

Purchase General Terms and Conditions

1 Supply of goods and/or services

- 1.1 You must supply the goods and/or services to us 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 our agreement with you.
- 1.3 Where there is an existing and current written contract between you and us in relation to the goods and/or services the subject of the purchase order (“**Contract**”), then:
 - (a) The reference to the Purchase Order Terms and Conditions must be read as a reference to the Contract; and
 - (b) The 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 you gave us a sample of the goods before we issued the 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 goods and/or services of the same kind are commonly supplied or bought and for any other purpose which we make known to you.
- 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, you are 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 We must have 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 You must provide to us, at our request, progress reports on the performance of the services. A progress report

must be detailed enough to allow us to ascertain whether the services are in conformity with this agreement.

- 4.3 At any time during the performance of the services we may inspect or witness tests on the services or their results.
- 4.4 If upon inspection we find any goods to be defective goods and/or any services or their results to be defective services, we may:
 - (a) reject the defective goods by returning them to you at your cost;
 - (b) reject the defective services by notifying you that we are rejecting them;
 - (c) Negotiate in good faith for the defective goods and/or services.
- 4.5 You must refund to us, when requested, any payments made by us in respect of goods and/or services which we reject.

5 Performance of the services

- 5.1 You must, in performing the services:
 - (a) comply with, and ensure that your 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 that our 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 us until:
 - (a) we take delivery of the goods; and
 - (b) we inspect and accept the goods.
- 6.2 You warrant that:
 - (a) you have complete ownership of the goods free of any liens, charges and encumbrances and will provide the goods to us on that basis;

7 Price

- 7.1 We agree to pay you the price in accordance with this agreement for the goods and/or services.
- 7.2 The price is inclusive of all costs incurred by you in 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 without our prior written consent.

8 Invoicing and payment

8.1 You must submit invoices to us:

- (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 you in that month or that period (as the case may be).

8.2 When submitting your invoice under clause 8.1 you must provide us with all relevant records to enable us to calculate and/or verify the amount of the invoice.

8.3 Our standard payment term to pay all invoices rendered to us by you under clause 8.1 is 45 days from end of month, except where we dispute the invoice, in which case:

- (a) you will, within the time directed by us, 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) we will pay the undisputed invoice or, if no such undisputed invoice is issued by you 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 we are to pay an amount to you, we will pay that amount upon resolution of that dispute.

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

8.5 Notwithstanding anything in this agreement, we may reduce any payment due to you under these terms by any amount for which you are liable to us, including costs, charges, damages and expenses. This does not limit our 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 we may have under this agreement, we may at any time, in our absolute discretion and without cause, terminate this agreement in whole or in part by written notice to you.

9.3 If we terminate this agreement under clause 9.2 then, subject to clause 8.5, we must pay to you, as your sole remedy in relation to the termination, all amounts due and unpaid for the portion of the goods and/or services that were provided prior to the date of termination.

10 Independent contractor

Both parties acknowledge that you are our contractor and not our agent or employee.

11 Warranties

11.1 You warrant 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, we find any of the goods to be defective goods and/or any of the services or their results to be defective services, you must:

- (a) repair free of charge or, at our option, replace free of charge any defective goods that we return to you;
- (b) re-perform free of charge or make good free of charge any defective services that we reject; or
- (c) reimburse us for any expenses we incur in making good any defective goods and/or services,

11.3 Any:

- (a) repairs or replacement goods provided by you 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 you 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 We are not liable to you (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 our part or on the part of any of our employees, agents, contractors and/or subcontractors in connection with or relating to this agreement.
- 12.2 You acknowledge that if you enter our premises, you do so at your own risk. You must ensure that your employees, agents, contractors and subcontractors are also aware that they enter our premises at their own risk.
- 12.3 You are liable for and must indemnify us and keep us 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 you under the agreement and the performance of your other obligations under the agreement;
 - (b) any breach of any warranty or any of the terms and conditions of this agreement by you;
 - (c) the illness, injury or death of any of your employees, agents, contractors and/or subcontractors arising out of or in connection with this agreement;
 - (d) any criminal act, fraud, negligence or wilful act or omission by you and/or any of your employees, agents, contractors and/or subcontractors in connection with this agreement;
 - (e) any claim made against us by any of your 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 you;
 - (g) any claim that the goods, the services or the results of the services, anything you do in supplying us with the goods and/or the services, or our 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 your other obligations and survives termination of this agreement.
- 12.5 We are not liable to you 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 You agree 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, you must:
- (a) Comply with all applicable modern slavery laws and regulations from time to time including the *Modern Slavery Act 2018 (Cwth)*; 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 (Cwth)* 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 12 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 you at all times.
- 15.3 You grant to us, or must procure the granting to us of, a perpetual, royalty-free and irrevocable licence to use your 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 We may sublicense use of your 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 your consent.

16 Taxes

16.1 Unless otherwise expressly provided in this agreement, you 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, you must immediately give us written notice of the Force Majeure Event. Upon receipt of such notice, we may, at our sole discretion:

- (a) request you 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 we request you 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 us, then you must do it immediately at your 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 us to you.

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, we 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" have the meanings given to them in the PPSA.

21 Conflicts of interest

21.1 You must advise us of any director, owner or employee of, or any person otherwise engaged by you 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 You warrant to us that you have systems in place to identify Conflicts of Interest.

21.3 You warrant that at the time of entering into this agreement there is no Conflict of Interest that you have not previously declared to us in writing, and you undertake to advise us 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.

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 you to us 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 your or our reasonable control excluding events caused directly or indirectly by your or your 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 you or us.

parties means you and us.

PPSA means the Personal Property Securities Act 2009 (Cth).

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

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 us to you 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 equalisation, 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.