

## PURCHASE ORDER TERMS AND CONDITIONS

### 1. DEFINITIONS

Unless the context otherwise requires, in these Terms and Conditions and the Purchase Order, the following terms have the meanings set out below:

**Agreement** means the agreement between the Company and the Contractor comprising:

- (a) these Terms and Conditions;
- (b) the Purchase Order to which these Terms and Conditions apply; and
- (c) any attachments, schedules or annexures referred to in the Purchase Order or Terms and Conditions.

**Business Day** means a day on which banks are open for general banking business in Perth, Western Australia.

**Commencement Date** means the date specified on the Purchase Order.

**Company** means Morella Corporation Limited ACN 093 391 774 located at LSuite 5, 680 Murray Street, West Perth WA 6005.

**Completion** has the meaning given to that term in clause 12 of these Terms and Conditions.

**Contractor** means the contractor, consultant, supplier or trading entity specified in the Purchase Order.

**Confidential Information** means the terms of the Agreement and any information concerning the business, operations, finances, plans or customers of the Company which is disclosed to or acquired by the Contractor, but does not include information which:

- (a) is or becomes public knowledge other than through a breach of the Agreement; or
- (b) has been independently developed or acquired by the Contractor.

**Date/s for Delivery** means the latest acceptable date(s) for the delivery of the Goods to the Delivery Point, being the dates detailed in the Purchase Order to which these Terms and Conditions are attached.

**Date of Completion** has the meaning given to that term in clause 12.

**Date of Delivery** has the meaning given to that term in clause 11.

**Delivery Point** means the point or place specified in the Purchase Order.

**Goods** means any goods to be supplied by the Contractor pursuant to the Agreement and includes any goods used during the performance of any Services.

**GST** has the meaning given in the GST Act - *A New Tax System (Goods and Services Tax) Act 1999*.

**IP Rights** means (in the context of a party) 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.

**Personnel** means, in relation to a party, any of its officers, employees, sub-contractors (including sub-contractors' Personnel), agents and representatives involved either directly or indirectly in the provision of Goods or the performance of Services.

**Price** means the price specified in the Purchase Order as the 'Unit Price' or 'Sub-total (excluding GST)', as the context requires.

**Purchase Order** means the purchase order document issued by the Company.

**Services** means any services to be performed by the Contractor pursuant to the Agreement.

**Site** means any location that the Company makes available for the purpose of performing obligations under the Agreement.

**Standards Australia** means the quality assurance standards as set by Standards Australia Limited (ABN 85 087 326 690).

**Supply** has the meaning given in the GST Act.

**Tax Invoice** has the same meaning as in the GST Act.

**Term** means the period from the Commencement Date to the Date/s for Completion.

**Variation** has the meaning given to that term in clause 18.

**Warranty Period** has the meaning given to that term in clause 15.

### 2. INTERPRETATION

Unless the context otherwise requires:

- (a) a document (including these Terms and Conditions and the Purchase Order) includes any variation or replacement of it;
- (b) a reference to 'including', 'includes' or 'include' must be read as if it is followed by 'without limitation';
- (c) headings are for convenience only and do not affect interpretation;
- (d) a reference to a party includes that party's executors, administrators, substitutes, successors and agents;

- (e) the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any government body;
- (f) a reference to a clause is to a clause of these Terms and Conditions;
- (g) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (h) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (i) a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (j) all monetary amounts are in Australian dollars, unless agreed in writing by the parties; and
- (k) no rule of construction applies to the disadvantage of the party on the basis that the party put forward the Agreement or any part of it.

### **3. CONTRACT AND PRECEDENCE**

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- (a) In the absence of written confirmation, the delivery of any Goods or performance of any Services will constitute acceptance by the Contractor of all Terms and Conditions in the Agreement.
- (b) If there is any conflict or inconsistency between the documents constituting the Agreement, unless otherwise provided, to the extent of any inconsistency, the Purchase Order shall prevail over these Terms and Conditions.
- (c) Any amendment, addition or deletion as defined in Schedule 1 takes precedence over the applicable clauses of the standard Terms and Conditions.

### **4. NO MINIMUM PURCHASE OR EXCLUSIVITY**

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- (a) Nothing in the Agreement obliges the Company to request or acquire any minimum supply of Goods or performance of Services from the Contractor.
- (b) The Agreement is not evidence of, nor does it create, an exclusive relationship between the Company and the Contractor in respect of the Goods or Services (or any aspect of it).

