

PURCHASE ORDER TERMS AND CONDITIONS (GOODS AND SERVICES)

The Company agrees to purchase the Goods and/or the Services from the Supplier and the Supplier agrees to supply the Goods and/or the Services to the Company on these Terms and Conditions.

1. CONTRACT

- 1.1 Subject to clause 1.2, the Purchase Order issued by the Company and these Terms and Conditions together form the Contract between the Company and the Supplier. By accepting the Purchase Order and commencing the supply of the Goods or the performance of the Services, the Supplier agrees to be bound by the Contract.
- 1.2 Where the Goods or the Services are the subject of a separate written contract between the Parties issued by the Company to the Supplier and concluded prior to the date of the Purchase Order, the terms and conditions of that contract shall apply rather than these Terms and Conditions.
- 1.3 To the extent the Supplier's terms and conditions are supplied to the Company, including with the Goods or as printed on consignment notes or other documents (including quotations), those terms and conditions will be of no legal effect and will not constitute part of the Contract even if any of the Company's personnel signs those terms and conditions or annexes the terms.
- 1.4 The Purchase Order when properly signed and bearing an order number:
 - 1.4.1 will be the only authority by the Company for the Supplier charging Goods or Services to its account; and
 - 1.4.2 the order number must appear in full on all invoices for Goods and/or Services, and all delivery slips or consignment notes included with any Goods.
- 1.5 The Purchase Order prevails in case of any inconsistency with these Terms and Conditions.

2. THE GOODS AND SERVICES

- 2.1 The Supplier must ensure that any Goods to be supplied by the Supplier pursuant to the Contract:
 - 2.1.1 are new, ready for use, free from Defects and fit for purpose;
 - 2.1.2 comply with all applicable Statutory requirements and Australian Standards at the minimum;
 - 2.1.3 are accompanied by all applicable instructions and technical documentation, including operating and service manuals;
 - 2.1.4 are supplied with a valid manufacturer's or supplier's warranty where the manufacturer or

supplier offers such a warranty in respect of the Goods; and

- 2.1.5 are delivered in accordance with any specifications and/or timeframes referred to in the Purchase Order or otherwise provided by the Company to the Supplier.
- 2.2 The Supplier must ensure that any Services to be supplied by the Supplier pursuant to the Contract:
 - 2.2.1 are performed to a high standard in accordance with industry best practice and, at a minimum, comply with any applicable Australian Standards; and
 - 2.2.2 are performed in accordance with any specifications and/or timeframes referred to in the Purchase Order or otherwise provided by the Company to the Supplier.
- 2.3 The Supplier must promptly notify the Company in writing of any ambiguity, discrepancy or inconsistency in any information provided by the Company as part of the Contract. The Company must provide the Supplier with a direction as to any such ambiguity, discrepancy or inconsistency within 10 days of receipt of the Supplier's notice in writing.

3. TIME FOR PERFORMANCE

- 3.1 Time is of the essence in respect of all obligations of the Supplier.
- 3.2 The Supplier must immediately report to the Company any actual or likely delay in supply of the Goods and/or the Services and its cause. The Supplier must take all reasonable steps to prevent delay, including but not limited to working overtime.

4. PACKAGING OF GOODS

- 4.1 The Supplier must:
 - 4.1.1 suitably pack the Goods to avoid damage during loading, transit, delivery, unloading or storage;
 - 4.1.2 pack and transport the Goods in accordance with any applicable regulations and industry codes; and
 - 4.1.3 clearly mark all packages of the Goods for delivery and the delivery documents for the Goods with the Contract number and ensure that the delivery documents accompany the Goods to the Delivery Address.
- 4.2 The Supplier will be liable for any difference in freight charges arising from its failure to:

- 4.2.1 follow any transport instruction in the Purchase Order;
- 4.2.2 properly describe the Goods transported; or
- 4.2.3 suitably pack or otherwise prepare the Goods for transportation.

