



Supplier Agreement

SUPPLIER SHOULD CAREFULLY READ THE Marketboomer Pty Ltd ACN 079 803 473 "Marketboomer" SUPPLIER TERMS AND CONDITIONS "TERMS" ATTACHED TO THIS APPLICATION. BY PROVIDING SUPPLIER INFORMATION AND SUPPLIER CATALOGUE, THE SUPPLIER AGREES TO BE BOUND BY THESE TERMS AND CONDITIONS.

Company name:		
Company's trading name:		
ACN:	ABN:	
Phone (BH): ()	Fax: ()	
General email address		
Company website:		
Supplier's street address:		Supplier's postal address:
Suburb:		Suburb:
State:		State:
Postcode:		Postcode:
Signed:		Date:
Please provide the Contact Details for the following areas of your company:		
Sales/Enquiries/Support	Name:	Phone:
Title:		Email:
Product Pricing	Name:	Phone:
Title:		Email:
Accounts Payable	Name:	Phone:
Title:		Email:
Who should Marketboomer contact if we have problems sending Purchase Orders to your company?		
During Business Hours:	Name:	Phone:
Title:		Email:
Outside Business Hours:	Name:	Phone:
Title:		Email:
Method for receiving orders (one option only):		
<input type="checkbox"/> Fax or <input type="checkbox"/> Email or <input type="checkbox"/> Self Collect		
Order fax number or email address:		
Which client requested you to become "marketboomer" enabled?		
Product & pricing information will be maintained in the following manner:		
<input type="checkbox"/> Self Maintained (Using ActiveSupplier) <input type="checkbox"/> marketboomer to update catalogue on our behalf (charges will apply)		
Prices on the marketboomer system will be updated on the following basis:		
<input type="checkbox"/> Daily <input type="checkbox"/> Weekly <input type="checkbox"/> Monthly <input type="checkbox"/> Annually <input type="checkbox"/> Other. Please specify how often: _____		

1. Definitions

- **Customer** means a third party who uses Marketboomer's purchasing application to order Products from a Supplier
- **ActiveSupplier** means the Marketboomer supplier application requiring installation of a Marketboomer client onto a Supplier computer system
- **Product/s** means goods offered for sale by Supplier upon establishment of Supplier Information and Supplier Catalogue on Host Server.
- **Price** means the price charged to Customers for the purchase of Product including GST and delivery charges.
- **Host Server** means Marketboomer's or a third party's data storage facility on which the Supplier Information and Supplier Catalogue are stored.
- **Self Collect** means where the supplier elects to receive Purchaser Orders through Marketboomer's supplier application – Active Supplier
- **Transmission Charge** means the fee set out in the Agreement payable by Supplier to Marketboomer for sending orders to that Supplier using Marketboomer Technology
- **Order/s** means orders for Product or Services by Customers
- **Marketboomer Technology** means any of Marketboomer's Purchaser, Supplier or Market Maker applications
- **Supplier Catalogue** means the content provided by the supplier or third party from a database or other source for use in the host server in accordance with this agreement.
- **Format** means the data structure required to manage and upload the Supplier Information and Supplier Catalogue
- **Supplier Information** means Supplier contact and business information required to transmit orders and for billing under this Agreement
- **Marketboomer catalogue format** means the electronic format with the following specified fields: category, sub-category, brand, product description, unit size, package size, package price, product code and tax rate. Please contact Marketboomer for a copy of the electronic format.
- **Marketboomer price update format** means the electronic format with the following specified fields: Marketboomer unique ID, category, sub-category, brand, product description, unit size, package size, package price, product code and tax rate. Please contact Marketboomer for a copy of the electronic format.
- **Confidential Information** means all information exchanged between the parties but does not include information that:
 - a) is in the public domain as at the date of this Agreement;
 - b) enters into the public domain other than by breach of this Agreement; and
 - c) is required by law to be disclosed
- **Consolidated Information** means the aggregated information created by use of Marketboomer technology, and the disclosure of such information does not reasonably identify any Customer, Supplier or any other user of Marketboomer technology

2. Supplier Undertakings

- 2.1. Supplier agrees to install ActiveSupplier on the Supplier's computer system.
- 2.2. Supplier agrees and acknowledges that Marketboomer is under no obligation to list any Product offered by Supplier and reserves the right to refuse to list any Product on the Host Server.
- 2.3. Supplier acknowledges, agrees and undertakes to list products with a price and to update Prices from time to time as required.

