

1. Definitions

In these Conditions:

"Authority" means a governmental or other authority having jurisdiction over the Services or the Goods;

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

Customer" means the entity named in the Order Form who requested the supply of Goods and/or Services / minor Works;"

Delivery Address" means the delivery address set out on the Order Form or if not set out, notified to the Supplier by the Customer;"

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

"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);

"Liability" means any debt or other monetary liability or penalty, fine or payment or any damages, loss, cost, charge, outgoing or expense of whatever description;

"Order" means the agreement created by the acceptance of the Order Form and these Conditions by the Supplier;

"Order Form" means the attached purchase order form;

"Personnel" means, in respect of a party, any of its employees, consultants, suppliers, subcontractors or agents,

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

"Property" means the property identified in the Order Form or as notified by the Customer to the Supplier including buildings and other improvements erected on the property area and adjacent areas required for access necessary for carrying out the Services or Works;

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

"Site" means the area of the Property identified by the Customer to the Supplier as the area where Services or Works are to be carried out;

"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;

"Tax Invoice" has the meaning defined in the GST Act; and

"Works" means the work to be undertaken and provided by the Supplier under this Order

2. Preliminary

2.1. Acceptance of an Order constitutes acceptance of these Conditions to the exclusion of any other terms. Therefore, unless otherwise specifically 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 14 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(e);
- (b) ensure that Goods delivered match the Goods ordered as to quality, quantity, specification and description;
- (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.

The Supplier agrees that time is of the essence in relation to the delivery of Goods.

3.2. The Supplier must ensure that the Goods:

- (a) are new and not second hand unless expressly stated to the contrary in the Order;
- (b) are free from all liens charges and encumbrances of any kind and are the property of the Supplier;
- (c) are constructed out of the best quality products available to the Supplier;
- (d) comply with:
 - (ii) the relevant standard of the Standards Association of Australia;
 - (iii) all Authority requirements;
 - (iv) any requirement of any other body or association establishing conditions of quality or merchantability in relation to the Goods; and
 - (v) are fit for purpose for which goods of the same kind are commonly supplied and any other purpose made known to the Supplier;

3.3. Where the provision of the Goods requires design, development or completion of the design of part of the works, installation, a performance specification or any combination of these, the Supplier must:

- (a) exercise skill, care and diligence to the standard expected of a specialist engineer, designer of goods or consultant as the case may be providing design services in Australia of a similar nature in respect of goods comparable to the Goods; and
- (b) ensure that the Goods, when manufactured, transported and supplied or installed are functional, fit for their intended purpose and comply with the Customer's needs and the intent of this Order.

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

3.5. Risk in the Goods remains with the Supplier until acceptance of the Goods at the Delivery Address, excluding any loss or damage to the Goods caused by the

Customer. The Customer will be deemed to have accepted the Goods if it does not reject the Goods under clause 3.7 within 7 days of delivery.

- 3.6. Title to the Goods free of encumbrances will pass to the Customer upon payment of the Price and any GST.
- 3.7. The Customer may reject the Goods by informing the Supplier within 7 days after delivery that the Goods do not comply with the Order or are otherwise defective.
- 3.8. The Customer will not and will not be required to pay for Goods that it rejects under clause 3.7. All expense and risk in rejected Goods remains at all times with the Supplier.
- 3.9. 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.
- 3.10. 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.
- 3.11. 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 and where relevantly the Works:

- (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;
 - (e) to the standard expected of a qualified, competent and experienced supplier;
 - (f) so the Services are reasonably fit for purpose; and
 - (g) 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 condition by the Supplier).
- 4.2. Where the Services are to be performed on the Customer's Site 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 Services provided do not comply with the Order, the Customer 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. Works

5.1. The Supplier must undertake any works required:

- (a) competently and safely;
- (b) in a proper and workmanlike manner, ensuring that the standard and quality of workmanship and materials to be incorporated in the works are at least of the standard and quality required by the Customer;
- (c) any material or standard or workmanship must be fit for its purpose and consistent with the nature and character of the part of the Works in which it is to be used;
- (d) promptly and diligently;
- (e) in compliance with all applicable safety regulations, ordinances, relevant laws, industry standards, and the relevant standard of Australian Standards; and
- (f) 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 condition by the Supplier).