5. DELIVERY

- 5.1 The Supplier must obtain all necessary permits and licenses, which must be obtained in Supplier's name and are necessary for Supplier to perform its obligations.
- 5.2 The Supplier must deliver any of the Goods, and/or provide the Services, at the Delivery Address by the Delivery Date, unless an extension of time has been agreed to in writing by the Company.
- 5.3 All Goods delivered must be accompanied by a delivery slip.
- 5.4 The Supplier must, when delivering the Goods or providing the Services:
 - 5.4.1 not interfere with the Company's activities or the activities of any third party at the Delivery Address or at the Site; and
 - 5.4.2 comply with, and ensure that its Personnel comply with, all safety and other regulations applicable to the Site, and directions and orders given by or on behalf of the Company at the Delivery Address or at the Site.
- 5.5 The Company reserves the right to cancel the Purchase Order if the full amount of the Goods and/or the Services is not delivered and/or provided at the Delivery Address by the Delivery Date.

6. INSPECTION AND SAMPLING

- 6.1 The Supplier must conduct all inspections and tests in strict accordance with requirements of the Contract.
- 6.2 The Supplier must ensure that the Company has the opportunity to inspect, test, and witness any test of the Goods and/or the Services wherever they may be located. The Supplier must provide or ensure that its suppliers provide unrestricted access to reasonable facilities necessary for the Company to carry out such inspections or witness such tests.
- 6.3 The Supplier is not relieved of any of its obligations under the Contract because the Company has signed a delivery slip for Goods, inspected the Goods and/or the Services or witnessed any testing prior to delivery of the Goods or supply of the Services.
- 6.4 The Company shall be entitled to reject any of the Goods or the Services that do not comply with the Specification, the requirements of the Contract or any sample

provided to the Company.

- 6.5 The Company is entitled to request samples of the Goods or components of the Goods in connection with the supply or use of the Goods, which must be supplied by the Supplier at its cost.

7. TECHNICAL MATERIAL

- 7.1 The Supplier must, without additional cost to the Company, supply all required plans, drawings, specifications, manuals, certificates, instructions, fabrication reports and the like in the form and at the times and in the numbers of copies specified in the Purchase Order or otherwise as reasonably required by the Company.

8. PRICE

- 8.1 The price for the Goods and/or the Services is the price stated in the Purchase Order, is in Australian Dollars (unless otherwise stated) and is the agreed amount for the whole of the Goods and/or Services supplied, inclusive of testing, packing, documenting and freight to the Delivery Address specified in the Purchase Order. Unless otherwise agreed and clearly stated in the Purchase Order, the price stated in the Purchase Order excludes GST but includes any other applicable taxes, customs, excise and import duties, tariffs, fees, levies, charges, costs or expenses incurred by the Supplier, including transport, packing and insurance costs.
 - 8.2 The Price is fixed and firm, and not subject to adjustment due to currency fluctuation or any other reason. The Price cannot be varied unless agreed by the Parties in writing.
 - 8.3 To the extent that rates for variations are specified, they must be used by the Supplier to calculate the cost of a variation, but otherwise the cost of the variation will be estimated by the Supplier at the lowest reasonable cost.
- ## **9. PAYMENT**
- 9.1 The Supplier must claim payment for the supply of the Goods and/or the Services by submitting invoices to the Company in accordance with the invoicing schedule stated in the Purchase Order or, if no schedule is stated, monthly by the last Business Day of the month. Each invoice must:
 - 9.1.1 be a tax invoice;
 - 9.1.2 be correctly dated;
 - 9.1.3 refer to the Contract;
 - 9.1.4 list the particular Goods and/or Services supplied;
 - 9.1.5 state that it is submitted under the Security of Payment Act; and
 - 9.1.6 be supported by relevant records

