

## Purchase Order Terms and Conditions

### 1 DEFINITIONS

In this Contract unless the context otherwise requires:

**"Contract"** means the Purchase Order and these Terms and Conditions;

**"Date for Delivery"** means the date/s and/or time/s on which the Goods and/or Services/Works are to be delivered and/or provided to/at the Delivery Location, as specified in the Purchase Order or directed by the Purchaser;

**"Date of Delivery"** means the date/s and/or time/s on which the Goods and/or Services/Works are actually delivered and/or provided to/at the Delivery Location;

**"Defective"** means:

- (a) in relation to Goods: Goods which are not in accordance with this Contract or Goods failing to perform at a satisfactory level for the Purchaser's purposes or in accordance with the level of performance typically expected of goods of a similar specification;
- (b) in relation to Services/Works: Services/Works which are not in accordance with this Contract, have been omitted, are not of the standard of expected of a competent professional supplier experienced in providing the same or similar Services/Works or are not in accordance with any reasonable Direction by the Purchaser;

**"Defects Liability Period"** means the period stated in the Contract after the Date of Delivery and/or completion of all the Services/Works;

**"Delivery Location"** means the location specified in the Purchase Order, or as otherwise directed by the Purchaser, to where the Supplier must deliver the Goods and/or Services/Works and, if not stated in the Purchase Order or in a Direction in relation to Goods, delivered FOT;

**"Direction"** means a direction, decision, demand, determination, instruction, notice, order, rejection or requirement of the Purchaser;

**"FOT"** means, in relation to delivery of the Goods, free on truck (or other transport) and includes the responsibility (and associated costs) for packing, loading, transportation and insurance (for the full replacement value of the Goods);

**"Goods"** means the goods, materials, equipment, articles, any other property or parts to be provided or products described and specified in the Purchase Order including all necessary ancillary and associated items, things or services;

**"Head Contract"** means the agreement between the Purchaser and the Purchaser's client for the Project.

**"Insolvency Event"** means in relation to a party: the bankruptcy, winding up or insolvency of that party; or that party enters into any scheme of arrangement or composition; or a receiver or administrator is appointed to any property of that party;

**"Intellectual Property"** means any intellectual or industrial property rights, whether registered or unregistered, including without limitation:

- (a) all patents, trade marks, copyright, designs, trade secrets, know-how and other rights in any design, materials, processes, documents and methods of working; and
- (b) all licences and other rights to use or to grant the use of any of the foregoing.

**"Payment Claim"** means the claim for payment made by the Supplier in accordance with this Contract.

**"Price"** means:

- (a) where there is a lump sum in the Purchase Order, that lump sum; or
- (b) where there are rates in the Purchase Order, the sum ascertained by multiplying those rates by the quantity properly delivered and performed in accordance with this Contract; or
- (c) where there are both rates and lump sums in the Purchase Order, the aggregate of the sums referred to in paragraph (a) and (b),

as adjusted under this Contract.

**"Project"** means the project at which the Purchaser is carrying out its own works;

**"Purchase Order"** means the document issued by the Purchaser to the Supplier to order the Goods and/or Services/Works and includes any specifications, drawings or other documents that may be contained or referred to therein or annexed thereto;

**"Purchaser"** means the party issuing the Purchase Order, unless stated otherwise in the Purchase Order;

**"Site"** means the location where the Purchaser is undertaking the Project;

**"Services/Works"** means the services and/or works described and specified in the Purchase Order including all necessary ancillary and associated items, things, works or services;

**"Special Conditions"** means provisions of the Purchase Order which are inconsistent with any term or condition of these Terms and Conditions;

**"Supplier"** means the party identified as the supplier in the Purchase Order;

**"Terms and Conditions"** means this document titled "Purchase Order Terms and Conditions";

**"Variation"** means any:

- (a) change in the quantity of the Goods and/or Services/Works including omitting any Goods or Services/Works with a view to undertaking the supply by itself or by a third party;
- (b) change in the character or quality of the Goods and/or Services/Works; or
- (c) any other change in the scope of the supply under this Contract, as directed by the Purchaser in writing and identified as a Variation.