5.2. Where the Works are to be performed on the Customer's Site 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.

5.3. At any time, if the Customer considers there is any defect in the works, it may request the Supplier to rectify the defective portion of the works and the Supplier must perform the rectification works at no extra charge to the Customer.

6. Warranties

6.1. The Supplier warrants to the Customer that it owns the Goods free of third party or other security interests or encumbrances, 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, as notified to the Supplier or as should have been reasonably contemplated by the Supplier in the circumstances;
- (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).
- 6.2. 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).
- 6.3. All warranties implied at law will apply to the Goods in addition to any warranty expressly set out in these Conditions or to any manufacturer's warranty, service guarantee of performance and in the event of any inconsistency between any implied warranty or express warranty or guarantee the most favourable to the Customer will prevail.
- 7. Payment terms and GST**
- 7.1. The amount payable for the Goods and/or Services, or the Works by the Customer will be the Price exclusive of GST, subject to clause 7.2. The Price is a fixed price and is not subject to any adjustment on account of cost of materials, delivery charges, rise or fall in labour rates or any other cause, unless otherwise agreed in writing between the parties. The Price includes the cost of all necessary packaging, freight, delivery charges, insurance and having any necessary import licences, customs duty and all other duties, taxes (other than GST), levies or other charges payable in relation to manufacture and supply of the Goods or Services.
- 7.2. 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.
- 7.3. Following receipt of a valid Tax Invoice under clause 7.4 and subject to satisfaction of clause 7.5, the Customer will pay the Supplier on the later of the date that is:
- (a) specified in the Order; or
 - (b) if no date is specified in the Order, 30 business days from the date the Tax Invoice is received; or
 - (c) the date that is 30 business days from which the Responsible Employee has certified the Goods supplied or the Services performed are satisfactory in accordance with clause 7.5.
- 7.4. 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.
- 7.5. Payment is subject to the Responsible Employee (acting reasonably) certifying that the Goods supplied or the Services performed comply with the Order.
- 7.6. The Supplier may not vary the price or scope of any Goods or Services without the prior written consent of the Customer.
- 8. Indemnities and Limitation of Liability**
- 8.1. The Supplier indemnifies the Customer against all Liability, claims, damages, suits, actions, losses, demands, actions, costs and expenses incurred (**Loss**) 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 to the extent caused by any act or omission of the Supplier in the supply of Goods and Services to the Customer; or
 - (c) any infringement of a third party's intellectual property rights by the Goods and/or Services,
- except to the extent that such Liability or Loss is caused or contributed to by a negligent or unlawful act or omission, or breach of the Order or these Terms, by the Customer.
- 8.2. Where the indemnity in clause 8.1 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.
- 8.3. 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 except 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.
- 8.4. If the Goods or any property of the Customer is damaged as a result of the act or omission of the Supplier or Suppliers Personnel, the Customer may, at its election:
- (a) require the Supplier to rectify and repair the Goods and the Customer's property 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 by others.
- 13.5. If the Works or any property of the Customer are damaged by the Supplier or Suppliers Personnel, the Customer may, at its election:
- (a) require the Supplier to rectify and repair the works and the Customer's property; or
 - (b) deduct from the Price the cost of having the works rectified by the Customers Personnel.
- 9. Confidentiality**
- 9.1. If in the performance of these Conditions or otherwise, a party (**Receiving Party**) obtains or becomes aware of any sensitive or confidential information relating to the other party (**Disclosing Party**) or its business, partners or customers (**Confidential Information**), the Receiving Party must not, without the Disclosing Party's prior written consent, disclose to any person the Confidential Information, except to those of its employees that is reasonably necessary in order to perform its obligations in connection with these Conditions or 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.
- 9.2. The Supplier must not reproduce an Order or advertise or publish any details of an Order without the Customer's prior written consent.
- 10. Intellectual property**
- (a) 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 (**Documents**) the Customer prepared in connection with an Order. The Supplier warrants that unless otherwise provided in the Contract, the Supplier owns the copyright in the Documents provided by the Supplier.
- 11. 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.
- 12. Termination**
- 12.1. Without limiting the Customer's rights under this Condition and Order or 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 Goods and/or Services, or Works delivered by the Supplier are not in accordance with the requirements of the Order, or are defective in quality, workmanship, material or otherwise, or the Supplier has breached any material provision of these Conditions.
- 12.2. Following such termination, the Responsible Employee will value any Goods and/or Services, or Works received at the date of termination to re-evaluate the Price payable (acting reasonably).
- 12.3. Notwithstanding the termination of any Order under this clause 12, the Supplier remains liable under these Conditions to the Customer in respect of any Goods or Services or Works provided up to the time of termination.
- 12.4. 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 12, is limited to payment for those Goods received and/or Services, or Works actually provided in accordance with the Order.
- 12.5. 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.
- 12.6. Termination pursuant to this condition does not affect any pre-existing rights or obligations or either the Supplier or the Customer.
- 13. Notices**
- 13.1. Any notice, approval, consent or other communication to be given under this Order must be given or served in writing and may be delivered by hand or sent by email to the other party at its address appearing in this Order. Notices are deemed to be properly given or served on the date of hand delivery or, if emailed, upon the sender receiving an electronic notice indicating the email had been delivered.
- 14. Insurance**
- 14.1. 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 AUD.
- 14.2. For the supply of Services and or Works 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 AUD and professional indemnity insurance during for a period of six years after the Order is fulfilled with a level of cover of \$5 million AUD.
- 14.3. For the avoidance of doubt if the Supplier is providing Goods and Services or Works the Supplier must have insurance in place as set out in clause 14.2.
- 14.4. For the supply of Goods and/or Services or Works, the Supplier warrants that it will have in place at all times, any other insurance required by any applicable law or Authority from time to time for the period of the Order.
- 15. Disputes**
- 15.1. 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 has not been 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 has not been resolved 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 Resolution Institute). 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.