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

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- (a) The Contractor must supply the Goods and provide the Services, as the circumstances require, to the Company in accordance with the Agreement.
- (b) In relation to the provision of Goods, the Contractor warrants that it has good and marketable title to the Goods.

### **6. TIME FOR PERFORMANCE**

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The parties agree that time is of the essence in the delivery of the Goods and the performance of the Services.

### **7. CONTRACTOR'S OBLIGATIONS ON DELIVERY OR PERFORMANCE**

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The Contractor must, in delivering the Goods or performing the Services:

- (a) in relation to the performance of any Services:
  - (i) the Contractor and its Personnel will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of comparable work;
  - (ii) any equipment used on-Site by the Contractor and its Personnel will be in safe working condition, will comply with all legislation which is applicable to such equipment and will be operated by suitably qualified and competent Personnel, to the satisfaction of the Company;
  - (iii) the Company may object to any of the Contractor's Personnel working on-Site who, in the reasonable opinion of the Company, is lacking in appropriate skills or qualifications, engages in misconduct or is incompetent or negligent. If the Company objects to any of the Contractor's Personnel, the Contractor must:
    - (A) remove from Site any Personnel that the Company objects to;
    - (B) not re-employ that person in connection with the Services without the prior written consent of the Company; and
    - (C) at its cost replace any removed Personnel with suitably qualified, competent and approved Personnel,
- (b) not interfere with the Company's activities;
- (c) be aware of and comply with:
  - (i) all applicable industrial relations laws and industrial awards;
  - (ii) the Company's HSE requirements and any other standards or procedures notified to the Contractor by the Company from time to time;
  - (iii) all relevant health, safety and environmental laws in force from time to time, including, but not limited to, laws relating to the packaging and transport of dangerous, hazardous or toxic goods; and

- (iv) all lawful directions and orders given by the Company or its Personnel;
- (d) ensure that the Contractor's Personnel entering the Site perform in a safe manner and are properly qualified for, and skilled in, the performance of their tasks and are of such character as not to prejudice:
  - (i) safe working practices;
  - (ii) care of property; and
  - (iii) continuity of work;
- (e) ensure that each of the Contractor's Personnel attend all relevant induction courses required by the Company;
- (f) leave the Site secure, clean, orderly and fit for immediate use having regard to the condition of the Site immediately prior to the delivery of Goods or the performance of Services;
- (g) cooperate with any other contractor engaged by the Company;
- (h) access the Site only through access points designated by the Company;
- (i) not interfere with the occupation of land adjacent to the Site, or access to, from or within that land by third parties;
- (j) not bring onto or use on the Site any dangerous substances or carry out any dangerous activities on Site, without first obtaining the Company's consent;
- (k) advise the Company of any special equipment the Contractor will use on the Site, such as cutting or drilling equipment;
- (l) take all proper precautions when using dangerous substances or special equipment or carrying out dangerous activities;
- (m) use its best endeavours to minimise nuisance or disturbance to any user of the Site or any neighbouring site;
- (n) coordinate the timing of its activities with the Company; and
- (o) comply with all directions given by the Company relating to the Site or activities carried out on the Site.

Nothing in this clause 7 limits or removes any obligation or duty imposed on the Contractor or any of its Personnel (whether under the Agreement or otherwise) to secure or have regard to the health and safety of Contractor or Company Personnel.

#### **8. CONDITIONS AS TO QUALITY OF SERVICES**

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The Contractor warrants that:

- (a) the Services are as described in the Purchase Order and in accordance with these Terms and Conditions;
- (b) if the Contractor provided the Company with a demonstration of the Services before the Company issued the relevant Purchase Order, the Services correspond in nature and quality with the Services demonstrated;
- (c) if the Contractor showed the Company a result achieved by the Services before the Company issued the relevant Purchase Order, the Services correspond in nature and quality with the services that achieved that result;
- (d) the Services are performed by appropriately qualified and trained Contractor Personnel, with due care and skill; and
- (e) the Services are fit for the purposes for which those type of Services are commonly bought and for any other purpose described in the Agreement.