### 2 INTERPRETATION

2.1 In this Contract unless a contrary intention appears:

- (a) clause headings are inserted for convenience only and will not be used in the interpretation of this Contract;
- (b) a reference to the word "including" and similar expressions are not words of limitation;
- (c) references to parties, clauses, schedules or annexures are references to parties, clauses, schedules or annexures to, or of, this Contract and a reference to this Contract includes any schedule or annexure;
- (d) a reference to this Contract or to any other agreement, deed or document, includes respectively, this Contract or that other agreement, deed or document as amended, novated, supplemented, varied or replaced from time to time;
- (e) a reference to a person includes a reference to a firm, body corporate, an unincorporated body or other entity however constituted;
- (f) a party includes the party's executives, administrators, successors and permitted assigns;
- (g) if a party consists of more than one person this Contract binds them jointly and each of them severally;
- (h) references to payments to any party shall be construed to include payments to another person upon the direction of such party;
- (i) references to any legislation, or to any section or provision of any legislation, includes any statutory modification or re-enactment or any statutory provision substituted for it, and any ordinances, by-laws, regulations and other statutory instruments issued under such legislation;

- (j) where a party executes this Contract in its capacity as a trustee, a reference to that party includes any substituted or additional trustee;
- (k) an obligation, covenant, representation or warranty on the part of more than one party shall be deemed to be an obligation, covenant, representation or warranty on the part of those parties jointly and each of them severally;
- (l) the singular will include the plural and vice versa and a reference to any gender includes all genders; and
- (m) a reference to dollars or \$ is to Australian Dollar.

2.2 Unless otherwise stated, the order of precedence of any of the following documents forming part of the Contract, will be as follows:

- (a) Purchase Order;
- (b) Special Conditions'
- (c) these Terms and Conditions'
- (d) specification(s) annexed and/or referred to in the Purchase Order;
- (e) drawing(s) annexed and/or referred to in the Purchase Order.

2.3 If the Supplier discovers any ambiguity in the Contract it shall immediately notify the Purchaser in writing. The Purchaser will then determine the correct interpretation of the Contract. The determination of the Purchaser will be final and binding on the Supplier and have no effect on the Price.

### 3 AGREEMENT TO SUPPLY GOODS AND/OR SERVICES/WORKS

3.1 The acceptance by the Supplier of a Purchase Order constitutes a contract for the supply of the Goods and/or Services/Works in accordance with the Terms and Conditions of this Contract. The Supplier agrees to supply the Goods and/or Services/Works to the Purchaser in consideration for the Price.

3.2 The Supplier is deemed to accept a Purchase Order on the first to occur of:

- (a) the Supplier acknowledging in writing that it accepts the Purchase Order; and
- (b) the Supplier commencing the supply of the Goods and/or Services/Works.

### 4 WARRANTIES

4.1 The Supplier warrants and represents that the Purchaser will have ownership of the Goods and/or the product of the Services/Works free of any charge, lien, encumbrance or any other interest by a third party and that the Purchaser will have the ownership of all Intellectual Property relating to the Goods and/or Services/Works.

4.2 The Supplier warrants and represents to have carefully examined all documents furnished by the Purchaser and fully satisfied itself regarding all the conditions, risks, contingencies and other circumstances which might affect the performance of the Services/Works and/or the supply of the Goods. No increase in the Purchase Order Price will be allowed for the Supplier's failure to ensure that it is fully informed regarding all the circumstances relating to the Purchase Order.

4.3 The Supplier shall comply with all applicable laws, by-laws, ordinances, regulations, proclamations, orders and rules and with the lawful requirements of public authorities and other authorities in any way related to the supply of the Goods and/or Services/Works, including without limitation all occupational health and safety laws.

4.4 The Supplier shall be responsible for the payment of all relevant Australian (Federal, State and Local Government) and overseas taxes, PAYG taxes, duties and charges payable with respect to the Goods and/or Services/Works. The Price will be deemed to be inclusive of all such taxes, duties and charges.

4.5 In relation to Goods, the Supplier warrants and represents that the Goods:

- (a) are new, of merchantable quality, are not Defective, are fit for the purposes for which the Purchaser requires them and are in accordance with the requirements of this Contract;
  - (b) will be capable of operating satisfactorily and safely in the environment to which they will be exposed;
  - (c) correspond with any sample and/or description made available by the Purchaser to the Supplier, or provided to the Purchaser by the Supplier; and
  - (d) are in compliance with any applicable standards, including, but not limited to any applicable Australian Standards and any other relevant standards.
- 4.6 In relation to Services/Works, the Supplier must:
- (a) perform the Services/Works to the standard of professional care, skill, judgement and diligence expected of a competent professional supplier experienced in providing the same or similar services and in accordance with the requirements of this Contract;
  - (b) follow any reasonable direction by the Purchaser;
  - (c) rectify all errors and omissions in the Services/Works, at no cost to the Purchaser; and
  - (d) utilise the nominated personnel to perform the Services/Works.

### 5 DIRECTIONS

5.1 The Supplier and its personnel, consultants and subcontractors must comply with the Purchaser's Directions whether oral or in writing.

