

1. Definitions

In these Conditions:

"Conditions" means these conditions for the supply of Goods and/or Services;

"Customer" means the Customer referred to in the Order Form;

"Delivery Address" means the delivery address on the Order Form;

"Goods" means the goods to be supplied pursuant to an Order;

"Force Majeure Event" means any event or circumstance which is beyond a Party's reasonable control including but not limited to, acts of God including fire, hurricane, typhoon, earthquake, landslide, tsunami, mudslide or other catastrophic natural disaster, civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities, ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination, any widespread illness, quarantine or government sanctioned ordinance or shutdown, pandemic (including COVID-19 and any variations or mutations to this disease or illness) or epidemic.

"GST" means goods and services tax within the meaning of the GST Act;

"GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

"Order" means the completed Order Form and these Conditions;

"Order Form" means the attached purchase order form;

"Personnel" means, in respect of a party, any of its employees, consultants, suppliers, subcontractors or agents, but in respect of the Supplier, does not include the Customer.

"Price" means the price specified in the Order Form;

"Responsible Employee" means the person identified as such on the Order Form;

"Services" means the services to be supplied pursuant to an Order and all necessary ancillary and incidental work;

"Supplier" means the supplier of the Goods and/or the Services identified as such in the Order Form; and

"Tax Invoice" has the meaning defined in the GST Act.

2. Preliminary

2.1. Acceptance of an Order constitutes acceptance of these Conditions to the exclusion of any other terms. Therefore, unless otherwise agreed by the Customer in writing:

- (a) if the Supplier accepts an Order, the Supplier's standard terms and conditions do not apply; and
- (b) any prior representations, negotiations, arrangements, understandings or communications between the parties about an Order are superseded by these Conditions.

2.2. No changes to an Order may be made without the Customer's written consent.

2.3. The Customer may at any time cancel an Order in whole or in part by providing 30 days' prior written notice to the Supplier and no penalty or liability for damages will be incurred by the Customer in connection with such cancellation.

3. Delivery of Goods

3.1. The Supplier will:

- (a) deliver the Goods to the Delivery Address and by the time specified in the Order, or within a reasonable time if no time is specified, subject to clause 3.1(c);
- (b) ensure that Goods delivered match the Goods ordered;
- (c) package the Goods so as to prevent damage to the Goods;
- (d) ensure that the Goods are prepared appropriately for shipment and to at least the carrier's requirements; and
- (e) notify the Customer as soon as practicable if the delivery of the Goods is likely to be delayed.

3.2. The Supplier is responsible for all transport costs, including freight and insurance charges, incurred in delivering the Goods to the Delivery Address.

3.3. The Customer may at any time before the delivery of the Goods inspect or test the Goods at the Supplier's premises or elsewhere.

3.4. Risk in the Goods remains with the Supplier until acceptance of the Goods at the Delivery Address, and the Customer will be deemed to have accepted the Goods if it does not inform the Supplier within 30 days of delivery that the Goods are unacceptable, for any reason whatsoever.

3.5. Title to the Goods free of encumbrances will pass to the Customer upon payment of the Price and any GST.

3.6. The Customer may reject the Goods by informing the Supplier within 30 days after delivery that the Goods are not acceptable.

3.7. The Customer will not and will not be required to pay for Goods that it rejects under clause 3.6 and will return the Goods to the Supplier only if so requested. All expense and risk in rejected Goods remains at all times with the Supplier.

3.8. The Customer may at any time return to the Supplier, at the Supplier's cost, Goods found to contain latent defects, and the Supplier must repay the Customer any Price paid for such defective Goods.

3.9. Evidence of the Customer signing the Suppliers delivery note or signing of other delivery documentation is not evidence and must not be taken to mean that the Customer has inspected or is satisfied as to the quality of the Goods but is evidence only as to the fact of delivery.

3.10. The Supplier must ensure the Goods are adequately insured until they are delivered to the Customer

4. Provision of Services

4.1. The Supplier must provide the Services:

- (a) competently;
- (b) safely;
- (c) according to all directions given by the Responsible Employee;
- (d) in compliance with all applicable safety regulations, ordinances, relevant laws and industry standards; and
- (e) in compliance with the Customer's work practices and procedures, as notified by the Customer to the Supplier from time to time (with all necessary protective clothing or equipment to be provided and kept in good repair by the Supplier).

4.2. Where the Services are to be performed on the Customer's premises or in the vicinity of power lines, electrical plant and equipment or live electrical apparatus, the Supplier must not commence work until the Responsible Employee has issued the relevant authority form

4.3. At any time, if the Customer is dissatisfied with the Supplier's provision of the Services, it may request the Supplier to provide the Services again and the Supplier must perform the work at no extra charge to the Customer.

