

Purchase Order Terms & Conditions

1 Supply of goods and/or services

- 1.1 The Supplier must supply the goods and/or services to the Company in accordance with the purchase order (which includes these Purchase Order Terms and Conditions).
- 1.2 Subject to clause 1.3, the purchase order, the Purchase Order Terms and Conditions and the documents expressly referred to in any of the above documents ("**Agreement**") comprise the entire terms of the Agreement.
- 1.3 Where there is an existing and current written contract between the Parties in relation to the goods and/or services the subject of the purchase order ("**Contract**"), then the:
 - (a) reference to the Purchase Order Terms and Conditions must be read as a reference to the Contract; and
 - (b) Purchase Order Terms and Conditions do not apply to the purchase order.

2 Conditions as to quality and description of the goods and/or services

- 2.1 The goods and/or services must match the description (including performance criteria) in the purchase order.
- 2.2 If the Supplier provided the Company with a sample of the goods before the Company has issued a purchase order, the goods must correspond with the sample in addition to matching the description.
- 2.3 The services must be performed by appropriately qualified, competent, skilled, experienced, and professional personnel and must be rendered with due care and skill.
- 2.4 The goods and/or services must be fit for the purpose for which the goods and/or services of the same kind are commonly supplied or bought and for any other purpose which the Company has made known to the Supplier.
- 2.5 The goods must be new and of merchantable quality (unless otherwise specified in the purchase order).

3 Delivery

- 3.1 Unless otherwise specified, the Supplier is responsible for ensuring that the goods are properly packed to avoid damage in transit or in storage and delivered to the place (within the time period) specified in the purchase order.
- 3.2 Packaging must be marked with the purchase order number, item number, destination, contents, quality, date and method of dispatch and weight of each package.

4 Inspection and acceptance

- 4.1 The Company must be given a reasonable time to inspect the goods after delivery. Payment for the goods or the signing of delivery receipts before inspection does not constitute acceptance of the goods.
 - 4.2 The Company may require the Supplier to provide the Company with progress reports on the performance of the services. A progress report must be detailed enough to allow the Company to ascertain whether the services are in conformity with this Agreement.
- 4.3 At any time during the performance of the services, the Company may inspect or witness tests on the services or their results.
- 4.4 If upon inspection the Company finds any goods to be defective goods and/or any services or their results to be defective services, the Company may:

- (a) reject the defective goods by returning them to the Supplier at the Supplier's cost;
- (b) reject the defective services by notifying the Supplier that the Company is rejecting them;
- (c) negotiate with the Supplier in good faith regarding the defective goods and/or services.

- 4.5 The Supplier must refund to the Company, when requested, any payments made by the Company in respect of defective goods and/or services which has been rejected by the Company.

5 Performance of the services

- 5.1 The Supplier must, in performing the services:
 - (a) comply with, and ensure that its employees, agents, contractors, and subcontractors comply with:
 - (i) all applicable laws, regulations and industrial awards and agreements;
 - (ii) all safety, health and environment guidelines, rules and procedures provided to you by us; and
 - (iii) all directions and orders given by our representatives; and
 - (b) ensure the removal of any rubbish, debris or other articles or things created or left as a result of the supply of goods and/or services by the Supplier so that the Company's premises are left secure, clean, orderly and fit for immediate use.

6 Title and risk

- 6.1 Title to and risk in the goods does not pass to the Company until:
 - (a) the Company takes delivery of the goods; and
 - (b) the Company inspects and accepts the goods.
- 6.2 The Supplier warrants that:
 - (a) it has complete ownership of the goods free of any liens, charges and encumbrances and will provide the goods to the Company on that basis.

7 Price

- 7.1 The Company agrees to pay the Supplier the price in accordance with this Agreement for the goods and/or services.
- 7.2 The price is inclusive of all costs incurred by the Supplier in the supply of the goods and/or performance of the services including all charges for packaging, packing, insurance, and delivery of the goods in accordance with this Agreement, and the cost of any items used or supplied in conjunction with the services. The price is also inclusive of all taxes except GST.
- 7.3 The price may not be increased by the Supplier without the Company's prior written consent.

