

**1. Definitions**

In these Conditions: **Goods** means the goods required to be provided by the Supplier under the Agreement from time to time. **Services** means services required to be provided by the Supplier under the Agreement from time to time; **Supplier's Staff** means any person employed or engaged by the Supplier in the performance of Services; **Specification** means the Company's requirements regarding Services, as contained on the Purchase Order or in an Annexure or provided to the Supplier from time to time; and **Term** means the duration of this Agreement, specified on the Purchase Order.

**2. Interpretation**

- 2.1 If the Supplier comprises two or more persons, the Agreement binds all of them jointly and each of them severally.
- 2.2 The Agreement comprises the information contained on the Purchase Order (including any Specification), these General Conditions and any documents annexed to this Purchase Order (**Annexures**).
- 2.3 If there is any inconsistency between the documents forming the Agreement:
  - (a) the information contained on the Purchase Order (including any Specification); (b) these General Conditions; and (c) any Annexures, have priority in that order, to the extent of the inconsistency.
- 2.4 No document provided by the Supplier will form part of the Agreement, unless specified on the Purchase Order as an Annexure.

**3. Purchase Order**

- 3.1 This Agreement is a standing offer by the Supplier to provide Goods and/or Services during the Term, whenever requested by the Company to do so.
- 3.2 The Company may request the Supplier to provide the Goods and/or Services orally or in writing. The Company will provide a Purchase Order number at that time which must be quoted on all invoices and correspondence.
- 3.3 The Supplier must provide the Goods and/or Services in accordance with the Specification, the Company's request and any written directions of the Company.
- 3.4 The Supplier must not vary the Goods and/or Services without the written agreement of the Company.

**4. Services**

- 4.1 The Supplier must supply all parts or goods necessary for the proper completion of Services in accordance with the Specification and the Company's request.
- 4.2 If the Supplier provides Services at one of the Company's sites, the Supplier must comply with the Company's Site provisions and (if provided) Supplementary Site provisions .
- 4.3 The Supplier must notify the Company as soon as it becomes aware that the Services may not be delivered by the time specified in the Purchase Order.
- 4.4 The Company does not guarantee that it will request the Supplier to provide any Services, or any particular volume of Services, during the Term.

**5. Goods**

- 5.1 The Supplier must supply any incidental services specified on the Purchase Order or in the Specification.
- 5.2 If the Supplier provides incidental services (other than merely delivery of Goods) at one of the Company's sites, the Supplier must comply with the Company's Site provisions and (if provided) Supplementary Site provisions .
- 5.3 The Supplier must notify the Company as soon as it becomes aware that the Goods may not be delivered by the time specified in the Order.
- 5.4 The Company does not guarantee that it will request the Supplier to provide any Goods, or any particular volume of Goods, during the Term.

**6. Supplier's Warranties - Services**

- 6.1 The Supplier warrants that any Services provided during the Term will:
  - (a) meet the Company's requirements as set out in the Specification and request;
  - (b) be provided in a skilful and competent fashion with all due care and skill;
  - (c) conform to all applicable laws and codes of practice; and
  - (d) not infringe the Intellectual Property Rights of any person.
- 6.2 Where Services involve the Supplier working on or affixing parts to Existing Plant (being plant of the Company not supplied by the Supplier under the Agreement), the Supplier warrants that: (a) those parts will properly connect to the Existing Plant and will operate correctly with, and not damage, the Existing Plant; and (b) neither Services nor any parts will adversely impact on, nor cause any deterioration or diminution in the performance of, the Existing Plant.

**7. Supplier's Warranties - Goods**

- 7.1 The Supplier warrants that any Goods provided during the Term will:
  - (a) be free from defects;
  - (b) be fit for their purpose;
  - (c) be of merchantable quality;
  - (d) conform with any sample provided;

- (e) comply with the Company's requirements as set out in the Specification;
- (f) be new as at the date of supply (unless specified to the contrary in the Agreement);
- (g) conform to all applicable laws and codes of practice; and
- (h) not infringe the Intellectual Property Rights of any person.

7.2 The Supplier warrants that any incidental services will:

- (a) meet the Company's requirements as set out in the Specification;
- (b) be provided in a skilful and competent fashion;
- (c) conform to all applicable laws and codes of practice; and
- (d) not infringe the intellectual property rights of any person.

7.3 Where Goods are intended to be affixed to Existing Plant (being plant of the Company not supplied by the Supplier under the Agreement), or where the Supplier will be providing incidental services in relation to Existing Plant, the Supplier warrants that:

- (a) the Goods will properly connect to the Existing Plant and will operate correctly with, and not damage, the Existing Plant; and
- (b) neither the Goods nor any incidental services will adversely impact on, nor cause any deterioration or diminution in the performance of, the Existing Plant.

**8. Compliance with Laws - OH & S and Environment**

- 8.1 The Supplier must comply with all applicable laws in performing its obligations.
- 8.2 The Supplier must have and maintain a safe system of work and all certificates, licences and approvals required by applicable laws, including all laws regarding the health and safety of workers and work sites.
- 8.3 The Supplier must, before performing any of its obligations on the Company's premises, provide the Company with written risk assessments and job safe procedures (which must be consistent with the Supplier's obligations under applicable laws and the Company's policies and procedures).
- 8.4 In addition, the Supplier must undertake the Supplier Safety Management Programme developed by the Company and work with the Company to ensure that the Supplier's operations meet the Company's standards for safeguarding the environment, employees, customers and members of the public.
- 8.5 The Supplier must comply with all applicable laws dealing with discharges into the marine environment, emissions, noise and the protection of the environment.