4.4. The Supplier must not subcontract or delegate the provision of the Services to any other party without the prior written consent of the Customer. In any event, any subcontracting or delegation by the Supplier will not relieve the Supplier of any of its obligations in these Conditions.

5. Warranties

5.1. The Supplier warrants to the Customer that it owns the Goods free of third party or other security interests and that the Goods:

- (a) are fit for the purpose for which the Goods or goods of the same kind are usually acquired and any other purpose of the Customer made known to the Supplier;
- (b) will function and perform in all respects as represented by the Supplier;
- (c) comply with any specifications, drawings, samples or other descriptions supplied by the Customer to the Supplier;
- (d) be provided on the basis that the Customer has the benefit of any applicable manufacturer's warranty;
- (e) comply with every aspect of the Goods' description in an Order or, if there is no description the highest industry quality standards for their manufacture;
- (f) comprise of new and unused components;
- (g) are of merchantable quality;
- (h) are free from all faults and defects;
- (i) will fully integrate with and operate within the Customer's existing operational environment;
- (j) do not, and Customer's use of the Goods will not, infringe any intellectual property rights of any person; and
- (k) comply with all relevant laws and Australian Standards (which compliance the Customer may require the Supplier to demonstrate on request).

5.2. The Supplier warrants to the Customer that the performance of the Services:

- (a) will comply with every aspect of the Services' description in an Order or, if there is no description, the highest industry quality standards for their performance;
- (b) will be performed with all due skill and care normally exercised by qualified and experienced persons in the performance of similar services;
- (c) will provide the functionality and performance represented by the Supplier;
- (d) will be provided to the Customer free of any restrictive covenants imposed by any other party; and
- (e) will comply with all relevant laws and applicable Australian Standards (such compliance the Customer may require the Supplier demonstrate on request).

6. Payment terms and GST

6.1. The amount payable for the Goods and/or Services by the Customer will be the Price exclusive of GST, subject to clause 6.2. The Price includes all other applicable taxes, duties, levies, and charges.

6.2. The Customer must pay to the Supplier any amount which is payable by the Supplier on account of GST as a consequence of any supply made to the Customer under this Order.

6.3. Following receipt of a valid Tax Invoice under clause 6.4 and subject to satisfaction of clause 6.5, the Customer will pay the Supplier on the later of the date that is:

- (a) in accordance with the Order or, if not specified in the Order, 30 business days from the date the Tax Invoice is received; or
- (b) the date that is 30 business days from which the Responsible Employee has certified the Good supplied or the Services performed are satisfactory in accordance with clause 6.5.

6.4. The Supplier must give to the Customer within 30 days after delivery of a Good or performance of a Service a Tax Invoice which:

- a. is fully compliant with the GST Act; and
- b. states the Order number, full details of the Goods delivered or Services performed, the Price and any other information that the Customer may require.

6.5. Payment is subject to the Responsible Employee (acting reasonably) certifying that the Goods supplied or the Services performed are satisfactory.

6.6. The Supplier may not vary the price or scope of any Goods or Services without the prior written consent of the Customer.

7. Indemnities and Limitation of Liability

7.1. The Supplier indemnifies the Customer against all claims, damages, suits, actions, liabilities, losses, demands, actions, costs and expenses incurred by any person arising directly or indirectly from:

- (a) any negligent act, omission or unlawful action by the Supplier or any of its Personnel;
- (b) any injury or death of any person or damage or destruction of any property arising from the supply of Goods and/or Services to the Customer; or
- (c) any infringement of a third party's intellectual property rights in the Goods and/or Services.

7.2. Where the indemnity in clause 7.1 is of a continuing nature, any payment made pursuant to that indemnity does not satisfy or discharge the indemnity, and this only occurs by the resolution of the event giving rise to that indemnity.

7.3. The Supplier is deemed to be aware of the inherent dangers and risks in the Customer's activities, and accordingly the Supplier:

- (a) releases the Customer from all Liability arising from or in connection with any injury or death of the Supplier's employees, agents or contractors on the Customer's premises to the extent the Customer (or its Personnel) contribute to the Liability, including the Customer's (or Personnel's) failure to mitigate such Liability; and
- (b) must insure itself fully in respect of all potential public liability claims.

7.4. If in the supply of the Goods or Services, the Goods are, or any property of the Customer or its employees, agents or contractors is, damaged, the Customer may, at its election:

- (a) require the Supplier to repair the Goods at the Supplier's cost;
- (b) require the Supplier to resupply the Services; or
- (c) deduct from the Price the cost of having the Goods repaired or the Services resupplied.

