser":	means the Red Cloud Ltd entity so named in the Purchase Order together with its related parties as defined in the Corporations Act 2001 and including its duly appointed representatives nominated from time to time.
"Supplier":	means the person (including an individual, firm or corporate entity) so named in the Purchase Order who is bound to supply and deliver the Goods.
"Purchase Order":	has the meaning given in Clause 2 and it is an agreement between Purchaser and Supplier comprised of the Purchase Order Form, these Purchase Order terms and conditions, any special conditions and attachments. The Purchase Order supersedes all previous communications and negotiations and shall be acknowledged by Purchaser as sole authority for charging Goods to its account.
"Revision":	has the meaning given in Clause 5.
"Goods":	means machinery, plant, equipment, apparatus, materials, articles, erection works, services and things of all kinds to be supplied, delivered or performed by Supplier in accordance with the Purchase Order.
2. PURCHASE ORDER:	<p>A Purchase Order for Goods is issued by Purchaser to Supplier. The Purchase Order is recorded on a document electronically generated by the Purchaser and titled "Purchase Order" bearing an identifying 'Purchase Order number' or a 'revision number' (Purchase Order Form). These Purchase Order terms and conditions apply to the Purchase Order. Purchase Order shall contain a description of Goods, applicable prices and delivery details and may contain special conditions (if any) in a separate section titled "Notes, Instructions and Special Conditions" or "Addendum". The Purchase Order may also include attachments (if any) referenced therein.</p> <p>In case of any conflict or ambiguity, the Purchase Order Form (including any attachments) and special conditions (if any) shall have precedence over these Purchase Order terms and conditions shall have precedence over the rest of the Purchase Order.</p> <p>Any reference by the Supplier to Supplier's own or any other terms and conditions in its quotation or other documentation presented by it in connection with the Purchase Order will have no effect on the Purchase Order.</p> <p>The Purchase Order shall be effective from the date of issue as stated in the Purchase Order.</p>
3. ACCEPTANCE:	<p>Upon receipt of Purchase Order, Supplier shall check it for discrepancies. Supplier shall acknowledge the Purchase Order by signing and returning the Purchase Order to Purchaser within five (5) days of receipt of Purchase Order. In the absence of such acknowledgment, the performance of the Purchase Order by Supplier shall constitute acceptance of the Purchase Order.</p> <p>The Purchase Order shall constitute the entire agreement between Supplier and Purchaser with respect to the Goods and no representation or statements by any employee or agent not expressly stated in the Purchase Order shall be binding upon the Purchaser.</p>
4. DELIVERY	<p>Supplier, at its expense, shall deliver the Goods using the mode, on the date and at the place specified in the Purchase Order in which any required advance notification of delivery may be indicated. Unless stated otherwise in the Purchase Order, Supplier at its cost shall unload the Goods at the specified location.</p> <p>Goods purchased for specific work and services on a data centre project site ("Works") will nominate an estimated time frame for delivery based upon an estimated point of insertion into the Works at the time or placing the Purchase Order. If the Works time frame moves for any reason the Purchaser will advise the Supplier who will be responsible for adjusting delivery times accordingly. The cost of holding and storage of Goods will be the responsibility of the Supplier. Should the Goods require upkeep and/or maintenance during the storage period, it is the responsibility of the Supplier to arrange and undertake the upkeep and maintenance unless the Purchaser agrees to an ex gratia payment which has the meaning given in clause 26.</p>
5. REVISION:	<p>Purchaser reserves the right at any time in relation to the Goods to make a Revision to the Purchase Order to correct any errors or omissions therein or to make any changes including in respect of specifications, quantity and delivery.</p> <p>A Revision shall be made through the issue of an electronic document titled "Purchase Order" having the same Purchase Order number as the previously executed Purchase Order ('revision number' "0") and a 'revision number' (designated "1", "2" and so on) to signify the chronological order of issue of the respective Revisions.</p> <p>Supplier must not make such corrections or changes until the resulting cost and time impacts have been agreed between the parties and the proper Purchase Order document with the appropriate 'revision number' has been authorised and issued by Purchaser and acknowledged and accepted by Supplier. Thereafter Supplier agrees to take immediate and necessary action to comply with such Revision to the Purchase Order.</p>
6. TITLE AND RISK:	Title to and property in the Goods shall pass to Purchaser on the first to occur of payment of any part of the Purchase Order price or delivery to the place specified in the Purchase Order. Such Goods yet to be delivered by Supplier shall be appropriately marked and identified as the property of Purchaser.

