

## Terms & Conditions

### 1. Applicable terms and benefit

- a. If a member of the Buyer Group and the Supplier have entered into a separate contract intended to govern the supply of Goods and/or Services by the Supplier to Buyer or other members of the Buyer Group (a 'Standing Arrangement'), then the terms set out in the Standing Arrangement apply and the terms and conditions in this PO (other than this clause 1) will have no effect. If there is no Standing Arrangement, these terms and conditions apply and contain the entire agreement between the parties with respect to the Goods and/or Services.
- b. No terms on any confirmation, shipment or delivery docket, invoice or other document issued by or for the Supplier will vary, replace or form part of this PO.
- c. If a member of the Buyer Group suffers any Losses as a result of the acts or omissions of the Supplier or any of its Personnel related to the performance, non-performance or termination of this PO, Buyer will be able to recover those Losses from the Supplier as if those Losses were suffered or incurred by Buyer and subject to the limitations and exclusions set out in clause 6.

### 2. Supply of Goods and/or Services

- a. The Supplier must supply the Goods and/or Services to the delivery address, by the delivery date, in the quantity and conforming to their description overleaf and in accordance with any special instructions. Buyer may purchase Goods and/or Services for the benefit of, and use by, one or more members of the Buyer Group. Time is of the essence in the performance of the Supplier's obligations under this PO.
- b. The Goods must be new and unused, free from any form of security or encumbrance, fit for the purpose for which goods of that kind are commonly supplied or bought (and for any other purpose notified by Buyer), be suitably packed to avoid damage in transit or in storage, be of merchantable quality, be free from defects and comply with all applicable standards and laws. If the Goods have the potential to affect a person's health or safety, they must be supplied together with information about the potential risk(s) to health or safety and instructions on how to eliminate the risk(s) so far as reasonably practicable (including any applicable safety data sheets and all other information and materials specified by Buyer).
- c. The Services must be supplied with due care and skill and in accordance with all reasonable directions of Buyer.
- d. If requested by Buyer, the Supplier must supply all engineering, technical, manuals and other data required for the satisfactory use, maintenance, repair, installation or operation of the Goods.
- e. In supplying the Goods and/or Services, the Supplier must not interfere with Buyer's activities or the activities of any other person at the delivery address and must comply with all applicable laws (including, in particular, all laws, codes or practice and Australian Standards relating to health and safety) and any relevant Buyer standards and procedures notified to the Supplier (including, in particular, all health, safety and environmental standards). The Supplier must ensure that each of its Personnel complies with this clause.

### 3. Price and payment

- a. The Price is fixed and includes all costs incurred by the Supplier in supplying the Goods and/or Services (including charges for packing, insurance, freight and delivery and the cost of any items used or supplied in performing the Services) and all taxes and duties (except GST).
- b. The Supplier may invoice Buyer on completion of the Services or on or after the Goods have been accepted by the Buyer (whichever occurs later). Each invoice must be a valid tax invoice. The Supplier must ensure the tax invoice and all delivery slips and correspondence are marked with the PO number overleaf, item descriptions, quantities, prices and such other information as Buyer reasonably requires to identify the relevant Goods &/or Services.
- c. Subject to clause 3(d) Buyer must pay each valid tax invoice less any amounts that Buyer is by law required to deduct together with any applicable GST within 30 days from the end of the month in which the tax invoice is received or dated, whichever is later. Payment of any monies by the Buyer is on account only and not evidence that the Goods or Services comply with this PO.
- d. Buyer may set off from any amount due to the Supplier, any amounts due from the Supplier to the Buyer pursuant to the terms of this PO.

### 4. Inspection of Goods & Services

- a. Signing a delivery document or paying for the Goods or Services does not mean Buyer has accepted the Goods and/or Services. Subject to clause 4(b), Buyer will accept the Goods and/or Services (if they are not defective) after inspecting them within a reasonable time after delivery.
- b. If any Goods and/or Services do not comply with any part of this PO, Buyer may, in its sole and absolute discretion, reject the Goods and/or Services and, without prejudice to any of Buyer's other rights, require the Supplier to either:
  - i. at no additional cost to Buyer, immediately rectify the defect or deficiency; or
  - ii. refund or credit the relevant amount paid or payable by Buyer to the Supplier.

### 5. Title and risk

- a. The risk of loss of or damage to the Goods will pass to Buyer when Buyer accepts the Goods. Title in the Goods passes to Buyer on the earlier of Buyer accepting the Goods or the Buyer paying for the Goods.
- b. All intellectual property rights created in connection with the Supplier supplying any Services vest in Buyer, and the Supplier assigns all such intellectual property rights to Buyer, on and from the date of their creation. The Supplier grants to Buyer and each member of the Buyer Group a perpetual, assignable, royalty-free licence to use any other intellectual property rights to the extent needed for Buyer or any member of the Buyer Group to use the Services.

### 6. Liability, indemnity and insurance

- a. Neither party is liable to the other for any loss of revenue, profit, income, use or production except to the extent the loss is covered by insurance held by the Supplier.
- b. The Supplier indemnifies Buyer against any and all Losses suffered by Buyer, any member of the Buyer Group or any of their Personnel related to a failure to supply the Goods and/or Services in accordance with this PO or a negligent act or omission of the Supplier or any of its Personnel, except to the extent caused by the negligence, breach of contract or wilful misconduct of Buyer, any member of the Buyer Group or any of their Personnel.
- c. The Supplier must obtain and maintain insurance with a reputable insurer in Australia sufficient to cover any loss and damage for which the Supplier may be liable in connection with this PO and must provide evidence of that insurance to Buyer upon request.
- d. If the Supplier is supplying the Goods and/or Services as trustee of a trust, it does so in its own right and as trustee of the trust and represents that it has the power under the trust deed to enter into this PO and does so for the benefit of all the beneficiaries of the trust.

### 7. Confidential information

The Supplier must keep all confidential information of any member of the Buyer Group that it acquires in acting in relation to this PO, confidential, safe and secure, use it only for the purposes of this PO, not disclose it to any person (except as required by law and to Personnel of the Supplier that have a need to know for the purposes of this PO and that are obliged to keep the information confidential) and destroy it when the Supplier has performed all of its obligations under this PO or this PO terminates.

### 8. General

- a. Buyer may terminate this PO without liability to the Supplier at any time prior to delivery of Goods or Services
- b. This PO is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts in that State.
- c. Any delay by Buyer in enforcing any of its rights under this PO is not a waiver of any of its rights.
- d. The Supplier may not assign all or any part of this PO without Buyer's prior written consent.

### 9. Definitions

**Buyer** means the company specified overleaf that issued this Purchase Order.

**Buyer Group** means Buyer and its Related Bodies Corporate or any third party owner of the asset for which the Goods or Services are being procured.

**Goods** means the goods, if any, specified overleaf.

**GST** means the tax described in *A New Tax System (Goods and Services Tax) Act (Cth) 1999*.

**Losses** means all liabilities, losses, damages, costs and expenses (including legal costs, whether incurred or awarded) whether arising in contract, tort (including negligence) or otherwise.

**Personnel** of a person means the officers, employees, contractors and agents of that person or that person's Related Bodies Corporate.

**Price** means the price as specified overleaf.

**Purchase Order** or **PO** means this document.

**Related Body Corporate** has the meaning given to it in the *Corporations Act (Cth) 2001*.

**Services** means the services, if any, as specified overleaf.

**Supplier** means the supplier entity specified overleaf as the 'Supplier'.