

1. AGREEMENT

- 1.1 Our contract with you is to purchase the works, goods and/or services (together the Supply) specified in the purchase order issued by us to you (Purchase Order). These terms and conditions, the Purchase Order and any special conditions, specifications, drawings and other documents supplied to you by us for the purpose of being incorporated into the contract between you and us collectively form the contract between us and you (Contract).
- 1.2 You agree that you accept the terms of this Contract on the earlier of either the signing of the Purchase Order by you or other written or verbal acceptance of this Contract or the Purchase Order, including commencement of your obligations under this Contract.
- 1.3 Where any part of this Contract is unenforceable, illegal or void for any reason then the application of that part shall be reduced only to the extent that such provision is unenforceable, illegal or voided and the enforceability or validity of the remaining provisions of the Contract (or part thereof) will not be affected or impaired in any way.
- 1.4 For the avoidance of doubt, the terms and conditions of this Contract shall supersede any order, conditions or terms provided to you or other prior written agreement for the Supply.
- 1.5 This Contract constitutes the entire agreement between us and you in relation to the Supply. Any assumptions, conditions or qualifications in your tender (if any), any communication between the parties or other terms and conditions provided by you at any time do not form part of this Contract except to the extent expressly set out in this Contract, and not merely by incorporation by reference.

2. SCOPE

- 2.1 You must perform the Supply in accordance with the Contract, all applicable laws, regulations, standards, requirements of any authority, and any direction given by us.
- 2.2 The Supply must be, and you warrant that Supply will be:
 - (a) fit for the purpose communicated to you or reasonably inferred from this Contract;
 - (b) performed in a proper and workmanlike manner;
 - (c) performed in accordance with good industry practice, which requires you to exercise a degree of skill, care, diligence, prudence and foresight that would reasonably be expected to be observed by a highly skilled and experienced person engaged in performing activities the same or similar to the Supply under this Contract;
 - (d) performed in accordance with all legislation, regulations, standards and requirements of any authority in relation to the provision of the Supply;
 - (e) performed otherwise in accordance with this Contract; and
 - (f) performed so that the Supply and all materials, equipment and goods used in the performance of the Supply, are of good merchantable quality, free of defects and are new.

3. PERFORMANCE AND TIME

- 3.1 You must perform the Supply in accordance with the Purchase Order or otherwise as directed by us.
- 3.2 You must commence the Supply on the date notified by us to you or as otherwise agreed between the parties for the commencement of the Supply and complete the Supply by the date stated in the Purchase Order or, if none is stated, the date agreed between the parties for the completion of the Supply. Time shall be of the essence.
- 3.3 You must take all reasonable steps to minimise or prevent any delay in the performance of the Supply. If you reasonably believe that the Supply will be delayed, you must promptly notify us of the particulars of the delay and the likely length of the delay.
- 3.4 If you fail to complete the Supply on time, you must pay us (as a debt due and immediately payable) liquidated damages at the rate stated in the Purchase Order or, if none is stated, as otherwise notified by us to you for every day until the Supply is completed or we terminate this Contract. Where no amount of liquidated damages is stated in the Purchase Order or has been otherwise notified by us, the rate of liquidated damages shall be those under any head or principal contract or other agreement to which the basis of the Supply attaches to.
- 3.5 We retain our right to common law damages for any delay arising out of your failure to perform the Supply, including if liquidated damages are unenforceable for any reason.

4. PERSONNEL

- 4.1 You must:
 - (a) engage and pay all costs and expenses for personnel required to enable you to provide the Supply;
 - (b) ensure and warrant that you and your personnel have the skill, ability, experience and equipment to perform the Supply, and that all personnel are appropriately trained, licensed, accredited and experienced and supervised by a person who has the requisite experience and qualifications to undertake that supervision; and
 - (c) comply with all applicable laws, regulations, standards, requirements of any authority and any agreements relating to the engagement of your personnel.
- 4.2 If directed by us, you must ensure that your personnel participate in any induction training at the site at which the Supply is to be performed or an alternative site communicated by us to you (Site).
- 4.3 If the behaviour of any of your personnel results in or contributes to any non-compliance with this Contract or is not otherwise acceptable to us, we may give you written notice to remove them from the Site and you must ensure that any such personnel ceases to undertake any work in connection with the Supply or any other services for us in future. Any costs associated with your compliance under this clause 4 shall be borne by you.