### 6 ACCESS

6.1 The Supplier acknowledges that if the Supplier enters the Site or any other premises, the Supplier must take all measures necessary to protect people and property, avoid unnecessary interference with the passage of people and vehicles and prevent nuisance and unnecessary noise and disturbance.

6.2 The Supplier must ensure that its employees, representatives and agents act in a safe and lawful manner and that they comply with all relevant safety legislation and with the Purchaser's safety standards and policies when they are on the Site or on any other premises.

### 7 DELIVERY OF THE GOODS AND/OR SERVICES/WORKS

7.1 The Goods will be delivered to the Delivery Location on the Date for Delivery, or, if no date is specified, as soon as is reasonably possible and in accordance with any Direction given by the Purchaser. Delivery may be required on any day.

7.2 The Services/Works must be:

- (a) commenced immediately upon the acceptance by the Supplier of a Purchase Order or as otherwise directed by the Purchaser;
- (b) completed on or before the Date for Delivery; and
- (c) carried out at the Delivery Location/Site.

7.3 The Purchaser may, at its sole discretion, amend the Date for Delivery to an earlier or later date by giving notice to the Supplier of the new Date for Delivery. The Supplier must not deliver the Goods and/or Services/Works until the amended later Date for Delivery and is not entitled to claim any additional payments as a result of the amended later Date for Delivery.

7.4 On the Date of Delivery, the Supplier (unless otherwise directed by the Purchaser), at its expense, shall promptly unload the Goods at the area(s) of the Delivery Location as directed by the Purchaser.

7.5 The Supplier must:

- (a) provide to the Purchaser a detailed program for the projected supply of the Goods and/or Services/Works and strictly abide by that program;
- (b) advise the Purchaser when the Goods have been dispatched to the Delivery Location and provide the anticipated delivery time;
- (c) advise the Purchaser when the Goods arrive at the Delivery Location;