#### **9. CONDITIONS AS TO QUALITY OF GOODS**

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The Contractor warrants that:

- (a) the Goods are as described in the Purchase Order and in accordance with these Terms and Conditions;
- (b) if the Contractor gave the Company a sample of the Goods before the Company issued the relevant Purchase Order, the Goods correspond to the sample;
- (c) the Goods comply with any relevant standard of Standards Australia and any standards specified in the Agreement;
- (d) the Goods are fit for the purpose for which Goods of the same kind are commonly supplied and for any other purpose described in the Agreement and will be free from defects in design, materials and workmanship and suitable for the relevant purpose of those Goods;
- (e) the Goods are new and of merchantable quality;
- (f) the Goods will not infringe upon, or contribute to the infringement of, any IP Rights; and
- (g) the Company has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Contractor must pursue any manufacturer's warranties on the Company's behalf if the Company requests).

#### **10. PACKAGING OF GOODS**

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The Contractor must:

- (a) suitably pack the Goods to avoid damage during loading, transit, delivery, unloading or storage having regard to the transport and climatic conditions through which the Goods will pass during transport;
- (b) pack and transport the Goods in accordance with applicable regulations and industry codes;

- (c) clearly mark all packages of the Goods for delivery and the delivery documents for the Goods with the Purchase Order number, part number / specification, a description of the Goods and any certificates required (including hazardous and/or dangerous goods), ensuring that the delivery documents accompany the Goods to the Delivery Point;
- (d) include a packing list in each package of Goods for delivery; and
- (e) assist the Company in obtaining documents and other information required for the resolution of any transport dispute.

## 11. DELIVERY

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- (a) The Contractor must deliver the Goods to the Delivery Point by the Date/Dates for Delivery (as applicable).
- (b) If it appears to the Contractor that all or any of the Goods will not be ready and available for delivery to the Company at the Delivery Point by the Date for Delivery of the relevant Goods, the Contractor must immediately notify the Company stating the anticipated delay, the reason for the delay and the Contractor's revised delivery time. On receipt of such notice (or in the absence of such notice, if the Goods are not delivered by the Date for Delivery):
  - (i) the Company may purchase alternative goods from another source, in which case the Company will not be responsible to the Contractor for the cost for the Goods and may claim from the Contractor the amount of any additional costs the Company incurs as a result; or
  - (ii) the Company may agree to a new Date/s for Delivery, by issuing a written notice to the Contractor; or
  - (iii) if, in the reasonable opinion of the Company, the delay has been caused by an act or omission of the Company, then the Company shall extend the Date for Delivery, having regard to the delay, and shall advise the Contractor of the revised Date for Delivery.
- (c) The Contractor shall, at the time of delivery, obtain from the Company, or the Company's authorised agent, or the carrier who will procure delivery on behalf of the Company, a written acknowledgement of delivery. Acknowledgement will normally be in the form of a signed delivery docket which shall state the date (**Date of Delivery**) and time at which the Company, or the Company's authorised agent, takes delivery of the Goods.
- (d) Signed delivery dockets shall be evidence of delivery only and shall not mean acceptance of the Goods by the Company.
- (e) If the Contractor fails to comply with clause 10 and the Goods are defective upon delivery or become defective as a result of such failure, then the Company may:
  - (i) purchase alternative goods from another source, in which case the Company will not be responsible to the Contractor for the cost for the Goods and may claim from the Contractor the amount of any additional costs the Company incurs as a result; or
  - (ii) agree to a new Date/s for Delivery, by issuing a written notice to the Contractor.

## 12. COMPLETION

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Where the Purchase Order specifies a Date for Completion:

- (a) "Completion" shall mean:
  - (i) the Services are, in the Company's opinion, completed without defects, in accordance with the Agreement;
  - (ii) there is no legal or other impediment to prevent the Services being used for their intended purpose; and
  - (iii) the Contractor has provided to the Company all documents and other information required to be provided by the Purchase Order or reasonably requested by the Company;
- (b) When the Contractor considers the Services have reached Completion, it shall notify the Company. The Company will assess whether Completion has been achieved and either:
  - (i) certify the date on which Completion was achieved (**Date of Completion**); or
  - (ii) advise the Contractor of what further work is required to achieve Completion.
- (c) If the Contractor is delayed in reaching Completion by the Date for Completion by any act of the Company, the Contractor shall notify the Company in writing of such delay within 7 days of the delay commencing. Subject to the Contractor providing notice within such period, the Company will make an assessment of the extent (if any) to which the Date for Completion has been affected and make a reasonable adjustment to the Date for Completion.