**9. Testing and Acceptance**

- 9.1 The Company may test, or may require the Supplier to test, the Goods and/or Services.
- 9.2 The Company will advise the Supplier immediately when it is satisfied that those Goods and/or Services comply with the Agreement and can be accepted.
- 9.3 If the Company considers that the Goods and/or Services do not comply with the Agreement, the Company may at its option reject those Goods and/or Services (in which case both parties will be relieved of any further obligations in relation to those Goods and/or Services) or require the Supplier to rectify those Goods and/or Services at its cost.

**10. Warranty Period**

The Supplier must at its cost rectify any defects in those Goods notified to the Supplier by the Company during the Warranty Period (being 12 months after acceptance of those Goods).

**11. Ownership and Risk**

- 11.1 If the Supplier takes possession of any Goods (including Existing Plant) of the Company, the Supplier holds those Goods only as bailee, and does not acquire any right, title or interest (including a lien) in those Goods.
- 11.2 Title to and ownership of any Goods, including Goods provided by the Supplier in the course of or incidentally to the provision of Services, passes to the Company once those parts are affixed to Existing Plant or those Services (including those parts) are accepted, whichever is earlier.
- 11.3 Risk in the Goods remains with the Supplier until acceptance.
- 11.4 Delivery will be deemed to have occurred when the Goods have been unloaded and the delivery has been accepted, or a duly authorised officer, employee or representative of the Company has approved the Services.

**12. Price and GST**

- 12.1 The Company must pay the Price at the end of the month after the month in which a valid tax invoice for the accepted Goods and/or Services is received. In addition to the Price, the Company must pay (at the same time) an amount on account of GST at the prevailing GST rate.
- 12.2 Unless otherwise specified on the Purchase Order, the Price is payable in Australian currency and is not subject to variation.
- 12.3 The Price includes all duties, charges, levies and fees payable in respect of Services (except GST and any charges identified on the Purchase Order).
- 12.4 The Company and the Supplier must comply with their respective obligations under the *A New Tax System (Goods and Services Tax) 1999* and associated legislation.

**13. Assignment & Subcontracting**

The Company may assign its rights and obligations under the Agreement at any time. The Supplier must not assign or sub-contract its rights or obligations under the Agreement without the Company's prior written consent.

**14. Supplier's Staff**

14.1 The Supplier must keep full and proper records of work performed by the Supplier (including records of the hours worked by each of the Supplier's Staff in providing Services) and provide a copy to the Company on request.

14.2 If the Supplier's Staff work on the Company's premises, the Supplier must:

- (a) have a current enterprise bargaining agreement or industrial agreement in force in relation to the Supplier's Staff; (b) ensure that any subcontractor(s) also has in place a current enterprise bargaining agreement or industrial agreement; and (c) provide a copy of those agreements to the Company promptly on request.

11.3 Neither the Supplier, nor any of the Supplier's Staff, is an employee or agent or partner of the Company.

**15. Intellectual Property Rights**

15.1 All Intellectual Property Rights in anything created by the Supplier in the course of providing Services vests in the Company upon its creation.

15.2 All Intellectual Property Rights in anything provided by the Company remains vested in the Company.

15.3 The Company grants the Supplier the right to use anything provided to the Supplier solely for the purposes of the Agreement but the Supplier must return any such things to the Company at the end of the Agreement or upon demand.

**16. Indemnity and Insurance**

16.1 The Supplier must indemnify the Company and keep the Company indemnified from and against any losses, costs, damages and expenses arising in connection with:

- (a) the loss of, or damage to, the property of any person; (b) the death of, or injury to, any person; (c) the breach of any Intellectual Property Rights of the Company or any third person, (including but not limited to claims by any employee or subcontractor of the Supplier).

16.2 The Supplier must effect and maintain:

- (a) a policy of public liability and product liability insurance in which the limit is not less than \$20 million for any one claim; (b) a policy of professional indemnity insurance in which the limit is not less than \$5 million for any one claim, and each insurance policy must note the interests of the Company.

**17. Termination**

Without limiting the Company's other rights the Company may terminate the Agreement with immediate effect by notice to the Supplier if:

- (a) the Supplier fails to comply with any of its obligations under the Agreement and fails to remedy the breach within 10 business days after receiving notice requiring it to do so; or (b) without cause, on 30 days' notice to the Supplier.

**18. Force Majeure**

Neither party will be liable for a failure to perform its obligations under a Purchase Order if such failure results from circumstances beyond the party's reasonable control, provided that labour and industrial disputes (including disputes between the Supplier and its own employees) and lack of Goods, equipment or materials will not be taken to be matters outside the control of the Supplier unless, in the case of lack of Goods or equipment, the Company is itself responsible for the lack thereof.

**19. Notices**

A notice under the Agreement must be in writing, in English and signed on behalf of the party giving notice; and must be served either by personal delivery, facsimile, pre paid ordinary post or email, to the recipient's address for service of notices appearing on the Purchase Order.

**20. The Company**

The Company represents and warrants that the person named as Contract Administrator on the Purchase Order has authority to exercise all rights and powers of the Company under the Agreement, and to bind the Company.

**21. Governing Law and Jurisdiction**

The laws applicable in New South Wales, and the courts of New South Wales, apply to and have jurisdiction in relation to the Agreement.

**22. Confidentiality**

The Supplier must treat the terms of a Purchase Order and any other information deemed by the Company as confidential.