- (including, in the case of Goods, a delivery slip for the Goods signed by the Company), to enable the Company to calculate and verify the amount stated in any Supplier invoice.
- 9.2 Compliance by the Supplier with clauses 9.1 and 9.5 is a condition precedent to the Supplier's entitlement to:
- 9.2.1 claim the amount stated in an invoice submitted by the Supplier to the Company; or
- 9.2.2 be paid any amount in respect of an invoice submitted by the Supplier to the Company.
- 9.3 If the Supplier submits an invoice earlier than the time for submission of that invoice, the invoice shall not be taken to have been submitted until that time.
- 9.4 The Company shall not be liable to pay for the Goods and/or the Services until the Goods and/or the Services have been supplied in accordance with the Contract.
- 9.5 The Company may at any time require by written notice that the Supplier provide the Company with all additional relevant records to calculate and verify the amount stated in any Supplier invoice, by the time stated in the notice or, where no time is specified, within 48 hours. The Supplier must provide such information.
- 9.6 Subject to clauses 9.2 and 9.7, the Company shall pay the Supplier the amount claimed in an invoice:
- 9.6.1 in accordance with the payment terms stated in the Purchase Order; or
- 9.6.2 if no terms are stated, within 30 days of the invoice being submitted; or
- 9.6.3 if the Security of Payment Act applies, within the time required by the Security of Payment Act.
- 9.7 If the Company disputes any amount claimed in an invoice, the Company shall:
- 9.7.1 make a determination of the amount payable;
- 9.7.2 within the time stated in these Terms and Conditions or as prescribed by the Security of Payment Act (where relevant), provide a payment schedule to the Supplier; and
- 9.7.3 pay amounts not in dispute in accordance with clause 9.6.
- 9.8 Any payment schedule issued by the Company in accordance with clause 9.7.2 must:
- 9.8.1 identify the invoice to which the payment schedule relates;
- 9.8.2 state the Company's determination, including, for each item of the invoice:
- (a) the amount which is not disputed and therefore payable; and
- (b) if applicable, the amount which is disputed and the reason(s) it is disputed.
- 9.9 Without limiting clause 9.7, the Company may issue a revised payment schedule at any time correcting any omission or error discovered in any previous payment schedule or modifying any previous payment schedule issued by it, including as a result of the provision of information under clause 9.5.
- 9.10 No interest shall be payable on any amount due to the Supplier but remaining unpaid after the date upon which it should have been paid, except where interest is required to be payable pursuant to the Security of Payment Act, in which case interest will be paid at the rate prescribed by the Security of Payment Act.
- 9.11 Without prejudice to any other rights, the Company may deduct from or set off against any monies which may be, or become, payable to the Supplier any costs, expenses or damages which are due from the Supplier to the Company, or which the Company has incurred or reasonably considers it might in the future incur as a consequence of any act or omission of the Supplier, whether under or in connection with the Contract or any other agreement between the Company and the Supplier.
- 9.12 Payment by the Company of all or any part of a claim by the Supplier or any other amount to the Supplier is on account only and does not constitute approval of any Goods and/or Services or any other matter or thing in respect of which the payment is made.
- 10. TITLE AND RISK**
- 10.1 Risk in the Goods passes to the Company upon delivery to the Delivery Address.
- 10.2 Unencumbered legal title in the Goods passes to the Company upon the earlier of payment or delivery to the Delivery Address.
- 10.3 The Supplier acknowledges that the Company has a purchase money security interest in the Goods (and any proceeds derived from the Goods) and may register that security interest in any manner it chooses. The Supplier must provide all information and take all other steps required by the Company to perfect that interest and effect that registration. The Supplier agrees to waive its rights under section 157 of the Personal Property Securities Act 2009 (Cth) (PPSA) and that, to the extent permitted by law, section 95 and chapter 4 of the PPSA shall not apply.
- 10.4 Neither the Supplier nor the Company will disclose information of the kind described in PPSA section 275(1), unless section 275(7)

of the PPSA applies.

- 10.5 Until the Company's security interest (whether perfected or not) is satisfied, the Supplier agrees not to cause or allow a security interest of higher priority to be created in the Goods. If the Supplier breaches this subclause, the Supplier must indemnify the Company for any Loss suffered.