## 13. LABOUR PLANT AND EQUIPMENT

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- (a) Unless the Agreement provides otherwise, the Contractor must supply, at its own expense, all labour, plant, equipment, tools, appliances or other property and items required to fulfil its obligations under the Agreement.
- (b) Any plant, equipment, tools, appliances or other property and items that the Company provides to the Contractor to enable it to complete the Agreement remain the Company's property and must only be used for the purposes of fulfilling the Contractor's obligations under the Agreement.
- (c) The Contractor must keep the Company's property in good order and condition and will be required to make good or pay for any damages to the Company's plant and equipment caused by the Contractor's negligence.

#### 14. PLANS AND ACCESS TO SITE

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- (a) If Services are to be provided at the Site, the Contractor shall, within 7 days of any request by the Company, provide to the Company for the Company's approval:
  - (i) an environmental management plan;
  - (ii) a quality assurance plan;
  - (iii) a health and safety plan; and
  - (iv) and such other plans as the Company may require from time to time.
- (b) Subject to the Agreement, the Company will if required grant to the Contractor access to the Site on and from the Commencement Date and the Contractor must give the Company at least 7 days' notice before commencing the Services on the Site.
- (c) Prior to commencement of the Services, the Contractor must notify the Company of its normal times and periods of work and must give the Company at least 24 hours' notice of any alteration in its working hours or periods of work.
- (d) The Contractor must at all times consult with the Company and obtain 7 days prior written approval for any action likely to interfere with the Company's operations on Site.
- (e) If the Contractor or its Personnel fail to comply with any of the requirements of clause 7 or this clause 14, then the Company may in its discretion deny access to the Site, for which any costs incurred by the Contractor (direct or indirect) are solely the Contractor's responsibility.
- (f) All site access and requests are to be coordinated through the Company's named point of contact.

#### 15. DEFECTS

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- (a) If the Goods are not in accordance with the Agreement, the Company may, at its discretion, reject the Goods, or require the Contractor to repair the Goods at no additional cost to the Company.
- (b) In addition to the Company's rights under clauses 11(e) or 15(a) to reject the Goods, if the Goods are found to be defective for any reason within the warranty period, the Company will be entitled to return the defective Goods to the Contractor and at the Contractor's expense, the Contractor will (at the Company's option) either replace or repair the Goods or reimburse to the Company the cost of replacing or repairing the Goods.
- (c) If the Services are not in accordance with the Agreement, the Company may, at its discretion:
  - (i) require the Contractor to re-perform the Services at no additional cost to the Company; or
  - (ii) arrange for another person to carry out those Services, the cost of which will be a debt due by the Contractor to the Company.
- (d) In addition to the Company's rights under clause 15(c), if there is found to be a defect, error or omission in or to the Services for any reason for a period of 12 months after the Date of Completion, the Contractor must promptly upon receipt of an instruction from the Company rectify such defect, error or omission at its own cost.

#### 16. PRICE

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Unless the Purchase Order provides otherwise, the Price is inclusive of:

- (a) packaging, packing, insurance and delivery to the Delivery Point of the Goods in accordance with the Agreement;
- (b) any miscellaneous services of a kind which are commonly provided with the Goods and any miscellaneous items of a kind which are commonly used or supplied in conjunction with the Services;
- (c) the Contractor's compliance with its obligations under the Agreement; and
- (d) all applicable duty and taxes.

#### 17. INVOICING

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- (a) The Contractor must, as a precondition for payment, submit within 30 days of delivery of the Goods or performance of the Services:
  - (i) a valid Tax Invoice, which contains sufficient information for the Company to determine if the Goods and Services have been provided in accordance with the Agreement; and
  - (ii) (if applicable) copies of Tax Invoices issued by third parties, which contain sufficient information for the Company to determine if the Goods and Services have been provided.
- (b) Tax Invoices must be in a form acceptable to the Company and must contain the following information:
  - (i) the Purchase Order number to which the invoice relates;
  - (ii) the dates to which the invoice relates;
  - (iii) a brief description of the Goods and/or Services provided in the period covered by the invoice;