8 Invoicing and payment

- 8.1 The Supplier must submit invoices to the Company:
 - (a) upon delivery of the goods; and/or
 - (b) at the completion of the services, unless the purchase order states that progress payments are to be made; or
 - (c) where progress payments are to be made for the provision of services, at the end of each calendar month (or other period specified in this Agreement) for services performed by the Supplier in that month or that period (as the case may be).
- 8.2 When submitting the invoice under clause 8.1, the Supplier must provide the Company with all relevant records to enable the Company to calculate and/or verify the amount of the invoice.
- 8.3 The Company's standard payment term to pay all invoices

rendered to it by the Supplier under clause 8.1 is 45 days from end of month, except where the Company disputes the invoice, in which case:

- (a) the Supplier will, within the time directed by the Company, issue a credit note for the full amount of the disputed invoice and issue a new invoice for the undisputed amount, if any ("undisputed invoice");
- (b) the Company will pay the undisputed invoice or, if no such undisputed invoice is issued by the Supplier in accordance with clause 8.3(a), the undisputed part of the relevant invoice (if any) and dispute the balance; and
- (c) if the resolution of the dispute determines that the Company are to pay an amount to the Supplier, the Company will pay that amount upon resolution of that dispute.

8.4 No interest will be payable by the Company in respect of any invoice rendered to the Company by the Supplier under clause 8.1 which remains due and unpaid.

8.5 Notwithstanding anything in this Agreement, the Company may reduce any payment due to the Supplier under these terms by any amount for which the Supplier are liable to the Company, including costs, charges, damages and expenses. This does not limit the Company's right to recover those amounts in other ways.

9 Termination

9.1 Either party may immediately terminate the purchase order by notice in writing to the other party if the other party:

- (a) does not carry out its obligations under the purchase order and such breach is not remedied within 30 days of notice being given to the party to remedy the breach;
- (b) breaches any law relating to the supply of the goods or services;
- (c) becomes insolvent;
- (d) enters into voluntary administration;
- (e) has a receiver or receiver & manager appointed to any of its assets; or
- (f) is convicted of a criminal offence.

9.2 In addition to any other rights that the Company may have under this Agreement, the Company may at any time, in its absolute discretion and without cause, terminate this Agreement in whole or in part by written notice to the Supplier.

9.3 If the Company terminates the Agreement under clause 9.2 then, subject to clause 8.5, the Company must pay to the Supplier, as its sole remedy in relation to the termination, all amounts due and unpaid for the portion of the goods and/or services that the Company was provided prior to the date of termination.

10 Independent contractor

10.1 Both parties acknowledge that the Supplier is the Company's contractor and not an agent or employee of the Company.

11 Warranties

11.1 The Supplier warrants that the goods and/or services will:

- (a) be free from any defect in design, performance, and workmanship;
- (b) be rendered with due care and skill and be of high quality and workmanship and otherwise satisfactory;
- (c) not infringe or contribute to the infringement of any intellectual property rights; and

- (d) conform with these terms and conditions for the warranty period.

11.2 If, during the warranty period, the Company finds any of the goods to be defective goods and/or any of the services or their results to be defective services, the Supplier must:

- (a) repair free of charge or, at our option, replace free of charge any defective goods that the Company has returned to the Supplier;
- (b) re-perform free of charge or make good free of charge any defective services that the Company rejected; or
- (c) reimburse the Company for any expenses it incurred in making good any defective goods and/or services,

11.3 Any:

- (a) repairs or replacement goods provided by the Supplier under this clause are subject to the same warranty as the original goods, as from the date of repair or replacement; and/or
- (b) defective services that are re-performed or made good by the Supplier under this clause are subject to the same warranty as the original services, as from the date of re-performance or the date on which the defective services were made good.

11.4 The remedies provided in this clause do not exclude any other remedies provided by law.

12 Liability and indemnities

12.1 The Company is not liable to the Supplier (whether in tort or in contract) for or in respect of any loss or damage of any kind whatsoever arising directly or indirectly from any act or omission (whether negligent or otherwise) on the part of the Company nor on the part of any of the Company's employees, agents, contractors and/or subcontractors in connection with or relating to this Agreement.

12.2 The Supplier acknowledges that if the Supplier enters the Company's premises, the Supplier does so at its own risk. The Supplier must ensure that its employees, agents, contractors and subcontractors are also aware that they enter the Company's premises at their own risk.

