

## 1. DEFINITIONS

1.1. Unless the context otherwise requires:

(a) **Agreement** means these Terms and Conditions together with any Purchase Order and any quote or proposal referenced in and attached to the Purchase Order.

(b) **Background IP** means Intellectual Property Rights owned by or licensed to a party as at the date of this Agreement, or acquired or developed by a party during the term of this Agreement independently of the activities carried out under this Agreement, which that party has the right to license to third parties and which are necessary or desirable for the performance of the Services.

(c) **Company** means the party named as the Company in the Purchase Order and includes any Related Body Corporate, transferees, successors and assigns.

(d) **Contract** has the meaning given to that term in clause 2.1.

(e) **Goods** means the products, materials, supplies, equipment and other goods that are identified in and the subject of a Purchase Order and, if applicable, forming part of the Works or output of the Services.

(f) **Intellectual Property Rights** means any rights in or to any patent, copyright, database rights, registered design or other design right, utility model, trade mark (including any rights in get up or trade dress), brand name, service mark, trade name, eligible layout right, chip topography right and any other rights of a proprietary nature in or to the results of intellectual activity, whether registered or not or registrable.

(g) **Order** means an order placed by the Company on the Supplier for the supply of Goods or the supply of Services or both (either as Works or separately) as detailed in the Order and referred to in Clause 2.

(h) **Order Date** means the date set out in the Purchase Order or such other date as advised by the Company by which the Goods or Services or both (either as Works or separately) must be supplied or completed (as applicable).

(i) **Order Specification** means the Company's specifications for the Goods and/or Services as described in any Purchase Order or otherwise made known to the Supplier by the Company and including any applicable Australian Standards and, in relation to Goods, the manufacturers specifications and includes any proposal or quote attached to the Purchase Order.

(j) **Legal Requirements** means the requirements of all codes, standards, industry requirements, regulations, legislation, by-laws, ordinances, common law and other laws applying to the production, sale, use and consumption of the Goods and the supply of the Services.

(k) **Project IP** means all documents, data and other materials to be supplied to the Company by Supplier

as part of the Goods or Services or both, as specified in the Purchase Order;

(l) **Purchase Order** means an accepted Order on the Company's official printed purchase order form bearing a purchaser order number to which these Terms and Conditions are attached which is the only form recognised by the Company as authority for charging Goods or Services to its account.

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

(n) **Related Body Corporate** has the same meaning as defined in section 50 of the Corporations Act 2001 (Cth).

(o) **Services** means all the services identified in the Purchase Order including all services and things to be performed in order to deliver those services in accordance with the Purchase Order.

(p) **Site** means the locations stated in the Purchase Order for the delivery of the Goods or the performance of the Services.

(q) **Supplier** means the party named as Supplier in the Purchase Order.

(r) **Supply** means the supply of Goods or Services or both by the Supplier to the Company in accordance with the Agreement.

(s) **Term** means the period specified in the Purchase Order.

(t) **Terms and Conditions** means these terms and conditions for the supply of Goods or Services or both by the Supplier to the Company.

(u) **Works** means the output of Services and/or Services to be executed including installation or incorporation of Goods (if applicable) and completed in accordance with the Purchase Order, including all variations provided for by the Company.

## 2. ORDERS

2.1. These Terms and Conditions apply to and govern all Orders placed by the Company and all contracts entered into by the Company whereby Goods or Services or both are supplied (either as Works or separately), provided and/or delivered to the Company by the Supplier.

2.2. No Order is valid other than an Order issued on a Purchase Order.

2.3. Unless otherwise agreed in writing by the Company each Purchase Order and these Terms and Conditions will together, constitute the entire Agreement between the Company and the Supplier under which Goods and/or Services will be supplied and/or Works completed by the

2.4. Supplier to or for the Company. No terms and conditions stated by the Supplier in any quotation, invoice or other document will be binding upon the Company unless accepted in writing by the Company.

2.5. Unless otherwise agreed in writing by the Company, to the extent that any conflict exists between these Terms and Conditions and any other documentation or correspondence forming part of any Purchase Order or any Contract, these Terms and Conditions will prevail.