- (iv) any further information stipulated in the GST Act or by the Company, so that the Company will receive the benefit of any tax input credits in relation to the Goods and/or Services; and
- (v) be sent by email to [accounts@morellacorp.com](mailto:accounts@morellacorp.com).
- (c) If the Company disputes any item or items in the Tax Invoice, the Company shall:
  - (i) notify the Contractor within 45 days of receipt of the invoice specifying the reasons for the dispute;
  - (ii) withhold payment of the disputed item or items until settlement of the dispute; and
  - (iii) pay the undisputed portion of the Tax Invoice in accordance with clause 18.
- (d) For a period of 12 months after payment of a Tax Invoice pursuant to the Agreement, including where the Company has withheld payment in accordance with paragraph (c), the Company shall have the right to query and/or dispute any Tax Invoice presented by the Contractor and to require correction of any error notwithstanding that the Tax Invoice may relate to a payment which the Company has already made.
- (e) Where the Price is calculated on a 'cost plus', 'schedule of rates' or 'per day' basis, the Company may audit the Contractor's records to determine if the Price has been correctly calculated (**Audit Information**). This right continues for 12 months after submission of any Tax Invoice. In such circumstances, the Contractor agrees to promptly provide the Audit Information as reasonably required by the Company to undertake the audit, and in any event within 7 days of the date of written request by the Company for the Audit Information.

## 18. PAYMENT

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Unless the Agreement otherwise provides:

- (a) the Contractor will be paid in either one lump sum, or as per the agreed milestones, on completion of its obligations under the Agreement;
- (b) subject to clause 17(c) and paragraph (a) of this clause 18, the Company will pay the Contractor within 30 days of the end of the month in which the Contractor submits a valid Tax Invoice for goods/services delivered and, in the reasonable opinion of the Company, sufficient supporting information; and
- (c) without limiting the Contractor's rights under any other provision of the Agreement or generally, all monies due to the Company by the Contractor due to costs, charges, damages or expenses which the Company may have incurred or paid and for which the Contractor is liable, may be deducted by the Company from any amount due under the Agreement to the Contractor.

## 19. VARIATION

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- (a) The Company may at any time vary any aspect of the Agreement by written notice to the Contractor, on and from the date specified in the notice (**Variation**).
- (b) To the extent that the Variation is reasonable, the Contractor must comply with the Variation and the Variation will be binding on the Parties as if it was included in the Agreement.
- (c) Within 7 days of receipt of a notice issued pursuant to paragraph (a), the Contractor must advise the Company of any change in Price arising from the Variation, which change must be based on agreed rates (if any) or reasonable rates and prices in the market at that time.

## 20. CANCELLATION OF THE AGREEMENT

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The Company may at any time and for any reason cancel the whole or any part of the Agreement by written notice to the Contractor without being required to give reasons for the cancellation, but:

- (a) the Company must pay for any part of the Goods delivered or Services performed prior to the cancellation;
- (b) if the Contractor has shipped any Goods before cancellation but the Goods have not been delivered to the Delivery Point at the time of cancellation, the Company must either:
  - (i) accept those Goods when delivered and pay for them; or
  - (ii) return the Goods to the Contractor at the Company's expense;
- (c) if the Contractor has not shipped the Goods at the time of cancellation, on receiving the written notice of cancellation the Contractor must stop manufacture of the Goods, and do everything possible to mitigate any costs incurred in relation to the Goods; and
- (d) if clause 20(b)(ii) or 20(c) applies:
  - (i) if the Goods are not required to be manufactured or fabricated by the Contractor specifically for the Company, the Company will have no obligation to pay for the Goods which have not been delivered to the Company at the time of cancellation;
  - (ii) to the extent the Goods were manufactured or fabricated in accordance with Company specifications, the Company must reimburse the Contractor in respect of expenditure reasonably incurred by the Contractor

prior to the date of the cancellation which is directly attributable to the placing of the Purchase Order and which the Contractor is not able to recoup in some other way; and

- (iii) the Contractor is not entitled to be paid for those Goods or Services, or to any compensation for the cancellation other than as specified in paragraph (d)(ii).