11. WARRANTIES

- 11.1 The Supplier represents and warrants that:
- 11.1.1 the Goods and/or the Services will be supplied in an efficient manner in accordance with all applicable laws, regulations, codes and standards;
 - 11.1.2 the Goods and/or the Services strictly comply with the Specifications;
 - 11.1.3 the Goods and/or the Services are free from all Defects;
 - 11.1.4 The Supplier will supply all labour, tools, equipment, materials and such other things as may be required by Supplier to comply with its obligations under the Contract;
 - 11.1.5 the Supplier will, and will ensure its Personnel will, exercise the standards of diligence, due care and skill normally exercised by a prudent and similarly qualified and competent supplier supplying equivalent goods and services;
 - 11.1.6 the Goods and/or the Services are fit for the purpose for which goods and services of the same kind are commonly supplied and for any other purpose described in the Contract;
 - 11.1.7 all Personnel are appropriately qualified, competent and skilled to perform the relevant part of the Services in respect of which they are engaged;
 - 11.1.8 any equipment used on the Site by the Supplier will be in a safe working condition and comply with all Legislative Requirements and be operated by suitably qualified, licensed and accredited Personnel;
 - 11.1.9 all the Goods match the description of the Goods stated in the Purchase Order;
 - 11.1.10 if the Supplier gave the Company a sample of the Goods before the Company issued the Contract, all the Goods correspond with the sample;
 - 11.1.11 all the Goods are of new and of merchantable quality; and
 - 11.1.12 all the Goods are completely owned by the Supplier and will be supplied to the Company free of any third

party interests, liens, charges or encumbrances.

- 11.2 The Supplier must immediately rectify or replace at the Company's option and at Supplier's sole cost any Defective Goods or Services discovered within 15 months after supply or 12 months after the Goods or the Services are first used or enter into the service for which they are purchased, whichever occurs first.
- 11.3 If the Company reasonably considers that it is necessary to immediately remove, rectify or replace Defective Goods or Services then the Company is not obliged to give the Supplier an opportunity to remove, rectify or replace such Goods or Services before the Company does so or causes a third party to do so. The Supplier must reimburse the Company for the full cost of such removal, replacement or rectification.
- 11.4 The Supplier's obligation to replace or rectify Defective Goods and/or Services is cumulative of other remedies available to the Company.
- 11.5 The Supplier must ensure that the Company has the full benefit of any manufacturer's warranties that may be applicable to the Goods or the Services and the Supplier must pursue any manufacturer's warranties on the Company's behalf if the Company so requests.
- 11.6 If the Supplier has replaced or rectified Defective Goods or Services, the rectified or replacement Goods or Services must be subject to the same warranty period as the original Goods or Services, from the date of rectification or replacement.
- 11.7 If the Company elects to accept Defective Goods or Services on one occasion, such election does not bind the Company to accept any other Defective Goods or Services and does not affect any of the Company's other rights under the Contract in respect of those Defective Goods or Services.
- 11.8 The Company may assign any or all of the above warranties to any of its clients or related companies and the Supplier consents to such assignment.

12. LIABILITY AND INDEMNITY

- 12.1 The Supplier is liable for, indemnifies and will indemnify and keep the Company indemnified against all Loss, and hereby releases and will release the Company from any claim, action, suit, proceeding or demand, arising directly or indirectly out of the supply of the Goods and/or the Services, except to the extent caused or contributed to by any wrongful act or omission of the Company.
- 12.2 To the extent permitted by Legislative Requirements, the Company's liability to the

Supplier arising out of or in connection with the Contract is limited to the Price.

- 12.3 The Company shall not be liable to the Supplier for any consequential, indirect or special loss, damage or expense (including but not limited to loss of profit or revenue, loss of market or loss of contracts or damage to commercial reputation).