- 2.4. All supply relationships are between Customer and Supplier.
- 2.5. Supplier agrees in all correspondence and other dealings with Customers to indicate that it is acting on its own account as principal and will not represent itself impliedly or expressly to be the agent of Marketboomer nor incur any contractual or other liability on behalf of Marketboomer.
- 2.6. On signing of this agreement supplier acknowledges they will be automatically accepted as approved suppliers in to Marketboomer managed Trading Zones.

3. Transmission Charges

- 3.1. Supplier agrees to pay to Marketboomer Transmission Charges as identified in Schedule A.
- 3.2. Marketboomer will provide Supplier with an Invoice each month setting out Transmission Charges incurred by the Supplier. Supplier agrees to pay such invoice within 30 days from the date of the Invoice.
- 3.3. Supplier acknowledges that such Invoice referred to in cl 3.2 above may include other amounts incurred by trading on a particular marketplace that are over and above the Marketboomer Transmission Charges, such charges only incurred by Supplier accepting the Terms and Conditions of that marketplace.
- 3.4. Marketboomer reserves the right to change the Transmission Charges from time to time by giving Supplier not less than 45 days notice.

4. Upgrades, Updates and New Releases

- 4.1. Marketboomer will make available any upgrades, updates or new releases of Marketboomer Technology to Supplier upon official release of any upgraded, updated or new version.
- 4.2. Marketboomer will provide no less than 7 days written notice to Supplier of any upgrade, update or new release of Marketboomer technology, such notice including release notes and updated help documentation as required.

5. Intellectual Property and Information

- 5.1. Marketboomer retains intellectual property rights in all present and future Marketboomer Technology and in all Marketboomer Material. Marketboomer source code is not public code and remains the property of Marketboomer.
- 5.2. All Intellectual Property rights in the Consolidated Information vests in Marketboomer when it is created.
- 5.3. Supplier agrees that Marketboomer has control of the collection, storage, retrieval and use of information generated by the system for the purpose of facilitating transactions between Suppliers and Customers.

6. Supplier Information and Supplier Catalogue

- 6.1. Supplier grants to Marketboomer a licence to use Supplier Information and Supplier Catalogue to populate the Host Server.
- 6.2. Supplier agrees to provide Marketboomer with Supplier Information and Supplier Catalogue in the Marketboomer catalogue format. Marketboomer reserves the right to amend the format of Supplier Information and Supplier Catalogue at its absolute discretion in order to conform to the data structure requirements of the Host Server.
- 6.3. Marketboomer will upload Supplier Catalogues of up to 2,000 line items free of charge, provided they are in the Marketboomer catalogue format. Catalogues not in the specified format and catalogues greater than 2,000 line items will incur a cataloguing fee of between \$0.50 and \$2.00 per line item, depending on the format provided.
- 6.4. Supplier must provide any line item additions or line item deletions to Supplier Catalogue in the Marketboomer price

update format. Marketboomer will provide email confirmation of any such amendments in a timely fashion.

- 6.5. Marketboomer requires five business days' notice to upload any line item additions, line item deletions or price updates.
- 6.6. Marketboomer does not accept responsibility for the integrity or accuracy of Supplier Information and Supplier Catalogue.
- 6.7. Supplier may choose to manage their products and pricing updates through the ActiveSupplier application at no charge. Marketboomer will manage supplier product and pricing updates on behalf of the supplier for a negotiated fee.