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	Risk in the Goods shall remain with Supplier until the time Purchaser takes delivery of the Goods unless otherwise expressly stated in the Purchase Order. Any loss or damage to Goods howsoever caused when under Supplier's risk shall at its own cost be rectified by Supplier and thereafter when the risk in the Goods has transferred to Purchaser, Supplier shall be liable for any loss or damage to such Goods to the extent caused by its negligence, wilful act, misconduct, fault, breach of duty (statutory or otherwise) or breach of the Purchase Order.
7. PRICE:	Unless otherwise stated, the total Purchase Order price as indicated in the Purchase Order is in Australian currency including GST and is fixed and firm, not subject to escalation for the duration of the Purchase Order; and includes all packing, testing, delivery and documentation costs.
8. PAYMENT:	Unless otherwise stated and agreed, payment of the Purchase Order price shall be made in full within thirty (30) days from receipt by Purchaser of correct and proper invoice and required supporting documentation following delivery of Goods to the delivery point stated in the Purchase Order. If the Goods require external accreditation or certification Payment shall be made in full within thirty (30) days from receipt by Purchaser of correct and proper supporting documentation confirming compliance with required accreditation or certification.
9. INSURANCE:	Supplier shall, at its cost, effect and maintain until the risk in the Goods passes to Purchaser adequate material loss or damage insurance at least to the full replacement value of the Goods including adequate transit insurance and also covering unloading if Supplier is required to unload the Goods. Such insurance shall cover the parties' respective rights and if required by Purchaser shall be in the joint names of the parties. Supplier shall carry: (a) Workers Compensation/Employer's Liability required by law with where legally permitted an indemnity for Purchaser (including its client as applicable) and ensure that its sub-suppliers have similarly insured its employees; (b) adequate public & product liability insurance and (c) any other insurance pursuant to Clause 16 (if applicable) or as required by law.
10. DRAWINGS:	Where Goods are purchased for specific build or fit out projects the Supplier shall ensure that all drawings and data used have been certified for construction and that Goods are manufactured according to such drawings and data or any subsequent revisions thereof.
11. WARRANTY:	Supplier shall (at the option of Purchaser) either replace or repair and make good any Goods or parts of Goods supplied by it found to be defective or in any way unsuitable for the purpose intended for a period of twelve (12) months from date of delivery of the Goods ("Warranty Period"). If Supplier repairs or replaces Goods during the Warranty Period, then those Goods repaired or replaced have a further warranty for a period of twelve (12) months from the date such repairs or replacements were completed.
12. PATENTS:	Supplier warrants that Goods supplied other than Goods supplied in accordance with technical plans or drawings provided to Supplier by Purchaser do not infringe any patent, copyright, design or trademark (whether foreign or domestic) which any person may in any way be entitled to and shall save harmless and indemnify Purchaser from and against all claims and proceedings for or on account of such infringements in respect of Goods supplied by Supplier and from and against all related claims, demands, proceedings, damages, costs, charges and expenses.
13. INSPECTION:	Purchaser may at any time during the course of manufacture or otherwise inspect Goods to be supplied (subject to Purchaser first giving Supplier reasonable notice of such inspection). Inspection by Purchaser shall neither relieve Supplier of its obligations under the Purchase Order or otherwise nor waive Purchaser's rights or remedies provided under the Purchase Order or otherwise.
14. PACKING:	Supplier shall be liable for all or any damage, loss or destruction to any Goods or property resulting from improper packaging or handling by Supplier or their sub-contractors.
15. TEST CERTIFICATES:	If Test Certificates for Goods are required by the Purchase Order those must be forwarded to Purchaser upon completion of testing.
16. ERECTION WORK & SERVICES:	When erection work and services on an external site ("Works") away from Supplier's workshops or premises form part of the Purchase Order, the following provisions shall apply: (a) All invoices shall be accompanied by a schedule certified by Purchaser of the Works completed. (b) Progress payments shall not be made unless so stated in the Purchase Order. (c) Supplier shall obtain within ten (10) days of receipt of the Purchase Order and keep in effect during the currency of the Purchase Order such insurance as necessary to adequately protect Supplier and Purchaser in respect of liability under law and shall lodge certificates of currency with Purchaser.
17. SUB-PURCHASE ORDERS & ASSIGNMENT:	Supplier shall ensure that any sub-purchase or sub-supply agreements relating to this Purchase Order contain the same terms and conditions as contained in the Purchase Order. The Purchase Order shall be binding upon and inure to the benefit of the parties hereto and (unless such interpretation shall be repugnant to the sense or context) their respective executors, administrators, personal representatives, successors and assigns but shall not be assignable by Supplier without the consent of Purchaser.
18. WAIVER & AMENDMENT:	Neither a waiver of any provision of the Purchase Order nor consent to any departure therefrom shall be effective unless given in writing by Purchaser.