5. COMPLIANCE

- 5.1 At all times during the performance of the Supply, you must comply, and must ensure that your employees, contractors and agents comply with, and do not place us in breach of any applicable legislation including legislation relating to occupational health and safety, environment protection, dangerous goods, building safety and electrical safety and any regulations made under such legislation or requirements of any authority.
- 5.2 You must comply with and ensure that your employees, contractors and agents comply with any directions from us or our agents, employees or subcontractors in relation to such legislation, together with any directions on safety or notices issued by any relevant authority, or any head or principal contractor.

6. PAYMENT

- 6.1 The purchase price of the Supply is set out in the Purchase Order and, unless otherwise stated in the Purchase Order, will not be subject to adjustment for rise and fall, exchange rate variations or any other variations in cost.
- 6.2 In consideration for the performance of the Supply made under this Contract and provided you have complied with your obligations under this Contract, including clauses 5 and 6, we agree to pay you the purchase price indicated in the Purchase Order.
- 6.3 It is a condition precedent to payment that the Supply is covered by a Purchase Order issued by us and your invoice references a valid Purchase Order number.
- 6.4 We will pay you the undisputed amount of any payment claim (less any amount otherwise due to us by way of set off) within 45 days from the end of the month in which a valid tax invoice was received unless a different payment period is specified on the Purchase Order or otherwise agreed by us in writing. If the amount we pay you differs from the amount that you have claimed, we will provide you with a payment schedule outlining the reasons for that difference and how the sum being paid by us has been calculated within 10 business days of receiving your claim. If a payment schedule contains any error or miscalculation, you agree that we are entitled to amend and reissue that payment schedule.
- 6.5 If you fail to issue an invoice within the time stipulated in clause 6.4 and subsequently fail to issue an invoice in respect of the same supply within a further 6 months, you shall be time-barred from claiming payment from us.
- 6.6 The purchase price excludes Goods and Services Tax (GST) unless otherwise stated. If GST is payable for the Supply, we will pay you the amount due for GST in addition to the price.
- 6.7 We may set-off and deduct from any amount payable to you the amount of any claim that we may have against you or any sum which we assert is or may become payable by you, whether under this Contract or otherwise.

7. DELIVERY OF GOODS

- 7.1 All goods delivered as part of the Supply (Goods) must be appropriately packaged and labelled and accompanied by a delivery slip. We are not required to pay for the Goods unless a delivery slip is signed by us.
- 7.2 We may inspect the Goods after delivery and reject any Goods which we consider to have any defect or are in breach of any warranties contained in or referred to in these terms and conditions, or otherwise fail to meet any requirements of this Contract. The provisions of clause 13 will then apply. The acceptance or rejection of any Goods delivered by you will not relieve any obligation to indemnify us for any defect, error or omission in the Goods supplied in accordance with this Contract.
- 7.3 Any goods delivered must be accompanied by any necessary instructions and technical documentation, including operating and service manuals.
- 7.4 If any Goods benefit from any third-party guarantee or warranty, you must assign or transfer it to us or if it cannot be assigned or transferred, you must hold the benefit of the guarantee or warranty as trustee for us and on our behalf.

8. DEFECTS AND WARRANTY

- 8.1 In the execution and provision of the Supply, including any manufactured, designed or provided Goods, you warrant to us that:
 - (a) any materials used are of merchantable quality, new and manufactured in a good workmanlike manner in accordance with any specification;
 - (b) such Goods will conform to its description, function, output or operation;
 - (c) such Goods are free from liens, charges, encumbrances or other defects in title;
 - (d) the Supply complies with all applicable laws, regulations, standards and requirements of any authority;
 - (e) the Supply is free from defects in design, material and quality and fit for the intended purpose to meet any required output, function or operation; and
 - (f) you have made independent assessments of any specifications, drawings or designs provided to you by us or any third party related or unrelated to us in relation to the Supply.
- 8.2 No reliance on any information, representation, document, procedure or other such information provided to you, written, verbal or otherwise, shall reduce your liability to us for the failure or defect of any Goods, equipment or product in connection with the Supply to perform or meet the function or output required.
- 8.3 The warranties required of you under clause 8 are in addition to any statutory warranties applying to the Supply or Goods.

9. TITLE AND RISK

- 9.1 The legal title in any Goods passes to us on the earlier of payment of the purchase price or incorporation of the Goods into any other works. Risk of damage in the Goods passes to us when we have inspected and accepted them at the delivery point.

10. INTELLECTUAL PROPERTY

- 10.1 You agree that all intellectual property rights in any technology, work, drawings, designs, reports or documents created by you in connection with the Supply (Supply IP) vests in us from the time of creation.
- 10.2 We agree to provide you with a non-exclusive, non-transferable, royalty free, revocable license to all intellectual property owned by us (including the Supply IP) as is required by you to provide the Supply.
- 10.3 In performing the Supply, you must not infringe the intellectual property rights of any third party for which you do not have a valid license.
- 10.4 You warrant that you have all intellectual property rights necessary to perform the supply and agree to indemnify us for any breach under any law or claim by a third party relating to intellectual property rights.