13. CANCELLATION

- 13.1 In addition to its rights under clause 14, the Company may cancel all or any part of the Contract at any time for any reason, in its sole and absolute discretion by written notice of cancellation to the Supplier.
- 13.2 Upon receipt of notice of cancellation, the Supplier must:
- 13.2.1 immediately cease performance of the Services to the extent specified in the cancellation notice;
 - 13.2.2 immediately take steps to cease the procurement, manufacture or delivery of the Goods to the extent specified in the cancellation notice;
 - 13.2.3 immediately take all possible action to mitigate any costs incurred by it as a result of the cancellation; and
 - 13.2.4 provide the Company with a detailed report in the form required by the Company relation to the Goods and the Services supplied prior to cancellation.
- 13.3 In the event of cancellation by the Company under this clause:
- 13.3.1 the Supplier is entitled to payment of the Price for the Services supplied and the Goods delivered to the Company prior to cancellation but not already paid for;
 - 13.3.2 if the Goods have been shipped, but not delivered, at the time of cancellation the Company may either:
 - (a) accept the Goods when delivered, and pay the Price for them; or
 - (b) return the Goods to the Supplier at the Company's expense;
 - 13.3.3 if the Goods have been procured, manufactured or fabricated in accordance with the Specification (but not shipped) at the time of cancellation, the Company shall pay costs reasonably incurred by the Supplier prior to the date of the cancellation which is directly attributable to the placing of the Contract and which the Supplier is not able to recoup in some other way;
 - 13.3.4 the Supplier is not entitled to the Price of the Goods or the Services

or to any compensation for that cancellation other than as specified in clauses 13.3.1 to 13.3.3; and

- 13.3.5 the maximum compensation payable under clause 13.3.1 to 13.3.3 arising out of the cancellation will not exceed the Price of the relevant Goods and/or Services cancelled.

14. DEFAULT AND TERMINATION

- 14.1 To the extent permitted by law, the Company may (by written notice to the Supplier) terminate the Contract or reduce the scope of the Goods and/or Services to be provided thereunder, where the Supplier:
- 14.1.1 fails to remedy any breach of its obligations under the Contract within 5 Business Days of receiving written notice from the Company requiring it to do so; or
 - 14.1.2 is a corporation and becomes insolvent, or has an administrator, controller or liquidator appointed under the *Corporations Act 2001* (Cth), or has receivers or managers appointed to it; or
 - 14.1.3 being an individual, is unable to pay its debts when they fall due or has a trustee in bankruptcy appointed; or
 - 14.1.4 ceases or threatens to cease to carry on business,
- in which case the Company's liability to the Supplier shall be limited to payment of the Price for the Goods and the Services supplied prior to such termination.
- 14.2 If the Company repudiates the Contract and the Supplier terminates the Contract, the Supplier shall be entitled to claim contract damages and shall not be entitled to claim on a quantum meruit basis.
- 14.3 Termination of the Contract does not affect or prejudice any rights of the Company that have accrued prior to the termination. The Company's exercise of its rights under this clause does not affect or limit its ability to exercise any other rights under the Contract, at law or in equity.

15. INSURANCE

- 15.1 The Supplier must prior to commencing the supply of the Goods and/or Services, and for as long as it has obligations outstanding in connection with the supply of the Goods or the Services, effect and maintain:
- 15.1.1 all insurances required for all risks arising out of the performance of its obligations under the Contract, including:
 - (a) workers' compensation as required under law;
 - (b) professional indemnity insurance for an amount not

- less than \$2,000,000;
 - (c) product liability insurance of not less than \$20,000,000 per occurrence;
 - (d) public liability insurance of not less than \$20,000,000 per occurrence;
 - (e) motor vehicle insurance of not less than \$10,000,000 per occurrence; and
 - (f) transit insurance for the replacement value of the Goods; and
- 15.1.2 such insurances must be effected with a reputable insurer having a Standard & Poor's, Moodys, AM Best or equivalent ratings agency's long-term issuer credit rating of A minus or better, or otherwise as approved by the Company in writing.
- 15.2 The Supplier must provide evidence satisfactory to the Company of such insurance to the Company as a condition precedent to the Supplier being entitled to:
 - 15.2.1 access the Site or Delivery Address;
 - 15.2.2 make a claim for payment for the supply of the Goods or the Services; and
 - 15.2.3 payment for the supply of the Goods or the Services.
- 15.3 If the Supplier does not comply with its obligations under clause 15.2, the Company may effect and maintain the relevant insurance and pay the premiums and the amount of such payment shall be a debt due and payable by the Supplier to the Company.
- 15.4 Insurance shall not limit the Supplier's liabilities or obligations under the Contract.
- 15.5 The Supplier must notify the Company immediately if any incident occurs that is likely to give rise to a claim under any policy of insurance effected by the Supplier under the Contract and must keep the Company fully informed of all subsequent developments regarding such claim.
- 15.6 To the extent permissible under any written or unwritten law, the Supplier must ensure that all insurances to be taken out pursuant to clause 15.1.1 and such other insurances which the Supplier considers necessary must:
 - 15.6.1 extend indemnification in favour of the Company; and
 - 15.6.2 include a cross liability clause which includes a waiver by insurers or underwriters of all expressed or implied rights of subrogation against the Company and its officers, employees and agents.