8. Confidentiality

8.1. If in the performance of these Conditions or otherwise, the Supplier obtains or becomes aware of any sensitive or confidential information relating to the Customer or its business, partners or customers ("Confidential Information"), the Supplier must not, without the Customer's prior written consent, disclose to any person the Confidential Information, except to those of its employees that are involved in the completion of an Order and then on a strictly confidential basis and must ensure that its employees comply with these obligations of Confidentiality. The Supplier must immediately notify the Customer if it knows of, or suspects, any unauthorised disclosure of the Confidential Information. This obligation survives the satisfaction or termination of an Order.

8.2. The Supplier must not reproduce an Order or advertise or publish any details of an Order without the Customer's prior written consent.

9. Intellectual property

The Supplier assigns to the Customer ownership of all copyright and other intellectual property rights in and to all documents, drawings, maps, characters, images, photographs, artwork, blueprints, calculations, information and instructions prepared in connection with an Order.

10. No relationship

The Supplier is not an employee, agent or representative of the Customer and has no authority to act on behalf of the Customer.

11. Termination

11.1. Without limiting the Customer's entitlement under clause 2.3, the Customer may terminate an Order (to the extent that the Order has not been fully satisfied), immediately on written notice to the Supplier if the Responsible Employee believes the Goods and/or Services delivered by the Supplier are not in accordance with the Conditions, or are defective in quality, workmanship, material or are otherwise unsatisfactory or the Supplier has breached any material provision of these Conditions.

11.2. Following such termination, the Responsible Employee will value any Goods and/or Services received to re-evaluate the Price payable for such Goods and/or Services.

11.3. Notwithstanding the termination of any Order under this clause 11, the Supplier remains liable under these Conditions to the Customer in respect of any Goods or Services provided up to the time of termination.

11.4. The Customer's sole liability to the Supplier as a consequence of terminating an Order (to the extent that order has not been fully satisfied) pursuant to this clause 11, is limited to payment for those Goods and/or Services actually provided in accordance with the Order to the Customer's satisfaction.

11.5. This Agreement will terminate immediately upon written notice by a party (**Non-Defaulting Party**) if:

- (a) the other party (**Defaulting Party**) breaches a material term of these Conditions and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
- (b) the Defaulting Party goes bankrupt, insolvent or is otherwise unable to pay its debts as they fall due.

11.6. Termination pursuant to this condition does not affect any pre-existing rights or obligations or either the Supplier or the Customer.

12. Insurance

12.1. For the supply of Goods the Supplier warrants that it has in place, and will keep current, and will not vitiate or render void or voidable, public liability insurance for the period of the Order with a level of cover per event of \$10 million.

12.2. For the supply of Services the Supplier warrants that it has in place, and will keep current, and will not vitiate or render void or voidable, public liability insurance for the period of the Order with a level of cover per event of \$10 million and professional indemnity insurance during for a period of six years after the Order is fulfilled with a level of cover of \$5million.

12.3. For the avoidance of doubt if the Supplier is providing Goods and Services the Supplier must have insurance in place as set out in clause 12.2.

13. Force Majeure

Neither Party will be liable for any delay or failure to perform their respective obligations under this Agreement if such delay or failure is caused or contributed to by a Force Majeure Event, provided that the Party seeking to rely on the benefit of this clause:

- (a) as soon as reasonably practical, notifies the other Party in writing details of the Force Majeure Event, and the extent to which it is unable to perform its obligations; and
- (b) uses reasonable endeavours to minimise the duration and adverse consequences of the Force Majeure Event.

Where the Force Majeure Event prevents a Party from performing a material obligation under this Agreement for a period in excess of 60 days, then the other Party may by notice terminate this Agreement, which will be effective immediately, unless otherwise stated in the notice. This clause will not apply to a Party's obligation to pay any amount that is due and payable to the other Party under this Agreement.

14. Disputes

14.1. Any dispute between the parties concerning an Order will be dealt with as follows:

- (a) the Customer must refer the dispute to its Responsible Employee and the Supplier must appoint an equivalent officer, who together must attempt to resolve the dispute;
- (b) if the dispute is not resolved within 3 weeks after such referral, the parties must refer the dispute to their respective managing directors or their agreed appointees; and
- (c) if the dispute is not resolved under clause 14.2 within 2 weeks, the parties must appoint an expert by agreement (failing which, the expert will be as appointed by the National President, or acting National President for the time being, of the Institute of Arbitrators and Mediators Australia). The matters in dispute must then be promptly referred by the parties to the expert for determination. In making its decision, the expert will act as expert and not arbitrator. The cost of the expert will be borne by the parties in accordance with the expert's determination.