11. LIABILITY

- 11.1 You are liable for, and indemnify and must keep us indemnified from and against all losses, liabilities or claims (including legal expenses in consequence) arising out of or in connection with:
 - (a) loss of, including loss of use of or damage to, our property;

- (b) any claims by any person against us in respect of personal injury or death, loss of or damage to any property, or infringement of third-party intellectual property rights;
- (c) the performance or non-performance of any Goods, obligations or services required of you under the Supply;
- (d) a breach by you of this Contract; or
- (e) otherwise due to your acts, errors or omissions, including your negligence.
- 11.2 Your liability under this clause will be reduced proportionately to the extent that we caused or contributed to the claim, loss, damage or injury due to our willful negligence.
- 11.3 Our maximum liability to you for all losses arising in connection with this Contract (other than the purchase price) will not exceed 10% of the total purchase price stated in the Purchase Order.
- 11.4 We will not be liable to you for loss of profit, loss of business opportunity, loss of revenue, loss of reputation and goodwill, loss of contract, loss or corruption of data, loss of anticipated savings or any other loss that is indirect or consequential.

12. INSURANCE

- 12.1 Prior to carrying out the Supply you must take out and maintain the following insurance policies on terms and conditions appropriate to cover your obligations under this Contract:
 - (a) Workers Compensation in the State or Territory in which the Supply is to occur;
 - (b) Public and Products Liability for a minimum of \$10 million per occurrence (aggregated for Products Liability);
 - (c) Professional Indemnity with a minimum limit of \$5 million per claim and in the aggregate; and
 - (d) any other policy required by law to complete the Supply or which you deem necessary to cover your obligations or which we deem necessary to cover your obligations under this Contract.
- 12.2 The policies referred to in this clause 12 must:
 - (a) be in your name and note our interests (other than professional indemnity insurance or where precluded at law);
 - (b) contain a waiver of subrogation clause whereby the insurer waives any right to claim against us notwithstanding any contribution by us to the incident the subject of a claim; and
 - (c) be with a reputable insurer and otherwise on terms acceptable to us.
- 12.3 Prior to performing the Supply you must provide us with a certificate of currency evidencing that the insurance cover referred to in clause 12.1 has been effected.
- 12.4 The maintenance or holding, including any approval or non-approval of any insurance policy shall not limit any obligation required by you to indemnify us for the Supply.

13. DEFECTS RECTIFICATION

- 13.1 Upon our request, you must correct any defect in the Supply at your own cost.
- 13.2 If you do not correct the defect within a reasonable time, then we may:
 - (a) correct the defect and you will be liable to reimburse us for the costs we incur;
 - (b) withhold any payment that may be or becomes due to you until you have corrected the defect;
 - (c) reject the part of the Supply containing the defect which has not been corrected and reduce the price by the amount reflecting the losses we have suffered as a result of the defect.
- 13.3 If you become aware of any defect prior to or during the Supply, you must immediately notify us. We may take action in accordance clause 13.2 or provide such other direction to you to rectify such defect. Failure to notify shall be constituted as a breach by you of this Contract.
- 13.4 This clause survives termination or expiry of this Contract.

14. SECURITY

- 14.1 You must provide us with the amount and form of security indicated in the Purchase Order or, if none is stated, as otherwise notified by us to you. We may have recourse to the Security whenever you owe us money under this Contract or any other agreement.

15. VARIATIONS

- 15.1 We may direct a variation to the Supply, and you must carry out any such variation as directed by us.
- 15.2 The price for any variations should be agreed between the parties. In the absence of such agreement, we will determine the value of any variation to the Supply using reasonable rates or prices.
- 15.3 You must not vary the Supply under this Contract, except as directed and approved by us in writing. You waive and are barred from any claim for payment if you perform a variation that has not been agreed to by us in writing, even if we benefit from the variation and know it is being performed.