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	Except as provided by law or equity or elsewhere in the Purchase Order, none of the provisions of the Purchase Order shall be varied or amended without the prior written consent of the parties.
19. CANCELLATION:	Purchaser may at its option cancel the Purchase Order or any part thereof at any time. Purchaser's liability will be to pay for materials manufactured and supplied in accordance with the Purchase Order up to the date of cancellation and for costs of materials and other items ordered in connection with the Goods for which Supplier is legally bound to pay. Upon such payment, title to and property in all those materials and other items shall pass to Purchaser.
20. TERMINATION FOR DEFAULT:	If Supplier fails to make delivery; fails to perform within the time specified in the Purchase Order; delivers non-conforming Goods; fails to make progress so as to endanger performance of the Purchase Order; then the Purchaser may cancel the Purchase Order or part thereof and Supplier shall be liable for all costs incurred by Purchaser in purchasing similar Goods elsewhere.
21. SUSPENSION:	The Purchaser may suspend all or part of the supply of the Goods at any time for any period of time by notice in writing to the Supplier. The Supplier must comply with the notice and recommence supply when notified by the Purchaser. The Supplier will not be entitled to any additional payment arising as a result of the suspension.
22. INDEMNITY:	Insofar as this Clause 22 applies to property, it applies to property other than the Goods. Supplier shall be solely responsible for and shall indemnify and hold Purchaser harmless against all claims, liens, demands, proceedings, judgements, fines, penalties, costs (including legal costs), losses, liabilities and other expenses whatsoever for any personal injury, including death and disease or loss of or damage to any property (including Purchaser's personnel and property) arising directly or indirectly out of or as a consequence of the performance of the Purchase Order or by failure of Supplier to perform any of its obligations under or to comply with requirements of the Purchase Order irrespective of sole or contributory negligence, misconduct, fault or breach of duty (whether statutory or otherwise) on the part of the Purchaser. However, in circumstances where Supplier is performing Works (as defined in Clause 16), Supplier's liability to the Purchaser under the foregoing paragraph that arise as a direct result of such Works shall be reduced proportionally to the extent that an act or omission of Purchaser may have contributed to the injury, death, loss or damage. The provisions of Part 1 F of the Civil Liability Act 2002 (WA) are excluded from operation with respect to any matter arising out of or in connection with this Purchase Order.
23. TIME:	If Supplier is delayed in delivery of the Goods by unforeseeable occurrences or causes such as acts of God, state or nationwide strikes, fire or other causes of a similar nature beyond Supplier's reasonable control, Supplier shall notify Purchaser within two (2) days of the commencement of each such occurrence or cause and request an extension of time. If approved by Purchaser, any extension of time shall be granted in writing. Supplier shall not be entitled to and hereby waives any and all claims to increased compensation for/or damages which it may suffer from any such unforeseeable causes.
24. EXPEDITING:	Purchaser shall be granted access to any and all parts of Supplier's work premises and those of its sub-suppliers. Supplier shall expedite all Goods ordered through sub-purchase orders on a regular basis and visit sub-supplier's facilities or premises when necessary.
25. CONSEQUENTIAL LOSS:	Neither Purchaser nor Supplier shall be liable to the other for any consequential loss including but not limited to loss of contract, business opportunity, profit or anticipated profit (or any loss of a similar nature) sustained by the other party.
26. EX GRATIA PAYMENTS	Notwithstanding any previous terms and conditions the Purchaser may at its absolute discretion consider an ex gratia payment to the Supplier for any aspect relating to the supply or expediting the supply of goods. In such circumstances the ex gratia payment is consider a gift undertaken voluntarily, out of kindness or grace for retention of a commercial relationship and does not minimise or eliminate the intent of any Clause in the Standard Terms and Conditions.
27. APPLICABLE LAW:	The Purchase Order and the rights and obligations of the parties hereto shall be construed in accordance with and be governed by the laws applicable in the State of Western Australia. Each of the parties hereto hereby agrees that any legal action or proceedings with respect to its obligations hereunder shall be brought in the State of Western Australia and each of the parties hereto hereby submits to such jurisdiction.
28. SERVICE OF NOTICE:	Unless otherwise agreed to by the parties, any notice (and other documents) required or permitted to be given or delivered under this Purchase Order shall be delivered and addressed to the party at the addresses set forth in the Purchase Order. Notice shall be deemed to have been received by any party, and shall be effective: (a) on the day given, if personally delivered or if sent by confirmed facsimile or electronic mail transmission (including any attached scanned documents), receipt verified, to a facsimile number or electronic mail address provided by the receiving party to the sending party for the purpose of receiving such notices; or b) on the third day after which such notice is deposited, if mailed by certified or prepaid post.



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