## **21. TITLE AND RISK IN GOODS**

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- (a) The Company does not have title to a Good until the Company pays for that Good.
- (b) The Company does not bear risk in any Good until the Company takes delivery of that Good at the Delivery Point in accordance with clause 11(c).
- (c) The Contractor warrants that full, clear and unrestricted title will be given to the Company in all Goods supplied by the Contractor, free and clear of any liens, charges, and encumbrances or security interests of any kind.
- (d) If the Company makes payment to the Contractor in respect of a Good prior to the Company receiving physical possession of that Good, the Contractor covenants to do all things necessary to assist the Company in registering any security interest the Company may have in relation to that Good pursuant to the Personal Property Securities Act 2009.

## **22. INSURANCE**

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- (a) The Contractor must procure and maintain the following minimum insurances with a reputable insurer and on terms approved by the Company, which approval must not be unreasonably withheld:
  - (i) public liability insurance for not less than A\$20,000,000 for any one occurrence for liability to any third party arising out of the performance of the Agreement (including the provision of Goods and Services) and which covers the Company as Principal, the Contractor, and the Contractor's Personnel;
  - (ii) professional indemnity insurance for not less than A\$10,000,000;
  - (iii) workers' compensation insurance as required by law;
  - (iv) insurance which covers the Goods for not less than the replacement value of the Goods, which insurance must be maintained up until the Goods are accepted by the Company at the Delivery Point; and
  - (v) any other insurances required by law or reasonably required by the Company.
- (b) Insurances required by paragraph(a)(i) must:
  - (i) name the Company as Principal;
  - (ii) include a cross liability clause in which the insurer accepts the term "insured" as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them; and
  - (iii) include a waiver of subrogation in which the insurer agrees to waive all rights of subrogation or action against the Principal.
- (c) Insurances required by paragraph(a)(iii) must contain:
  - (i) a principal's indemnity extension for both statutory liability and common law liability in favour of the Company and its respective officers and employees; and
  - (ii) a waiver of subrogation in favour of the Company and its respective officers and employees.
- (d) At the request of the Company, the Contractor must submit to the Company for review the policies and certificates of currency for the insurances required by the Agreement.

## **23. LIABILITY AND INDEMNITY**

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- (a) The Contractor is liable for and must indemnify and keep indemnified the Company and the Company's Personnel against any liability, loss (including economic loss), claim or proceedings whatsoever arising under any statute or at common law in respect of:
  - (i) damage to property, real or personal, including any infringement of third party IP Rights;
  - (ii) injury to persons, including injury resulting in death;
  - (iii) negligent or any wilful act or omission by the Contractor's Personnel;
  - (iv) defective Goods or Services or non-compliance with specified standards and/or relevant standards according to Standards Australia;
  - (v) payments due to manufacturers and suppliers; and
  - (vi) breach of occupational health and safety or environmental legislation,caused by the Services performed or Goods delivered under the Agreement except to the extent that such damage, injury, loss, claim, liability, or proceeding is due or contributed to by any wilful misconduct or negligence of the Company or of the Company's Personnel.

- (b) For the purpose of section 11 of the Property Law Act 1969 (WA), the Contractor intends to confer a benefit on each member of the Company's Personnel in each indemnity given by the Contractor in favour of the Company in the Agreement and the Company holds the benefit of each of those indemnities on trust for the benefit of each such member.
- (c) The provisions of Part 1F of the Civil Liability Act 2002 (WA) are excluded.
- (d) Each indemnity in the Agreement is a continuing obligation separate and independent from the Contractor's other obligations and survives termination of the Agreement.

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**24. INTELLECTUAL PROPERTY**

- (a) All IP Rights (present or future) created, discovered or in connection with the provision of Goods or Services under the Agreement will be vested in the Company and will be the Company's property as and when created.
- (b) The Contractor must, and must ensure that its Personnel, execute all documents and do all things required to give the Company full legal ownership and title to the IP rights described in paragraph (a) and to protect those rights.

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**25. CONFIDENTIALITY**

The Contractor must not, and must ensure that its Personnel do not, use or disclose Confidential Information other than:

- (a) as strictly necessary for the provision of the Goods and Services under the Agreement; or
- (b) as required by law (including disclosure to a recognised securities exchange), or where required for the making or defending of any claim pursuant to the Agreement, where such requirement has been notified to the Company.