16. PERSONNEL

- 16.1 The Company may object to any Personnel

who, in the Company's opinion, do not have the appropriate qualifications, competency or skill to perform the relevant part of the Services in respect of which they are engaged, or who engage in misconduct. The Supplier must remove and immediately replace such Personnel with a suitable replacement upon being directed to do so by the Company.

17. SITE

- 17.1 This clause 17 applies to the extent the Supplier or its Personnel are required to be on, or in the vicinity of, the Site.
- 17.2 The Supplier is deemed to have examined the Site and the means of access to the Site prior to the delivery of Goods to the Site (if the Site is specified to be the Delivery Address).
- 17.3 The Supplier:
 - 17.3.1 must comply, and ensure its Personnel comply, with all Legislative Requirements and all policies, standards, rules and procedures in force from time to time, including in relation to HSE at the Delivery Address or at the Site (where applicable);
 - 17.3.2 submit and amend any HSE management plan(s) as reasonably required by the Company;
 - 17.3.3 attend all induction courses as reasonably required by the Company;
 - 17.3.4 permit the Company to have access to the Supplier's premises, documentation, data and Personnel as necessary to enable the Company to verify, monitor and audit the Supplier's compliance with this clause 17;
 - 17.3.5 give the Company not less than 7 days prior written notice before commencing the Services on the Site.
- 17.4 The Supplier acknowledges that it will not have exclusive possession of any part of the Site and will only be granted access to the Site to the extent necessary for the performance of the Services. The Supplier must cooperate and coordinate its performance of the Contract with other contractors and persons on the Site and coordinate its work with them.

18. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- 18.1 The Supplier warrants that any design, equipment, methods of working and documentation including but not limited to specifications, drawings, reports and publications used or produced by the Supplier in connection with the Services do

- not infringe any IP Right.
- 18.2 The Company acknowledges that ownership of all IP Rights used or created under the Contract or in the provision of the Services (other than pre-existing IP Rights of the Supplier) is vested in the Company. The Company grants to the Supplier a non-exclusive, transferable, royalty free, irrevocable and perpetual licence to use such IP Rights for the purpose of the Supplier supplying the Goods or the Services.
- 18.3 The Supplier indemnifies the Company for all Loss and expense incurred as a result of a breach of this clause.
- 18.4 If any of the Goods or Services (or their use) is agreed or held to infringe the rights (including IP Rights) of any third party, then without prejudice to the operation of the remainder of this clause 18, the Supplier must immediately at its own cost for the Company obtain the right to use or to continue to use the relevant Goods or Services. If the Supplier is unable to obtain such consent, the Supplier must, at its own cost and at the Company's direction, either replace the infringing Goods or Services with Goods or Services that do not infringe, or modify the infringing Goods or Services to avoid any infringement. The Supplier shall have no entitlement to make any claim arising out of compliance with this clause 18.4.
- 18.5 The Supplier acknowledges that the terms of the Contract are confidential and agrees not to disclose any information regarding the Contract (including any engineering data, information, specifications, drawings, reports, accounts or other documents supplied or made available by the Company to the Supplier for the supply of Goods and/or Services under the Contract), its existence or its terms to any third party (including by making any media release) without the express written permission of the Company.
- 18.6 Unless otherwise provided in the Purchase Order, all plans, drawings and specifications prepared or supplied by or on behalf of the Company, and any patterns made therefrom will be, and remain, the property of the Company and must be used by the Supplier only in the performance of its obligations under the Contract, and will be returned to the Company by the Supplier on completion of its obligations, or termination or cancellation of the Contract, whichever occurs earlier.