7. Warranties

- 7.1. The Supplier warrants that;
- a) Any computer files or databases provided to Marketboomer do not contain any defects, viruses or other code that is intended to or likely to cause either party's computer systems to cease being operational or to cause any damage to or to interrupt or interfere with either party' computer systems in any way;
 - b) Supplier Information and Supplier Catalogue do not infringe any Intellectual Property or other right of any person and are not contrary to any law or industry code of conduct in force at the time.
- 7.2. Marketboomer reserves the right to remove from the Host Server any Supplier Information or Supplier Catalogue or any other material that Marketboomer considers infringes any of the warranties in clauses 7.1(a) and 7.1(b). Marketboomer may alter Supplier Information and Supplier Catalogue at its discretion so that Supplier Information and Supplier Catalogue complies with the warranties in clauses 7.1(a) and 7.1(b).
- 7.3. The Supplier warrants that it has not relied on any representation made by Marketboomer that has not been expressly made in this Agreement.
- 7.4. The liability of Marketboomer for any breach of an obligation, condition or warranty must be limited at the option of Marketboomer to any one or more of the following:
- a) if the breach relates to software or Marketboomer documentation, replacement of the same or correction of defects in the same; and
 - b) if the breach relates to services, the supplying of the services again or payment of the cost of having the services supplied again.
- 7.5. Except as expressly provided to the contrary in this Agreement, Marketboomer must not be under any liability to Supplier or to any other person in respect of any loss or damage (including consequential loss or damage), however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of the installation, supply, display, uses updating or alteration of Supplier Information and Supplier Catalogue.

8. Release and Disclaimer

- 8.1. Supplier waives and discharges any and all claims that Supplier now has or may have against Marketboomer, its related bodies corporate, directors, employee, agents and representatives that are connected with or are incidental to this Agreement.
- 8.2. The parties mutually agree to indemnify each other against all losses, expenses and damages which either may suffer or incur as a result of the negligence of the other party or the failure of the other party to observe any of the terms and conditions of this Agreement.
- 8.3. Supplier indemnifies Marketboomer against any liability in respect of any dispute or claim between the Customer and Supplier.

9. Confidential Information

- 9.1. As a consequence of entering into or performing this Agreement, a party may have disclosed to it or may otherwise have access to or learn of Confidential Information of the other party.
- 9.2. Subject to cl.10.2 each party must hold in strict confidence all Confidential Information of the other party that it learns of or is provided with and use such Confidential Information only for the purposes of this Agreement.
- 9.3. Supplier acknowledges and agrees no rights, title or ownership in the Confidential Information are or will be acquired by Supplier or by any Customer or other person other than as specifically set out in this Agreement.

10. Term and Termination

- 10.1. This Agreement will continue until terminated.
- 10.2. Either party may terminate this Agreement by 45 days notice in writing to the other party
- 10.3. Either party may terminate this Agreement immediately by notice in writing to the other party if the other party:
- a) commits any breach of its obligations under this Agreement including terms relating to payment; or
 - b) becomes or threatens to become subject to any form of insolvency administration.
- 10.4. Marketboomer may terminate this Agreement if Supplier has failed to pay any Transmission Charge within 30 days from the date the Transmission Charge falls due.
- 10.5. Upon the termination of this Agreement, the Supplier Information and Supplier Catalogue will be deleted from the system.
- 10.6. Marketboomer retains the title in and ownership of all Consolidated Information upon the termination of this Agreement.
- 10.7. Clauses 5, 7, 8 and 9 survive termination of this Agreement.

Schedule A – Transmission Charges

Marketboomer charges Supplier transmission charges for any order sent to Supplier from any Customer from any marketplace:

- Self Collect - **\$0.90** per order (excl GST)
- Electronic (email) Transmission - **\$1.65** per order (excl GST)
- HTTP Transmission - **\$1.65** per order (excl GST)
- Facsimile Transmission - **\$2.95** per order (excl GST)

Prices are subject to change in accordance with Clause 3.4 of this Agreement. The Supplier may incur other charges by trading in a particular marketplace, provided it has agreed in advance.

Schedule B – Marketboomer details

Address: Level 13
181 Miller Street
North Sydney NSW 2113

Ph: 61 2 8456 0555
Fax: 61 2 8214 7090
Email: help@Marketboomer.com

Customer Support is available 8.30am – 6.00pm EST Monday to Friday on 1300 666 044