12.3 The Supplier is liable for and must indemnify the Company and keep the Company indemnified from and against any liability and/or any loss or damage of any kind whatsoever, including lawyers' fees and expenses on a solicitor/client basis, arising directly or indirectly from:

- (a) the performance of the services by the Supplier under the Agreement and the performance of its other obligations under the Agreement;
- (b) any breach of any warranty or any of the terms and conditions of this Agreement by the supplier;
- (c) the illness, injury or death of any of the Supplier's employees, agents, contractors and/or subcontractors arising out of or in connection with this Agreement;
- (d) any criminal act, fraud, negligence or willful act or omission by the Supplier and/or any of the Supplier's employees, agents, contractors and/or subcontractors in connection with this Agreement;
- (e) any claim made against the Company by any of the Supplier's employees, agents, contractors and/or subcontractors in respect of any relevant legislation concerning income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award, determination, or Agreement of a competent industrial tribunal;
- (f) any penalty imposed for breach of an applicable law in connection with the supply of the goods and/or performance of the services by the Supplier;
- (g) any claim that the goods, the services or the results of the

services, anything the Supplier does in supplying the Company with the goods and/or the services, or the Company's use of the goods or the results of the services infringes or allegedly infringes the intellectual property rights of any person.

12.4 Each indemnity in this Agreement is a continuing obligation separate and independent from the Supplier's other obligations and survives termination of this Agreement.

12.5 The Company is not liable to the Supplier in any circumstances for any indirect, economic, special, or consequential loss or damage, including but not limited to loss of revenue, loss of production or loss of profit.

13 Business Conduct

13.1 The Supplier agrees to act ethically and in a manner that will not result in a violation of the principles described in the OECD Convention on Combating Bribery of Foreign Officials in International Business Transaction, or any applicable laws in respect of bribery or corruption.

13.2 In performing obligations under the Contract, the Supplier must:

- (a) comply with all applicable modern slavery laws and regulations from time to time including the *Modern Slavery Act 2018* (Cth); and
- (b) not engage in any activity, practice, or conduct that would constitute an offence under Division 270 or Division 271 of the Schedule to the *Criminal Code Act 1995* (Cth) if such activity, practice or conduct were carried out in Australia.

14 Confidentiality

14.1 Each Party undertakes that it will not, either during the term of this Agreement or at any time thereafter (except in the proper course of its duties under this Agreement or as required by law or by the other Party) disclose to any person any confidential information of or relating to the other Party of which it has become possessed as a result of this Agreement or the negotiations preceding this Agreement including, but not limited to, the terms of this Agreement.

14.2 Nothing in this Agreement prohibits disclosure of information which:

- (a) is in the public domain;
- (b) after disclosure to a party becomes part of the public domain otherwise than as a result of the wrongful act of that party;
- (c) is received from a third party provided that it was not acquired directly or indirectly by that third party from a party to this Agreement; or
- (d) is required to be disclosed by law or any government or government body, authority or agency having authority over a party.

14.3 The obligations under this clause 14 survive termination of this Agreement for a further three (3) years after goods and/or services have been delivered.

15 Intellectual Property

15.1 Each party retains title to its respective Existing IP.

15.2 Subject to clauses 15.3 and 15.4, all Project IP created as part of this Agreement will remain vested in the Supplier at all times.

15.3 The Supplier grants the Company, or must procure the granting to the Company of, a perpetual, royalty-free and irrevocable license to use the Supplier's Existing IP and the Project IP in connection with the goods and/or services (including without limitation the use, maintenance, repair and upgrade of the goods and/or services).

15.4 The Company may sublicense use of the Supplier's Existing IP and the Project IP in connection with the goods and/or services (including without limitation the use, maintenance, repair, and upgrade of the goods and/or services) without the Supplier's consent.

16 Taxes

16.1 Unless otherwise expressly provided in this Agreement, the Supplier must pay all taxes including sales tax, payroll tax, levies, duties, and assessments due in connection with the goods and/or services.

17 Privacy

17.1 Each party agrees to comply with their obligations under the *Privacy Act 1988* (Cth) in respect of personal information obtained by or disclosed to them pursuant to this Agreement.

17.2 Each party warrants to the other that it has complied with the *Privacy Act 1988* (Cth) in obtaining any personal information disclosed by it pursuant to the Agreement.

18 Assignment and sub-contracting

18.1 Neither party may assign its rights and/or obligations under this Agreement without the prior written consent of the other party (which may not be unreasonably withheld).

19 Force Majeure

19.1 If the occurrence of a Force Majeure Event prevents or is likely to prevent the supply of goods or services by the agreed delivery date, the Supplier must immediately give the Company written notice of the Force Majeure Event. Upon receipt of such notice, the Company may, at its sole discretion:

- (a) request the Supplier to supply the goods or services by a mutually agreed alternative delivery date; or
- (b) cancel the purchase order.

19.2 Each party must bear their own costs arising from a Force Majeure event and no party will have any claim for compensation against the other arising from the cancellation of the Agreement.