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- (d) ensure that the Goods are undamaged upon arrival to the Delivery Location;
- (e) ensure that all Goods are clearly marked and identified;
- (f) ensure that any employees or contractors present at the Delivery Location/Site observe the rules of the Delivery Location/Site, including any personal protective equipment requirements;
- (g) in the event that the Goods are damaged or destroyed during delivery to the Delivery Location, indemnify the Purchaser in relation to any losses in relation to that damage or destruction;
- (h) ensure that the Goods have a delivery docket attached to them at the time they are delivered to the Delivery Location, that it is signed by the person delivering the Goods.
- (i) at the time of delivery, have the delivery docket signed by the Purchaser's representative, stating the time and Date of Delivery. Signed delivery dockets will be evidence of delivery only and will not constitute or be deemed to constitute acceptance of the Goods by the Purchaser.
- 7.6 Without prejudice and in addition to its other rights under this Contract, if the Supplier:
- (a) delivers the wrong type, quantity or quality of Goods then the Purchaser may accept or reject, entirely or in part the Goods delivered and where the Goods are to be returned to the Supplier, shall be packaged and returned at the Supplier's expense;
- (b) delivers the Goods at a time or place other than the Date for Delivery and the Delivery Location, then the Purchaser may refuse or reject the Goods, and the Purchaser may, without prior notice, procure the Goods from another supplier, and the Supplier will be liable for any additional costs incurred by the Purchaser.
- 8 INSPECTION AND TESTING**
- 8.1 At any time, the Purchaser is entitled to inspect, examine and test the Goods and/or Services/Works. No inspection or testing, nor the results of the inspection or testing by the Purchaser will in any way relieve or reduce the obligations of the Supplier to the Purchaser under the Contract or otherwise.
- 8.2 At all reasonable times, the Purchaser has the right to carry out site inspections, examinations and testing at the Supplier's premises or any other premises where the Goods are being manufactured or stored.
- 8.3 The Supplier must:
- (a) provide to the Purchaser, at the Purchaser's request, copies of all technical and safety/quality documentation and information relating to the Goods and/or Services/Works and all other reasonable assistance; and
- (b) ensure that the Purchaser is provided with access to the Supplier's premises or any other premises where the Goods are or were being manufactured or stored, to enable the Purchaser to inspect, examine and test the Goods and/or Services/Works.
- 8.4 If the inspections, examinations or tests show Defective Goods and/or Services/Works, the costs incurred by the Purchaser in conducting the inspection, examination and tests will be a debt due from the Supplier to the Purchaser. Acceptance and rejection of Goods and/or Services/Works
- 8.5 If, at any time, it is apparent to the Purchaser that there are Defective Goods and/or Services/Works, the Purchaser may, at its sole discretion:
- (a) return those Defective Goods to the Supplier;
- (b) direct the Supplier to rectify any omissions or defects in the Defective Goods and/or Services/Works within a period of time determined at the Purchaser's discretion;
- (c) direct the Supplier to replace the Defective Goods within a period of time determined at the Purchaser's discretion; and/or
- (d) withhold any payment due to the Supplier.
- 8.6 In the event that the Supplier fails to comply with such a Direction within the time specified by the Purchaser, then the Purchaser may have the work of rectification, removal and/or replacement carried out by a third party(ies) and the cost of doing so will be a debt due from the Supplier to the Purchaser. All costs associated with repairing, reinstating or replacing Defective Goods and/or Services/Works, any other materials or part of the Project affected, or any other losses incidental to the failure of the Goods and/or Services/Works, will be to the account of the Supplier.
- 9 CARE OF THE WORKS**
- 9.1 The Supplier is responsible for the care of the Works, construction plant and things entrusted to the Supplier for the purpose of the Works. During the Defects Liability Period, the Supplier is responsible for any loss of or damage to the Works caused by the Supplier or any of its subcontractors, employees or agents.
- 9.2 If loss or damage occurs to the Works/Site during the period of the Supplier's care, the Supplier shall, at its cost, rectify such loss or damage.
- 10 DEFECTS LIABILITY PERIOD**
- 10.1 Unless stated otherwise in this Contract, the Defects Liability Period will commence at the day of completion of all of the Works or delivery of the Goods and will continue for a period of eighteen (18) months thereafter or until the defects liability period under the Head Contract has expired, whichever is later.
- 10.2 At any time up to the expiry of the Defects Liability Period, the Purchaser may direct the Supplier to rectify any defect. The Supplier must comply with any Direction within the time stated in the Direction, or if no time is stated, within a reasonable time.
- 10.3 If the Supplier fails to comply with a Direction given under this clause, or where the rectification work is required urgently, the Purchaser may perform the work or have the work performed by others. The cost to the Purchaser of having the work performed will be charged to the Supplier.
- 11 TRANSFER OF TITLE AND RISK**
- 11.1 Title in the Goods will be transferred to the Purchaser upon the earlier of:
- (a) payment for the Goods by the Purchaser; or
- (b) the Date of Delivery.
- 11.2 Risk of the Goods remains with the Supplier and only transfers to the Purchaser when the Goods are either:
- (a) collected from the Supplier's premises by the Purchaser. The Goods are deemed to be collected after they have been loaded onto the Purchaser's or its agent's transport; or
- (b) delivered to the Delivery Location, unloaded and the delivery docket has been signed by the Purchaser's representative.
- 12 PAYMENT**
- 12.1 The Price and/or each rate making up the Price is fixed, is exclusive of GST (unless stated otherwise) and will not be subject to adjustment for rise and fall or for exchange rate variations. Unless expressly stated in this Contract, no other sums, fees or charges will be payable in relation to the Goods supplied or Services/Works performed, or in relation to this Contract generally.
- 12.2 The Supplier must, on the last calendar day of each month, submit to the Purchaser a Payment Claim. Each Payment Claim must:
- (a) contain sufficient detail for the Purchaser to calculate the amount owing;
- (b) quote a Purchaser Order reference number;
- (c) be provided in a format approved by the Purchaser and constitute a valid tax invoice; and