16. TERMINATION AND SUSPENSION

- 16.1 We may terminate the Contract at will by giving you written notice. We will pay you for any Supply which you have completed but for which we have not yet paid and legal title to the Supply or Goods shall pass to us upon payment. We will also pay for your reasonable costs of removal from Site of your workers, tools, temporary buildings, and materials. You will repay to us any amount paid in advance for any Supply not completed or any Supply made but which does not comply with the Contract. We will not be liable to you for any loss or cost you incur as a result of such termination.
- 16.2 We may terminate this Contract immediately by giving written notice to you if you commit a breach of this Contract which is:
 - (a) capable of rectification but which is not rectified to our satisfaction within 10 days after notice in writing has been given to you requiring such breach to be remedied; or
 - (b) not capable of rectification.
- 16.3 If this Contract is terminated pursuant to clause 16.2, we will:
 - (a) be entitled to take possession of and use, or require you to remove from the Site, your materials, equipment, tools, and other things intended for the Supply; and
 - (b) not be obliged to make any further payments to you, and the parties' rights and liabilities shall be the same as they would have been at common law if you had repudiated this Contract and we had elected to treat this Contract as at an end and recover damages.
- 16.4 We may terminate this Contract immediately by giving written notice if you become insolvent or bankrupt.
- 16.5 We may direct you to suspend the carrying out the Supply for any period of time and you must immediately comply at your own cost. We may direct you to re-commence the Supply at any time after any suspension and you must immediately comply.
- 16.6 Termination of this Contract will not affect any right, power, remedy, obligation, duty or liability of any party under this Contract which has accrued to the date of termination.

17. DISPUTES

- 17.1 If a dispute arises between the parties in relation to a Purchase Order or this Contract, then either party may give the other a written notice of dispute (Notice of Dispute) identifying and providing details of the dispute.
- 17.2 Within 10 business days after receiving the Notice of Dispute, the representatives of the parties must confer at least once to resolve the dispute or agree on methods of doing so.
- 17.3 If the dispute has not been resolved within 20 business days of a party receiving a Notice of Dispute, either party may refer the dispute to arbitration or litigation.
- 17.4 If referred to arbitration, the arbitration shall be conducted in accordance with, and subject to, the Resolution Institute Arbitration Rules. Unless the parties agree upon an arbitrator, either party may request a nomination from the Chair of the Resolution Institute.
- 17.5 Notwithstanding the existence of a dispute, the parties shall continue to perform this Contract.
18. **GENERAL**
- 18.1 Nothing in this Contract creates or implies an obligation of exclusivity on either party.
- 18.2 All references to "you" in this Contract means the entity or person described as the Supplier in the Purchase Order and includes anyone under your direction including your employees, agents, contractors, consultants or agents undertaking the Supply or attending the Site.
- 18.3 All references to "us" under this Contract means the legal entity (and using the trading name) that issued and is named in the Purchase Order and the benefit (but not the burden) of this Contract extends to include any related body corporate, parent, directors, officers, employees, agents or other such affiliates of that entity who maintain an interest in this Contract.
- 18.4 All references to "authority" under this Contract includes every minister, government authority, regional or territorial authority or other statutory or regulatory authority.
- 18.5 You must maintain strict confidentiality about this Contract and may only use and disclose to employees who have a need to know, any documents, know-how and confidential information of or about us of which you become aware or generate in connection with performing the Supply. This clause survives termination or expiry of this Contract.
- 18.6 Unless we give you prior written consent, you must not make any public statements or advertisements concerning this Contract, us or any head or principal contractor or other agreement to which the basis of this Supply attached to. This clause survives termination or expiry of this Contract.
- 18.7 This Contract does not create a relationship of employment, agency or partnership between the parties.
- 18.8 We may but you must not (without our prior written consent which can be withheld at our discretion) assign, novate or otherwise transfer any rights and obligations under this Contract.
- 18.9 This Contract may not be amended, supplemented or varied other than in writing signed by both parties.
- 18.10 Any notice required to be given under this Contract must be in writing.
- 18.11 No waiver by us of any breach of this Contract by you will be considered as a waiver of any subsequent breach of the same or any other provision.
- 18.12 You are required to obtain and comply with the SRG Global Code of Conduct, which is available at <https://www.srgglobal.com.au/wp-content/uploads/2020/05/Code-of-Conduct.pdf>
- 18.13 This Contract is governed by and to be construed in accordance with the laws of the State or Territory where the Supply is to be made or delivered.
- 18.14 All obligations to indemnify survive termination of this Contract and are separate and continuing obligations.
- 18.15 You bear all risks and loss you incur in performing the Supply except to the extent that this Contract expressly imposes that risk or loss on us.
- 18.16 Where we "may" do or not do something, or otherwise have a discretion, the discretion is absolute and is not required to be exercised for the benefit of, or having regard to, you, and may be given with conditions.
- 18.17 If requested by us, you must provide us with all reasonable access during the Supply, and for a period of seven (7) years after completion of the Supply, to all books, records, systems, procedures and other documents relating to this Contract. This clause survives the termination or expiry of this Contract.