20 PPSA

20.1 Whenever the Company requests the Supplier to do anything to ensure this Agreement and any security interest granted under it is fully effective, enforceable, and perfected with the priority required by the Company, then the Supplier must do it immediately at the Supplier's own cost. This may include:

- (a) Doing anything to make, procure or obtain any consent, authorisation, registration, or approval in respect of anything or to facilitate it;
- (b) Create or execute any document, including any form, notice, consent or Agreement; and
- (c) Deliver documents or evidence of title or otherwise giving possession or control with respect to any personal property or other asset.

20.2 To the extent this Agreement or the transactions contemplated by it create a security interest under the PPSA, the parties' contract out of each provision of the PPSA which section 115 permits, other than sections 96, 117, 118, 120, 123, 126, 128, 129, 134(1) and 135, and any other provision of the PPSA notified by the Company to the Supplier.

20.3 Nothing in this clause or the provisions of the PPSA set out in clause 20.1 shall derogate from the terms of this Agreement. Where relevant, the Company may determine whether it exercises a particular right or power under a provision of this Agreement or under the PPSA.

20.4 In this clause "security interest", "secured party", "perfected", "personal property", "possession" and "control" has the meanings given to them in the PPSA.

21 Conflicts of interest

21.1 The Supplier must advise the Company of any director, owner or employee of, or any person otherwise engaged by the Supplier who:

- (a) is involved, planned to be involved or who becomes involved in performing any services, or supplying any goods under this Agreement; or
- (b) who was involved in the preparation, review, negotiation, approval, or execution of this Agreement,

that has a Conflict of Interest.

21.2 The Supplier warrants to the Company that the Supplier has systems in place to identify Conflicts of Interest.

21.3 The Supplier warrants that at the time of entering into this Agreement there is no Conflict of Interest that the Supplier has not previously declared to the Company in writing, and the Supplier undertakes to advise the Company immediately if a Conflict of Interest arises.

22 Governing law

22.1 This Agreement is governed by the laws of Western Australia, Australia.

22.2 Each party submits to the non-exclusive jurisdiction of the courts of Western Australia.

23 Definitions

Agreement has the meaning given in clause 1.2.

Conflict of Interest means a personal or business relationship with anyone at any of our operations.

Defective goods means goods which are not in conformity with this agreement or are defective in design, performance, workmanship or makeup.

Defective services means services or the results of any services which are not in conformity with this agreement, are of inferior quality or workmanship or are otherwise unsatisfactory.

Existing IP means any intellectual property rights or industry rights (whether legal or equitable) in a party's procedures, processes, systems, know-how and methodologies which are pre-existing immediately prior to a purchase order or developed other than in the supply by the Supplier to the Company of any goods and/or services and which are made available to the other party for the purposes of this agreement.

Force Majeure Event means an act of government, war, riot, civil disturbance, embargo, storm, tempest, fire, flood, earthquake, natural calamity or other event beyond the Party's reasonable control excluding events caused directly or indirectly by the Supplier or its subcontractors or suppliers.

GST means the goods and services tax imposed by the *New Tax System (Goods and Services Tax) Act 1999* (Cth) and the related imposition Acts of the Commonwealth.

Goods means the goods specified in this Agreement (including any part of the goods specified).

Intellectual Property Rights includes without limitation the protected rights attaching to inventions, patents, registered designs, trademarks, copyright, circuit layouts and confidential information.

Licenses means all licenses, certifications, registrations and other statutory requirements necessary for the supply of goods and/or services under this agreement.

Party means the Supplier or the Company.

Parties means the Supplier and the Company.

PPSA means the *Personal Property Securities Act 2009*

(Cth).

Price means the price specified in the purchase order, or as otherwise agreed with the Company.

Project IP means any new intellectual property rights created or generated in connection with the supply of goods and/or services under this Agreement.

Purchase order means the purchase order for goods and/or services issued by the Company to the Supplier from time to time containing, amongst other things, a description of the goods and/or services.

Related body corporate has the meaning given in the *Corporations Act 2001* (Cth).

Services means the services specified in this Agreement (including any part of the specified services and the results of the specified services).

Taxes means any and all present and future sales, use, personal, property, real property, value added, goods and services, turnover, stamp, documentary, interest equalization, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever imposed (other than taxes on our net income) by any government, governmental, semi-governmental or other relevant authority, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed or otherwise payable.

You means the person named in this Agreement as the Supplier of the goods or services and **your** has the corresponding meaning.

Warranty period means the period of 24 months from the date of delivery or 12 months from the date of installation or initial use of the goods, whichever is the sooner.

We and **us** means the entity set out in the purchase order and their employees, contractors, and agents. **Our** has the corresponding meaning.