15. Severance

If a provision of these Conditions is invalid or unenforceable, it is to be read down or severed to the extent of the invalidity or unenforceability and that fact will not affect the remaining provisions.

16. Governing law

An Order is to be interpreted according to the laws of New South Wales and each party submits to the jurisdiction of the courts of that State.

17. Modern Slavery

17.1. In this clause, **modern slavery** has the meaning given to it in the Modern Slavery Laws. **Modern Slavery Laws** means the *Modern Slavery Act 2018* (Cth), *Modern Slavery Act 2018* (NSW), Divisions 270 and 271 of the *Criminal Code 1995* (Cth) and any other anti-slavery, human trafficking or similar laws or regulations in force in Australia, in other jurisdictions (as applicable) and international laws

17.2. The Supplier acknowledges that the Customer:

- (a) is committed to providing publicly accessible information and reporting regarding:
 - (1) its structure, business, operations and supply chains;
 - (2) the due diligence and remediation processes being adopted in relation to modern slavery in its business and its supply chains;

(3) the parts of its business, operations and supply chains where there is a risk of modern slavery taking place, and the steps being taken to assess, address and manage that risk, including the development of policies and processes;

(4) the training available to employees and contractors regarding modern slavery; and

(5) the effectiveness of the actions taken; and

(b) has obligations under the Modern Slavery Laws.

17.3. The Supplier warrants and represents that it will (and ensure its Personnel will):

(a) comply with all Modern Slavery Laws, and not do anything, which places, or may place, the Customer to be in breach of the Modern Slavery Laws;

(b) take all reasonable steps to ensure that it does not engage in any Modern Slavery, and there is no Modern Slavery in any of its supply chains;

(c) notify the Customer immediately after it becomes aware of any of the following events (each a **MS Breach Event**):

- (1) an actual or potential breach of Modern Slavery Laws; or
- (2) any investigation, inquiry or enforcement proceedings initiated against the Supplier regarding any breach or alleged breach of Modern Slavery Laws; or any Modern Slavery practices in its supply chains;

(d) promptly after becoming aware of a MS Breach Event, take all reasonable action to address or remedy the MS Breach Event, including where relevant by addressing any practices of other entities in its supply chains;

(e) provide the Customer with all information and assistance reasonably requested by the Customer in relation to any Breach Event and/or the Supplier's compliance with the Modern Slavery Laws; and

(f) on reasonable prior written notice by the Customer, allow the Customer or a person nominated by the Customer, at the Customer's cost, to audit the Supplier's compliance with this clause 17.3 on the date nominated in that notice.

17.4. Clauses 17.5 and 17.6 will apply to, to the extent to Modern Slavery Laws apply to the Supplier.

17.5. Without limiting and in addition to clause 17.3, the Supplier will:

(a) immediately (and, if not possible to do so immediately, then as soon as possible) provide the Customer with all information, data, reports, statements and other documentation, and all other assistance and support (including assisting us in undertaking any due diligence processes):

- (1) as reasonably required to enable the Customer to comply with the Modern Slavery Laws; and/or
- (2) to establish and demonstrate that the Supplier is complying with this clause 17,

(b) (**Modern Slavery Information**); and

(c) comply with all policies, procedures, guidelines, codes (including codes of conduct) or requirements which are in any way connected with the Modern Slavery Laws, as provided to the Supplier by or on behalf of the Customer at any time and from time to time (**Modern Slavery Policies**), including by implementing all systems, controls and procedures required under the Modern Slavery Policies.

17.6. The Supplier warrants and represents that:

(a) the Modern Slavery Information will be current, accurate and truthful and will be provided in English and in the format or formats reasonably required by the Customer;

(b) the Customer will be entitled, and able, to rely on the Modern Slavery Information, including for the purpose of preparing and publishing reports and statements in connection with the Modern Slavery Laws and/or the Modern Slavery Policies; and

(c) the Supplier irrevocably and unconditionally consents to, and permit, the Customer (and all of its Personnel) where the Customer provides written notice to:

- (1) access, audit, use, modify and publish all Modern Slavery Information for any purpose arising from or in connection with the Modern Slavery Laws and/or the Modern Slavery Policies; and
- (2) access and use all facilities, premises, systems, software and files to enable the Customer to undertake all due diligence and audit processes to enable the Customer to comply with the Modern Slavery Laws and/or the Modern Slavery Policies.

17.7. For the avoidance of doubt, the Supplier is liable for the acts or omissions of the Supplier's Personnel which breach this clause 17.

17.8. If the Supplier (or Supplier's Personnel) are in breach of this clause, then without prejudice to any rights or remedies of the Customer under these Conditions or at law, the Customer may immediately terminate these Conditions on written notice to the Supplier.