- (d) include all supporting documentation.
- If the Supplier submits a Payment Claim:
- (e) later than required; or
- (f) earlier than required,
- then the Purchaser may treat the Payment Claim and deem it as though it was not submitted until the period for submission immediately following actual submission.
- 12.3 The amount payable by the Purchaser to the Supplier in relation to each Payment Claim is calculated as follows:
- (a) if rates apply, by applying the rates to the quantities of Goods delivered and/or Services/Works performed by the Supplier in accordance with this Contract, as measured by the Purchaser;
- (b) otherwise, by the Purchaser's valuation of the Goods and/or Services/Works supplied and work completed to the date of the Payment Claim (as a proportion of the Price);
- (c) by subtracting any other amounts due from the Supplier to the Purchaser under the Contract; and
- (d) by deducting retention money pursuant to this Contract.
- 12.4 The Purchaser must assess each Payment Claim within twenty one (21) days of the date the Payment Claim was deemed to have been made. If the Payment Claim is not assessed within time, the Payment Claim is deemed to be disputed in full.
- 12.5 The Purchaser must pay the Supplier the amount calculated by the Purchaser as payable in relation to the Payment Claim by the 42nd day following the end of the month in which the Payment Claim was deemed to have been made.
- 12.6 Following the delivery of the last Goods and/or Services/Works, the Supplier will submit its final Payment Claim and releases the Purchaser from any liability to make any other payments (other than the final Payment Claim as assessed) to the Supplier.
- 12.7 Payment for the Goods and/or Services/Works does not constitute acceptance of the Goods and/or Services/Works but is a payment on account only.
- 12.8 Without limiting the Purchaser's rights under any provision in this Contract, the Purchaser may deduct from any sums due to the Supplier (including in respect of a Payment Claim or any retention) any sum which the Purchaser asserts is or may become payable by the Supplier to the Purchaser, whether or not:
- (a) the Purchaser's right to payment arises by way of damages (whether liquidated or unliquidated), debt, restitution or otherwise; or
- (b) the factual basis giving rise to the Purchaser's right to payment arises out of this Contract, any other Contract, or is independent of any Contract.
- Nothing in this clause will affect the right of the Purchaser to recover from the Supplier the whole of any such sum or any balance that remains owing.
- 13 RETENTION**
- 13.1 Unless specified otherwise in the Purchase Order, retention of 10% of each payment will be held by the Purchaser to ensure the Supplier's performance of all and any of its obligations under this Contract.
- 13.2 The Purchaser will release the Supplier's retention at the end of the Defects Liability Period subject to all defects having been rectified to the satisfaction of the Purchaser.
- 13.3 The Purchaser is entitled to utilise the Supplier's retention to pay for any costs, expenses or damages which the Purchaser claims that it has incurred or might in the future incur as a consequence of any act or omission of the Supplier which the Purchaser asserts constitutes a breach of the Contract.
- 14 VARIATIONS**
- 14.1 The Purchaser may, at any time, issue a Variation and the Supplier must perform the Variation. The Supplier must provide an estimate of the cost of the Variation and the impact on the Date for Delivery within seven (7) days of the issue of the Variation.
- 14.2 If the Supplier considers that a Direction from the Purchaser is a Direction for a Variation but which does not comply with the formal requirements of a Variation, in order to have any entitlement arising from the Direction, the Supplier must, within seven (7) days of the Direction and before commencing work pursuant to the Direction, notify the Purchaser in writing that the Supplier considers the work is a Variation together with an estimate of the cost of the Variation and the impact on the Date for Delivery.
- 14.3 Where the Purchaser issues a Variation, the Price will be altered by an amount calculated in the following order or priority:
- (a) to the extent that the parties have agreed the amount of the alteration, then the amount agreed;
- (b) to the extent that this Contract provides for the amount of the alteration, then that amount;
- (c) to the extent that the rates contained in this Contract apply, by applying those rates to the quantities properly supplied in accordance with this Contract;
- (d) failing any of the above being applicable, then by the amount reasonably assessed by the Purchaser.
- 14.4 To have any entitlement to any extra payment or for an extension of time as a consequence of performing a Variation or the Goods or Services/Works the subject of a Direction which it considers to be a Direction for a Variation, the Supplier must strictly comply with the requirements of this clause 14.
- 15 EXTENSION OF TIME**
- 15.1 The Purchaser may, by notice in writing to the Supplier, extend the Date for Delivery. The Purchaser is not under any circumstances obliged to exercise this discretion reasonably or for the benefit of the Supplier. The Supplier is not entitled to claim any additional payments as a result of the later Date for Delivery.
- 15.2 If performance of the Works/Services or delivery of Goods is likely to be delayed for any reason, the Supplier must notify the Purchaser in writing within 24 hours of the alleged cause of delay arising giving particulars of the delaying event, the likely effect on the Date for Delivery and what measures the Supplier is taking to mitigate the delay.
- 15.3 The Supplier is only entitled to an extension to the Date for Delivery when:
- (a) the Supplier can demonstrate that it actually has been or will be delayed in achieving the Date for Delivery by a Variation or any act or omission by the Purchaser, the Purchaser's other subcontractors, agents, consultants or employees;
- (b) the cause was beyond the reasonable control of the Supplier;
- (c) the Supplier has not contributed to the cause and taken all reasonable steps to mitigate the effect of the delay; and
- (d) the Supplier has given all notices strictly in accordance with the requirements of this clause 15.
- 15.4 Where one period of delay has more than one cause, and if one or more of those causes is not a cause for which the Supplier is entitled to claim an extension of time, the Supplier will have no entitlement to an extension of time for that period of delay.
- 15.5 Where the Supplier wishes to make a claim for an extension of time then it must give a notice in writing to the Purchaser within seven (7) days of the commencement of the cause of the delay which provides full detailed particulars of the cause of the delay, how that cause has delayed or will delay it from achieving the Date for Delivery, the period