19. DISPUTE RESOLUTION

- 19.1 If a Dispute arises then either Party may serve the other Party with a Dispute Notice.
- 19.2 Within 5 Business Days of receipt of a

Dispute Notice, representatives of the Parties having authority to bind the Parties shall confer in an attempt to resolve the Dispute, which conferral shall be confidential and without prejudice.

- 19.3 If a resolution or method of resolution has not been agreed within 15 Business Days of the service of the Dispute Notice, the General Managers (or their equivalent) of the Parties shall confer for the same purpose as the Parties' representatives, which conferral shall be confidential and without prejudice.
- 19.4 Neither Party may commence legal proceedings (except for urgent interlocutory relief) in relation to any Dispute unless the procedure referred to in clause 19 has been strictly complied with, and the Dispute has not been resolved within 20 Business Days of receipt of a Dispute Notice.
- 19.5 Notwithstanding the existence of a dispute, the Supplier shall continue to carry out its obligations under the Contract.

20. SECURITY OF PAYMENT

- 20.1 The Parties agree that for the purposes of any adjudication under any Security of Payment Act in relation to the Contract or the Goods or the Services, the authorised nominating authority shall be Resolution Institute or, if the Goods or the Services are to be supplied in Queensland, then the Registrar appointed under the *Building Industry Fairness (Security of Payment) Act 2017* (Qld).

21. GENERAL

- 21.1 **Entire Agreement:** The Contract comprises the entire agreement between the Parties in respect of its subject matter and supersedes all prior agreements, quotation requests, understandings, representations, warranties, promises, statements, negotiations, letters and documents in respect of its subject matter. The Company shall have no obligations of good faith or fair dealing except as expressly stated in the Contract.
- 21.2 If at any time in relation to the Goods and/or the Services the Supplier provides or refers to any terms or conditions not included in the Contract (including in quote forms) those terms and conditions shall not form part of or be incorporated into the Contract and are deemed to have been withdrawn in favour of the provisions of these Terms and Conditions.
- 21.3 Any terms that may have been attached or embodied in the Supplier's tender or offer or other correspondence (including quote forms and Contracts) whether before, at or after the acceptance of the Contract are not applicable.

- 21.4 **Severance:** If any provision of the Contract is determined to be void by any court then that determination does not affect any other provision of the Contract, which otherwise remains in full force and effect.
- 21.5 **Waiver:** the Company's failure or delay to exercise a power or right does not operate as a waiver of that power or right. No waiver by the Company of any breach of a provision of the Contract is a waiver of any subsequent breach of that provision or any other provision. A waiver is not effective unless it is in writing, signed by the Company.
- 21.6 **Variations:** An amendment or variation to the Contract is not effective unless it is in writing and signed by a duly authorised director of the Company prior to the supply of additional or varied Goods and/or Services.
- 21.7 **Assignment:** The Supplier must not assign the Contract or any part of the Supplier's obligations under the Contract without the prior written consent of the Company, which must not be unreasonably withheld. The Company may assign the Contract or any part of it or any right or interest under the Contract, by notice to the Supplier.
- 21.8 **Subcontracting:** The Supplier must not subcontract all or any of its obligations under the Contract without the prior written consent of the Company, which must not be unreasonably withheld.
- 21.9 **Exclusion and apportionment:** The operation of the *United Nations Convention on Contracts for the International Sale of the Goods* and, to the extent not prohibited by law, Apportionment Legislation is excluded. The Supplier indemnifies the Company against any claim, cost, expense or liability whatsoever arising out of or in connection with the Contract which are caused or contributed to by the Supplier's Personnel and for which the Supplier would have been liable to the Company but for, or which the Company is not able to recover from the Supplier because of, any apportionment under any Apportionment Legislation.
- 21.10 **Survival:** Clauses 12, 13, 14, 18, and 19 survive the cancellation, termination, repudiation or expiry of the Contract for any reason.
- 21.11 **Governing Law:** The Contract is governed by, and is to be interpreted in accordance with the laws in force in the State or Territory in which the Goods or the Services are supplied and the Parties submit exclusively to the jurisdiction of the courts in that State or Territory.
- 21.12 **Further Assurance:** Each Party shall promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to the Contract.