2.6. By accepting an Order or by supplying any Goods or Services the subject of a Purchase Order, the Supplier shall be deemed to have accepted these Terms and Conditions and the terms of the Agreement.

### **3. SUPPLY OF GOODS AND SERVICES**

3.1. Goods supplied pursuant to a Purchase Order must:

- (a) comply strictly with the quantity, volume and description as noted in the Purchase Order;
- (b) comply strictly with the Order Specification;
- (c) be fit for and of suitable quality for the purpose for which they are supplied to, and otherwise as required by, the Company;
- (d) be to or of any standard specified in the Purchase Order;
- (e) be of merchantable quality;
- (f) be delivered by the Order Date specified in and in accordance with all instructions in the Purchase Order including being clearly and durably labelled identifying the Goods and including any appropriate and correct warning and instructions;
- (g) comply with the applicable requirements of the Company;
- (h) comply with the Legal Requirements; and
- (i) pass such inspections and tests as may be required by the Company.

3.2. Services and Works (if applicable) performed pursuant to an Purchase Order must:

- (a) be performed with a high standard of care and diligence and in accordance with all Legal Requirements including all applicable laws, regulations, codes of practice, national standards and applicable ethics and other regulatory approvals;
- (b) be to or of the standard of skill and care and the quality expected of a provider experienced in the provision of the type of services required;
- (c) comply strictly with the description as noted in the Purchase Order;
- (d) comply strictly with the Order Specification (including any due date for commencement of the Services);
- (e) be completed by the time specified in and in accordance with all instructions in the Purchase Order;
- (f) be fit for the purpose for which they are supplied to, and otherwise as required by, the Company; and
- (g) pass such inspections and tests as may be required by the Company.

3.3. Where in the reasonable opinion of the Company the Works are defective, the Supplier must remedy any defect within 7 days of receiving notification of such or earlier where reasonably required and requested by the Company. Where, in the reasonable opinion of the Company, the defect poses a risk to persons or property, the Supplier must upon notification and at its own expense make the Works safe and must rectify the defect

within 3 days from the date of notification.

3.4. The Company relies upon the skill and knowledge of the Supplier in providing the Goods and/or Services and in completing the Works.

### **4. PRICE**

4.1. Unless otherwise agreed by the Company in writing, the prices specified for the Goods and/or Services and/or Works in the Purchase Order:

- (a) will remain fixed and will not be subject to any variation in the cost of materials, labour, delivery, taxes or otherwise;
- (b) include all duties, taxes (including GST), levies, imposts and other like costs; and
- (c) include all costs of delivery to the Site as well as the full cost of packaging and marking and, in relation to Services, include all costs of performance at the Site.

4.2. The Supplier must provide the Company with a valid tax invoice in respect of each supply of Goods or Services.

### **5. VARIATIONS**

5.1. The Company may at any time issue a written instruction to the Supplier requiring additions, deletions or changes to the Goods and/or Services and/or Works to be supplied ("Variation").

5.2. Where an instruction under clause 5.1 results in an additional cost to the Company, the Supplier must clearly identify the increases in costs and provide necessary documentation to substantiate any increased cost of the Goods or Services or both and/or Works.

5.3. If the Supplier proposes that a Variation to an Purchase Order, it must give notice to the Company that:

- (a) describes the Variation the Supplier proposes;
- (b) states why the Supplier wishes to make the Variation;
- (d) clearly identifies any change in cost that would result from the Variation; and
- (c) states what effect the Variation will have on the Goods and/or Services and/or Works as a whole.

5.4. The Supplier must not under any circumstance commence any Variation works without the prior written approval of the Company.

5.5. No payment in respect of a Variation shall be made or required to be made from the Company to the Supplier unless the Variation is authorised in writing by the Company.

### **6. DELIVERY**

6.1. Time is of the essence for each Purchase Order. If the Supplier does not supply the Goods or complete the performance of the Services and/or Works within the time(s) stated in the Purchase Order, the Company may terminate the Agreement, which termination will be without prejudice to any other rights or remedies of the Company.