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of the delay (including the dates of commencement and, if applicable, conclusion of the delay) and the extension of time claimed.

15.6 The Purchaser will determine the period of any extension of time to the Date for Delivery to which the Supplier is entitled as a consequence of the alleged cause of the delay. A failure of the Purchaser to grant a reasonable extension of time will not cause the Date for Delivery to be set at large.

15.7 The Supplier's sole remedy for delay shall be an extension of time to the Date for Delivery as provided in this Contract and the Supplier shall not be entitled to any costs, losses, expenses or damages as a result of or in connection with any delay or extension of time.

15.8 Except as provided in this clause, the Supplier will have no entitlement to claim any extension of time or any costs in relation to delay or disruption.

### 16 LATE DELIVERY

16.1 The Supplier indemnifies the Purchaser from any loss, cost, damage or expense suffered or incurred by the Purchaser by reason of the Goods and/or Services/Works not being delivered by the Date for Delivery.

### 17 HEALTH AND SAFETY

17.1 The Supplier must provide to the Purchaser, Safety Data Sheets (SDS) and identify potential hazards in the use and application of material substances prior to or on delivery of the Goods. Such information must include measures and precautions to be taken in storing and handling the Goods.

17.2 Where plant and equipment is supplied by the Supplier to the Purchaser, the Supplier must ensure:

- the plant and equipment is in safe working order, repair and condition and complies with current occupational health and safety legislation or codes of practice; and
- a compliance certificate is provided by the Supplier to the Purchaser confirming that the plant and equipment is in compliance with current occupational health and safety legislation or codes of practice; and safe operating instructions, logbooks, manuals and risk assessments are provided and operators have received an induction in the safe use of the plant and equipment.

17.3 The Supplier shall at all times keep the Works and the Site clean and tidy.

17.4 Upon the completion of the Works, the Supplier shall remove all of its plant and equipment and leave the Site clean and tidy.

17.5 If the Supplier fails to comply with any requirement in this clause, the Purchaser shall make the necessary arrangements and the cost thereof will be withheld from payments to the Supplier.

### 18 INDEMNITY AND LIABILITY

18.1 The Supplier will be liable for, and must indemnify the Purchaser and keep the Purchaser indemnified from and against any liability and any loss or damage of any kind whatsoever arising directly or indirectly from or in connection with any breach of this Contract by the Supplier, except to the extent that any liability, loss or damage is caused or contributed to by the Purchaser's wilful misconduct or negligence.

18.2 The provisions of this clause will survive the expiration or termination of this Contract.

18.3 Every exemption, limitation, defence, immunity or other benefit contained in this Contract to which the Purchaser is entitled will also be held by the Purchaser's personnel.

18.4 It is not necessary for the Purchaser to incur expense or make payment before enforcing a right of indemnity conferred by this Contract.

18.5 Notwithstanding any other clause in this Contract, the Purchaser's aggregate liability whether under or for breach of this Contract, or at law or in equity, will be limited (to the extent permitted by law) to the greater of the:

- Price; or
- proceeds (if any) of any relevant insurance coverage maintained by the Purchaser under this Contract less the amount of any deductible paid by the Purchaser in relation to that coverage.

18.6 Notwithstanding any other provision in this Contract and to the full extent permitted by law, the Purchaser will not be liable to the Supplier, on any basis (including negligence, tort, contract, statute or otherwise), for any loss of profits, loss of business, loss of revenue, loss of goodwill, cost of capital, loss of use of property, loss of anticipated saving, increase in capital costs, increase in operating costs or any other financial or economic loss or indirect, special, incidental, or consequential loss or consequential damage arising under or in connection with this Contract.

18.7 It is agreed that to the extent permitted by law the operation of Part 1F of the Civil Liability Act 2002 WA (and any equivalent statutory provision in any other State or Territory) is excluded in relation to any claims brought by the Purchaser against the Supplier in connection with this Contract whether such claims are sought to be enforced in contract, tort or otherwise.

### 19 INSURANCE

19.1 The Supplier must effect and maintain the following insurance policies for the duration of the Contract:

- if the Supplier is responsible for transporting the Goods or any other items, transit insurance covering damage to Goods and any other items to be incorporated or used in relation to the Goods, while in transit;
- public liability insurance that provides cover of at least \$20 million per event in relation to liability arising out of personal injury, death, disease or illness or liability to third parties for loss or damage to property caused by or in connection with the Goods and/or Services/Works or otherwise in relation to the Supplier's performance of this Contract;
- workers' compensation insurance against its liability to its employees or persons deemed to be employees as required under any applicable legislation; and
- if the Supplier must carry out any design work or other professional services, professional indemnity insurance that provides cover of at least \$5 million per event that covers any liability of the Supplier in respect of a breach of duty owed by the Supplier in the course of the performance of the Supplier's business or profession, whether as a result of Contract, negligence or otherwise and misleading or deceptive conduct.