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**26. NOTICES**

- (a) A notice, consent, approval or other communication under the Agreement is only effective if it is in writing, signed and either delivered personally to the addressee's address or sent to the addressee by mail or email. If it is personally delivered on a Business Day, it is taken to have been received on that Business Day, otherwise it is taken to have been received on the next Business Day. If it is sent by mail, it is taken to have been received five (5) Business Days after it is posted. If it is sent by email, it is taken to have been received when the sender successfully delivers the email to the addressee's mail server.
- (b) The parties' address and email addresses are those set out on the Purchase Order, or as otherwise notified.

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**27. GOODS AND SERVICES TAX**

- (a) Subject to clause 16, if GST is imposed on any Supply made under the Agreement by a party (**Contractor**) to another party (**Company**), then the Company must pay to the Contractor an amount equal to that GST in addition to any other amount payable or other consideration provided for the Supply.
- (b) The Company's obligation to pay an amount equal to the GST under paragraph (a) only applies if the Contractor has given the Company a Tax Invoice for the Supply that details the relevant amount in respect of which GST is payable and the amount of that GST.
- (c) If the amount paid by the Company under paragraph (a) differs from the amount of GST payable at law by the Contractor on the Supply, the amount paid by the Contractor to the Company will be adjusted accordingly.

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**28. ENTIRE AGREEMENT**

- (a) The Agreement constitutes the entire agreement between the parties and supersedes any prior understandings (whether oral or written) regarding the subject matter.
- (b) To the extent that the Contractor's terms and conditions are supplied with the Goods or Services (including as printed on consignment notes or other documents), those terms and conditions will have no legal effect and will not form part of the Agreement, even if any of the Company's Personnel sign those terms and conditions or annex those terms and conditions to the Agreement.

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**29. ASSIGNMENT**

- (a) The Contractor may not assign its rights or transfer its obligations under the Agreement without the prior written consent of the Company.
- (b) The Company may assign its rights or transfer its obligations under the Agreement without the prior written consent of the Contractor.

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**30. SUBCONTRACTING**

The Contractor must not subcontract the whole or any part of its obligations under the Agreement without the prior written approval of the Company.



**31. SEVERABILITY**

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The invalidity or enforceability of one or more of the provisions of the Agreement will not invalidate, or render unenforceable, the remaining provisions of the Agreement.

**32. RELATIONSHIP BETWEEN THE PARTIES**

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Nothing in the Agreement constitutes a joint venture, agency, partnership or other fiduciary relationship between the parties. At all times when performing its obligations under the Agreement, the Contractor is an independent contractor and not an employee or agent of the Company.

**33. COSTS**

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- (a) Each Party must bear its own costs arising out of the negotiation, preparation and execution of the Agreement, and except as expressly provided otherwise in the Agreement, any transaction contemplated by the Agreement.
  - (b) All duty (including fines and penalties) which may be payable in any relevant jurisdiction on or in connection with the Agreement or other document related to the Agreement will be borne by the Contractor.

**34. LAW AND JURISDICTION**

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The Agreement is governed by the laws of the State of Western Australia. Each party submits to the jurisdiction of the courts of the State of Western Australia and waives any right to claim that those courts are an inconvenient forum.

**35. WAIVER**

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No failure to exercise and no delay in exercising any right, power or remedy under the Agreement will operate as an election not to exercise that right, power or remedy. A single or partial exercise of any right, power or remedy will not preclude any other or further exercise of that right, power or remedy.

**36. SECURITY AGAINST THE COMPANY**

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The Company does not consent to the granting of any charge, caveat or lien over the real property of the Company. Nothing in this Agreement shall be construed as providing the Contractor with a right to place a charge, caveat or lien over the Company's real property as security for the payment of the Company's obligations to the Contractor.

**37. PERSONAL GUARANTEES**

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The Company does not consent to the provision of personal guarantees for the payment of amounts due to the Contractor. Nothing in this Agreement shall be construed as providing the Contractor with a right to seek a personal payment guarantee from any Director, Delegate or employee of the Company.

**38. AMENDMENT, ADDITION, DELETION**

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Any Amendment, Addition and/or Deletion to these Terms and Conditions are defined in Schedule 1. If Schedule 1 is not enclosed then the Standard Terms and Conditions as defined in this document apply.

**ENCLOSURES:**

Schedule 1 – Amendment, Addition, Deletion (AS APPLICABLE)

**PURCHASE ORDER TERMS AND CONDITIONS ENCLOSURE**

**SCHEDULE 1 – AMENDMENT, ADDITION, DELETION**

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Insert details as applicable.