- 21.13 **Relationship:** The Supplier acknowledges that it supplies the Goods and/or Services to the Company as an independent contractor, and not as an employee, officer or agent of the Company.

22. DEFINITIONS

In these Terms and Conditions:

Apportionment Legislation means any legislation under which an apportionment may be made.

apportionment includes an apportionment of liability for damages, a limit on the amount of damages that may be awarded against a party or a determination of or judgment for the proportion of any damages that should be borne by a party.

Business Day means a day except Saturdays, Sundays and public holidays in the State where the Site is located, or any other day excluded by the definition of "business day" in the Security of Payment Act.

Company means Everett-Smith & Co. Pty Ltd, or any other purchasing entity stated in the Purchase Order.

Contract comprises the Purchase Order and these Terms and Conditions.

Defect means any aspect of the Goods or the Services not in accordance with the Contract, or which is damaged, deficient, faulty, inadequate or incomplete in design, performance, workmanship, quality or makeup and **Defective** has an equivalent meaning.

Delivery Address means the address for delivery stated in the Purchase Order.

Delivery Date means the date for delivery of the Goods and performance of the Services stated in the Purchase Order.

Dispute means a dispute or difference arising out of or in connection with the Contract.

Dispute Notice means a written notice stating that it is issued under clause 19 and that outlines the nature of the dispute.

Goods means the goods or materials (if any) specified in the Purchase Order including, without limitation, manuals, operating instructions, reports and drawings. **GST** has the meaning given to that expression in the GST Act.

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

HSE means health, safety and environment.

IP Rights means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and similar rights which may subsist or may hereafter subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and

know-how, rights in relation to designs (whether or not registrable), rights in relation to registered or unregistered trademarks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers.

Legislative Requirements means any applicable statutes, regulations, by-laws, orders, industrial awards, workplace agreements, proclamations of the Commonwealth, certificates, licenses, consents, permits, approvals, codes, standards and requirements of organisations.

Loss means any loss, damage, expense, payment or liability, whether direct or indirect, and includes consequential loss, damage or expense (including but not limited to loss of profit or revenue, loss of market or loss of contracts or damage to commercial reputation), and includes any Loss incurred in connection with:

- (a) the investigation of a breach of the Contract; or
- (b) the rectification of a breach of the Contract.

Party means the Company or the Supplier, and a reference to Parties is a reference to both of them.

Personnel means any employee, person, consultant, agent or subcontractor engaged by the Supplier to provide all or any part of the Services on behalf of the Supplier.

Price has the meaning given in clause 8.1.

Purchase Order means the written order signed by or on behalf of the Company for the supply of the Goods and/or the Services.

Security of Payment Act means, if the location of the Site is in:

- (a) Western Australia, then the Building and Construction Industry (Security of Payment) Act 2021 (WA);
- (b) New South Wales, then the Building and Construction Industry Security of Payment Act 1999 (NSW);
- (c) Queensland, then the Building Industry Fairness (Security of Payment) Act 2017 (Qld);
- (d) Tasmania, then the Building and Construction Industry Security of Payment Act 2009 (Tas);
- (e) Northern Territory, then the Construction Contracts (Security of Payments) Act 2004 (NT);
- (f) Victoria, then the Building and Construction Industry Security of Payment Act 2002 (Vic); or
- (g) South Australia, then the Building and Construction Industry Security of Payment Act 2009 (SA),

each as amended from time to time.

Services means the services (if any)

specified in the Purchase Order and includes all necessary minor incidental services.

Site means the project site to which the Goods or the Services relate and as specified in the Purchase Order.

Specification means all codes, standards, drawings and specifications applicable to the Contract, referred to in the Purchase Order or otherwise incorporated into the Contract by reference and to be complied with by the Supplier.

Supplier means the supplier of the Services and/or Goods specified in the Purchase Order.

Terms and Conditions means these terms and conditions and any additional terms and conditions stated in the Purchase Order, including any variations agreed by the Parties in writing.