19.2 If the Supplier fails to comply with any provisions relating to insurance, the Purchaser may, but is not obliged to, effect, renew, or pay the premium due in respect of the relevant insurance policies, and may recover the cost of doing so as a debt due from the Supplier.

19.3 Within five (5) calendar days of the Purchase Order and immediately following the renewal of each insurance policy, the Supplier must provide the Purchaser with evidence, to the satisfaction of the Purchaser, that the Supplier has satisfied all of its insurance obligations under this Contract.

19.4 Compliance with all provisions relating to insurance is a condition precedent to payment. The Purchaser shall not be in breach of this Contract should payment be delayed or withheld due to the Supplier's non-compliance with such provisions.

### 20 DEFAULT

20.1 In addition to any other rights that the Purchaser has under this Contract or at law, if the Supplier commits a breach of any obligation in this Contract which, in the Purchaser's opinion is capable of remedy, the Purchaser may give the Supplier a written notice of default. A notice provided under this clause must specify the breach and the date by which the Supplier must rectify the breach.

20.2 Time is of the essence and if the Supplier has not performed any of its obligations under this Contract within the prescribed time periods, the Purchaser is entitled, at its sole discretion, to treat such a breach as a breach which is not capable of remedy.

20.3 If:

- the Supplier fails to rectify the default within the time specified in a notice given under clause 20.1;
  - the breach is, in the Purchaser's opinion, not capable of being remedied; or
  - an Insolvency Event occurs in relation to the Supplier,
- the Purchaser may, by notice in writing, do either or both of the following:
- suspend payments due or which may become due under this Contract; and
  - either:
    - immediately take over the incomplete Goods and/or Services/Works and the Supplier's plant and equipment at the Site, and at its option have the Goods and/or Services/Works completed and delivered by itself or others; or
    - terminate this Contract, in which case the respective rights and liabilities of the parties will be the same as they would be at common law if the Supplier had wrongfully repudiated the Contract.

20.4 If the Purchaser exercises the power in clause 20.3(e)(i) then, when the Goods and/or Services/Works have been completed and delivered and when anything else the Supplier was obligated to undertake pursuant to this Contract has been done, the Purchaser must calculate the difference between:

- the additional cost of having the Supplier's obligations completed by itself or others, and any other loss, cost, damage or expense suffered or incurred by reason of the Supplier's default; and
- the amount of suspended payments and security (including any retention) called on by the Purchaser.

20.5 If the calculation results in a shortfall to the Purchaser, the Supplier must pay the amount of the shortfall to the Purchaser within seven (7) days of a written demand for payment.

20.6 If the Purchaser commits a substantial breach of this Contract the Supplier may give the Purchaser a written notice of default. A notice provided under this clause must specify the breach and the date by which the Purchaser must rectify the breach, which must not be earlier than twenty eight (28) days from the date of the notice. If the Purchaser does not remedy the breach within the required period, the Supplier may terminate the Contract by notice immediately. The Supplier will have no right to terminate the Contract unless it has strictly complied with this clause. The Supplier has no other rights for the Purchaser's breach of this Contract (including no right to suspend its obligations) other than under this clause. In any case, interest on overdue payments will not be payable by the Purchaser.

### 21 TERMINATION FOR CONVENIENCE AND SUSPENSION

21.1 The Purchaser may in its absolute discretion terminate the Contract, in whole or in part, for its convenience, by providing notice to the Supplier.

21.2 Upon receipt of the notice of termination for convenience, the Supplier must not place any further orders for Goods or incur any further liabilities for the purposes of the Contract and comply with any Directions contained in the notice of termination for convenience.

21.3 In the event of termination for convenience of the Purchaser, the Supplier may only claim payment from the Purchaser for any Goods and/or Services/Works supplied in accordance with the Contract at the date of termination and not included in any previous payment.

21.4 No action taken by the Purchaser under this clause will operate to prejudice the rights, remedies, powers, authorities and discretions of the Purchaser and the accrued liabilities of the Supplier (all of which must continue in full force and effect as if there had been no such termination) with respect to the Goods and/or Services/Works that are completed and delivered in accordance with the Contract.

21.5 The Purchaser may, at any time by written notice, suspend all or part of the provision of any Goods and/or Services/Works for any reason whatsoever. Upon receipt of a notice of suspension, the Supplier will cease the provision of the Goods and/or Services/Works in accordance with the Directions of the Purchaser. The Supplier must recommence provision of the Goods and/or Services/Works within forty eight (48) hours of a Direction to do so by the Purchaser. In the event of a suspension directed the Purchaser, the Supplier is not permitted to claim payment from the Purchaser for any costs resulting from such suspension.