16. Variations

- 16.1. The Supplier must not make any change or variation to the Services and/or Goods without the prior written approval or instruction of the Customer. The Customer may at any time vary the Services by giving notice in writing to the Supplier.
- 16.2. If the Supplier considers any instruction or direction, whether in writing or otherwise amounts to a variation, but is not identified as a variation, it must within seven (7) days of receipt of the instruction or direction notify the Customer in writing. If the Supplier fails to comply with this clause and proceeds with work the subject of the instruction or direction the Supplier will have no entitlement to any adjustment to the Price as a result of that instruction or direction.
- 16.3. If the Customer directs the Supplier to vary the Services or the Goods the Supplier must promptly notify the Customer of the anticipated cost of the variation and seek to reach agreement as to the cost of the variation prior to proceeding with the variation.

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 Suppliers 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 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 16,
- (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.

18. Removal

18.1. The Customer may require the removal from the Services or Works of any person employed by the Supplier who in the opinion of the Customer is incompetent or misconducts himself or herself.

19. Statutes and Regulations

19.1. The Supplier at its own expense must comply with all statutes, ordinances, regulations, requirements and by-laws of any Authority having jurisdiction over the subject matter of this Order and must pay all fees and charges applicable. The Supplier must comply with all legislative requirements and the requirements of any Authority.

20. Occupational Health and Safety

- 20.1. Each party must as far as practicable in connection with the execution of the Services or the Works, and manufacturing and delivery of the Goods, ensure the health and safety of all persons including without limitation, members of the public, the Supplier's and the Customer's Personnel.
- 20.2. The Supplier acknowledges and agrees that it is fully familiar with and in providing the Services or in undertaking the Works, and must comply with all requirements of all applicable health and safety legislation.
- 20.3. The Supplier must at the request of the Customer and in any event prior to undertaking any work that is likely to be deemed to be of medium to high risk provide evidence in writing of health and safety policies and procedures implemented or to be implemented by or under this Order in the performance of the Works, including without limitation risk assessments and safe work method statements.
- 20.4. The Supplier must ensure that persons employed or engaged in the performance of the Services and Works are provided with safe systems of work, adequate welfare facilities and such instruction, training and supervision as is necessary to enable the Services and Works to be provided without risk to health and safety of any person.

21. 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.

22. 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.