6.2. Unless otherwise agreed by the Company in writing, the Supplier must deliver the Goods to the Site and/or perform the Services and/or complete the Works at the Site set out in the Purchase Order.

6.3. Goods must be accompanied by a delivery docket

stating the Purchase Order number and the item number, description, quantity and price of the Goods.

#### **7. TITLE, RISK, INSPECTION AND ACCEPTANCE**

7.1. The Supplier warrants that, at the time of delivery, it has the right to sell the Goods and the Goods are free from all security interests, liens, charges and

7.2. The Company may inspect and test the Goods, Services or Works at the Supplier's premises, at the Site or elsewhere and at any stage during or after manufacture, production, supply or performance. The Company's right to inspect and test will not reduce the obligations or liabilities of the Supplier.

7.3. Title and risk in the Goods will pass to the Company

after the Goods have been physically delivered, inspected and accepted by the Company as being in accordance with the Purchase Order.

7.4. In the event that Goods are supplied with Services, risk in the Goods will not pass to the Company until both the Goods and the Services have been supplied by the Supplier and inspected and accepted by the Company as being in accordance with the Purchase Order and the Contract

7.5. The Company may reject any Goods, Services or Works which the Company determines, at its sole discretion, to be contrary to the requirements of the Purchase Order or the Agreement.

7.6. The Company may at any time return rejected Goods to the Supplier at the Supplier's expense and obtain a full refund or credit, at the Company's option, in respect of the purchase price thereof.

7.7. If required by the Company, the Supplier must resupply any rejected Goods and remedy any rejected Services or Works at no additional cost to the Company.

#### **8. INSURANCE**

8.1. The Supplier must at its own expense arrange and maintain any insurances required by all Legal Requirements including but not limited to that prescribed by the Workplace Injury Rehabilitation and Compensation Act 2013 .

8.2. In addition to any insurance required by law, the Supplier must at its own expense arrange and maintain adequate insurance coverage in respect of the Goods and/or Services, in such amounts and insuring such risks, as a prudent operator supplying goods or services of the kind supplied by the Supplier would.

8.3. The Supplier shall maintain such insurance and must, upon the Company's request, provide the Company with certificates of currency with respect to the insurance policies. The Supplier shall ensure that every subcontractor is similarly insured.

#### **9. INDEMNITY**

9.1. Subject to clause 9.3, and without prejudice to any other right or remedy, the each party ("Indemnifying Party") releases and indemnifies, and keeps indemnified,

the other party and their officers, employees, servants and agents ("Indemnified Parties") from and in respect of all costs, expenses, fees, claims, damages, liabilities and losses (including in respect of bringing or defending any action, claim or proceedings and including any indirect or consequential loss or damage including loss of opportunity, loss of profits, loss of goodwill or other financial loss or expense) suffered, paid or incurred by the Indemnified Parties or for which any of the Indemnified Parties is or may become liable by reason of, in relation to or in connection with: (a) a breach by the Indemnifying Party of this Agreement including any of these Terms and Conditions;

(b) a breach by the Indemnifying Party of any warranty as may be implied by operation of law or Legal Requirements; or

(c) the negligence of the Indemnifying Party or any of its employees, servants, agents or sub-contractors. At its option the Indemnified Parties may deduct from or withhold from any amount then due and owing or to become due and owing to the Indemnifying Party by the Indemnified Parties an amount equivalent to not more than the sum of the moneys owing or payable to the Indemnified Parties by the Indemnifying Party.

#### **10. LEGAL AND OTHER REQUIREMENTS**

10.1. The Supplier must, in providing any Goods and/or Services:

(a) comply with all the Legal Requirements;

(b) comply with all lawful requirements of the Company given by it from time to time which in any way affect or are applicable to the Goods or Services;

(c) ensure that all Services and Works will be carried out in a proper workmanlike manner and in accordance with Australian Standards and Manufacturers Specifications along with any instructions, plans or specifications set out in the Order Specification (as applicable);

(d) obtain all permits, licences, consents, approvals and authorisations required in respect of the Goods and Services (including any Works) and give all notices required to be given in respect of the Goods, Services or Works and pay all requisite fees, deposits, and taxes relating to the provision of the Goods and Services or Works;

10.2. The Supplier must provide written evidence of its compliance with this clause 10.1 upon the request of the Company.