### 22 GST

22.1 In this clause GST means GST within the meaning of A New Tax System (Goods and Services Tax) Act 1999 (as amended) and terms which are defined in that Act have the same meaning as those terms have in that Act.

22.2 Unless otherwise expressly stated, the Price and any other amounts due to the Supplier are exclusive of GST.

22.3 In addition to any payment obligation of the Purchaser for a taxable supply in connection with this agreement, the Purchaser must pay to the Supplier the GST payable by the Supplier on any taxable supply under this Contract.

22.4 If this Contract requires a party to pay for, reimburse or compensate against any expense or liability (reimbursable expense) incurred by the other party (payee) to a third party, the amount to be paid, reimbursed or compensated is the amount of the reimbursable expense net of any input tax credit to which the payee is entitled in respect of the reimbursable expense (net amount).

### 23 NOTICES

23.1 A notice, demand, certification, process or other communication relating to this Contract must be in writing in English, must refer to this Contract and may be given by an agent of the sender. A communication may be given by being:

- personally delivered;
- left at the party's current address for notices;
- sent by email to the email address specified in this Contract. Where no email address is specified then notice shall be deemed to have been effectively given if it is sent to an email address which can be demonstrated by the sending party to be an email address in use by the receiving party;
- sent to the party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- sent by fax to the party's current fax number for notices.

23.2 A communication is given if posted:

- within Australia to an Australian address, four (4) days after posting; or
- in any other case, fourteen (14) days after posting.

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- 23.3 A communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.
- 23.4 If a communication is given after 5.00 pm in the place of receipt it is taken as having been given on the next day.
- 24 CONFIDENTIALITY**
- 24.1 The Supplier must not, and must ensure that each of its sub-contractors does not, without the express prior written consent of the Purchaser, divulge to third parties or use for their own or any other purposes:
- any information relating to the Project; and
  - any information relating to the Goods and/or Services/Works, unless that information has been published or made available to the public at large, other than due to a breach of an obligation of confidentiality.
- 24.2 If the Supplier is provided with, or has access to, personal information (as defined in Privacy Act 1988 (Cth)) rela, the Supplier must:
- comply with the provisions of the Privacy Act 1988 (Cth);
  - use or collect the personal information for the sole purpose of providing the the Goods and/or Services/Works;
  - protect the personal information from misuse and loss and from unauthorised access, modification or disclosure; and
  - destroy or permanently de-identify the personal information if that information is no longer needed to provide the the Goods and/or Services/Works.
- 25 ASSIGNMENT AND SUBCONTRACTING**
- 25.1 The Supplier will not subcontract or engage any sub-supplier or at any time purport to charge, assign or encumber this Contract without the prior consent in writing of the Purchaser and then only on such terms as the Purchaser in its discretion will approve.
- 26 GENERAL**
- 26.1 This Contract is governed by the laws of Western Australia and the parties submit to the exclusive jurisdiction of the courts of Western Australia.
- 26.2 Unless otherwise stated in this Contract, none of the Terms and Conditions of this Contract will be varied, waived, discharged or released either at law or equity, except with prior consent, in writing by both parties. Any waiver provided in writing is limited to the relevant specified instance and is not a general waiver.
- 26.3 Every provision of this Contract shall be deemed to be severable and if any provision of this Contract shall be void or illegal or unenforceable for any reason then the same shall be deemed to be severed and omitted here from and this Contract with such provision thus severed and omitted and with such consequent amendment as may be necessary shall otherwise remain in full force and effect.
- 26.4 This Contract constitutes the entire, final and concluded agreement between the parties in respect of the Goods and/or Services/Works. Subject to the other express terms of this Contract, no prior or subsequent representation, quotations or terms and conditions (whether verbal or in writing) by the Purchaser or the Supplier, or any of their respective employees or agents, will bind the parties. The Supplier warrants that it did not rely upon any the Purchaser provided information, representations or statements for the purposes of entering into this Contract and that it did so upon its own investigations and determinations. To the extent that the Supplier's terms and conditions are supplied with Goods and/or Services/Works the subject of a Purchase Order, the Supplier's terms and conditions shall be of no legal effect and shall not constitute part of the contract for supply and purchase of those Goods and/or Services/Works.
- 26.5 The Supplier is an independent contractor of the Purchaser and this Contract does not constitute a partnership or a joint venture or employment relationship between the Parties, or authorise a party to assume or create any obligations on behalf of another party except as specifically permitted under this Contract.