#### **11. WARRANTY**

11.1. The Supplier warrants that:

(a) the Services and Works will be carried out in accordance with, and will comply with, all Legal Requirements including, without limiting the generality of this warranty, the Occupational Health and Safety Act and the Regulations made under that Act;

(b) all Goods to be supplied are safe and free from risk to health and safety and are compliant with all Legal Requirements relating to the

Goods including those relating to manufacturing, packaging, labelling and transportation; and

(c) all Goods will include any applicable manufacturers or other warranty that passes to the consumer from the Supplier.

11.2. The Supplier agrees and accepts that despite anything contrary in the Limitation of Actions Act 1958 or in any other Act or law an action for breach of any warranty provided under this clause 11 or for any other breach of the Agreement may be brought against the Supplier and its agents, subcontractors or servants during the period of 7 years from the Order Date or as otherwise allowed by law, whichever is greater.

#### **12. FEES and PAYMENT**

12.1. The Supplier will invoice the Company for payment after supply of the Goods and/or completion of the Services unless supply of the Goods or performance of the Services extends for more than 1 calendar month in duration, in which case the Supplier may invoice the Company at the end of each month for Goods supplied or Services performed on the Site during the relevant month; or

12.2. Unless otherwise agreed by the Company in writing, the Company will pay the Supplier within 30 days after the end of the month in which the Company receives a valid tax invoice properly issued in accordance with the requirements of the Agreement and otherwise subject to the Supplier having complied with all of the requirements of the Agreement.

12.3. The Company will not pay or be liable for any expenses not specified in the Purchase Order including Variations not authorised in writing by the Company.

#### **13. CANCELLATION**

13.1. The Company may, at any time prior to the supply of the Goods or the completion of the Services, cancel an Purchase Order for any Goods not supplied or incomplete Services and the Supplier will not supply those Goods or perform the Services in accordance with and to the extent specified in the notice.

13.2. If a Purchase Order is cancelled under clause 13.1 the Supplier will immediately do everything possible to mitigate any costs incurred by it arising from the Purchase Order and the cancellation.

13.3. The Company will pay for any Goods delivered or Services performed at the time of provision of the notice referred to in clause 13.1. Title to any Goods which the Company pays for will pass to the Company in accordance with clause 7.

#### **14. GOVERNING LAW**

14.1. The Agreement and all associated Contracts or Conditions are governed by and interpreted in accordance with the laws and courts of the State of Victoria.

#### **15. SUBCONTRACTING OR ASSIGNMENT**

15.1. The Supplier must not subcontract or assign, in whole or in part, an Purchase Order or assign

money due to the Supplier under the Agreement, except with the prior written consent of the Company.

#### **16. LIENS**

16.1. The Supplier must not claim any liens, attachments or similar claims in connection with the Goods or the Services and must defend and indemnify the Company against any liens, attachments or other similar claims arising out of or in connection with an Purchase Order.

#### **17. INTELLECTUAL PROPERTY**

17.1. Each party acknowledges that all Background IP remains the sole property of its owner. Each party acknowledges that it acquires no right, title or interest in or to the Background IP of the other party by virtue of this Agreement or the disclosure or use of the Background IP in the course of the performance of the Services, other than as expressly set out in this Agreement.

17.2. Each party grants to the other party a perpetual, non-exclusive, royalty-free, non-transferable license to use the Background IP owned by it to the extent necessary, and for the sole purpose of, the Supply of Goods and / or performance of the Services or use of the Goods or Works where applicable (including the right to grant sublicences).

17.3. All right, title and interest in the Project IP vests in and is assigned to the Company with effect from its creation.

17.4. The Supplier must promptly and fully disclose all Project IP to the Company.