

General Conditions for the Procurement of Goods and Services



1. Application of these Conditions

1.1 Definitions

Capitalised terms are defined in clause 22.13 unless otherwise stated.

1.2 Goods and Services covered

These Conditions apply to the supply of Goods and Services by the Supplier to the Principal, unless:

- (a) the Principal has agreed in writing that these Conditions do not apply; or
- (b) the Principal and Supplier have entered into a separate contract for that supply.

1.3 Creation of Contract

- (a) The issue of a Purchase Order by the Principal and actual or implied acceptance by the Supplier (verbally, in writing or by commencing performance) is conclusive evidence that these Conditions apply to the supply of the Goods and Services.
- (b) Upon acceptance of any Purchase Order, a separate contract is formed comprising the documents referred to in clause 1.4 (**Contract**).

1.4 Contract documents

The Contract contains the entire agreement between the parties for the supply of the Goods and Services and comprises:

- (a) the Purchase Order;
 - (b) any documents, terms or information attached to or expressly incorporated into the Purchase Order by reference;
 - (c) any written quote, rates, specifications, warranties or estimates provided by the Supplier to the Principal in connection with the Purchase Order which have been expressly accepted by the Principal; and
 - (d) these Conditions,
- but does not include the Excluded Terms.

1.5 Excluded Terms

The parties agree that the following (**Excluded Terms**) will not form part of the Contract:

- (a) any standard terms and conditions provided or referred to by the Supplier;
- (b) any purported variations to these Conditions, unless the Principal has expressly agreed in writing that those terms prevail; and
- (c) any other terms referred to in the Supplier's quote, invoice notes, bill of lading or otherwise.

1.6 Inconsistency

If there is any inconsistency in the Contract, the documents forming the Contract will be interpreted in a descending order of priority as listed in clause 1.4.

2. Primary obligations

- (a) The Supplier agrees to supply the Goods and Services and perform its obligations under the Contract in consideration of the Principal agreeing to pay the Contract Price.
- (b) Unless otherwise stated in the Contract:
 - (1) the Contract Price is the full and complete payment for performance of the Contract by the Supplier; and
 - (2) nothing prevents the Principal from acquiring goods and services the same as or similar to the Goods and Services from any other person.

3. Supply of Services

3.1 Standard of Services

The Supplier must ensure the Services are performed:

- (a) in accordance with the Contract, the Principal's requirements and any directions of the Principal;

- (b) in compliance with all relevant laws and Australian Standards and good industry practice;
- (c) with all due care and skill by appropriately qualified, experienced and skilled persons;
- (d) expeditiously, without delay and completed by the date stated in the Contract or any other date the parties agree or, if no date has been stated or agreed, within a reasonable time from the date of the Purchase Order;
- (e) using appropriate equipment that is regularly inspected, certified as required and properly maintained;
- (f) so that, upon completion of the Services, any Goods or deliverables to which the Services relate are:
 - (1) fit for the purpose stated in, or reasonably inferred from, the Contract and any other agreed purpose; and
 - (2) delivered into the possession of or as directed by the Principal; and
- (g) where the Services include design, so that what is designed will be :
 - (1) in accordance with the Contract, the Principal's requirements and any directions of the Principal;
 - (2) in compliance with all relevant laws and Australian Standards and good industry practice;
 - (3) fit for the purpose stated in, or reasonably inferred from, the Contract and any other agreed purpose.

3.2 Service-related obligations

The Supplier must:

- (a) obtain and maintain all approvals, permits, licences and other authorisations which are necessary for the Services; and
- (b) provide reasonable advance notice to the Principal of any testing, inspection or assessing of the Services and comply with the reasonable requirements of the

Principal in relation to attendance or involvement.

4. Supply of Goods

4.1 Sale, delivery and installation

Unless otherwise stated in the Contract, the Supplier must:

- (a) sell the Goods to the Principal free of encumbrances or other security interests;
- (b) deliver the Goods to the Principal on a DDP basis (or other delivery terms stated in the Contract) at the time agreed, or if no time is agreed, within a reasonable time from the date of the Purchase Order;
- (c) install the Goods; and
- (d) obtain and maintain all approvals, permits, licences, clearances and other authorisations which are necessary for the supply, installation or use of the Goods.

Any obligations of the Supplier in respect of the Goods are in addition to any requirements of delivery under the Incoterms 2010.

4.2 Testing, acceptance and rejection

- (a) The Principal may test the Goods as it sees fit:
 - (1) before delivery to the Principal, whether at the Supplier's premises or elsewhere; and
 - (2) after the Goods have been delivered and installed in accordance with the Contract.
- (b) Any Purchase Order number and Part Numbers identified by the Principal must appear on all related correspondence, shipping papers and invoices. The Principal reserves the right to refuse acceptance of Goods which are not accompanied by the correct documentation, including but not limited to delivery advices.
- (c) The Principal must accept the Goods upon being satisfied the Goods comply with the Contract, are fully functional and meet the Principal's requirements.

- (d) If the Principal is not satisfied as to the matters in clause 4.2(c), the Principal may reject the Goods by written notice to the Supplier. If rejected, title to and risk in the Goods will revert to the Supplier and the Supplier must promptly remove the Goods from the Principal's premises and make good any damage at the Supplier's cost.

4.3 Warranties about Goods

- (a) The Supplier warrants that the Goods:
 - (1) will, unless otherwise stated in the Contract, be new;
 - (2) conform with any description applied to the Goods and any sample of them provided by the Supplier;
 - (3) meet the Principal's requirements, and are fit for the purpose of those requirements;
 - (4) are free of any Defects in materials, workmanship or installation;
 - (5) conform to any applicable standards, relevant law, and appropriate Australian Standards;
 - (6) are of merchantable quality; and
 - (7) are and will be manufactured or constructed in accordance with a quality assurance programme approved by the Principal.
- (b) The Supplier warrants and undertakes to the Principal that:
 - (1) it has the benefit of all manufacturer's warranties in respect of the Goods;
 - (2) it will not do anything which would void or prejudice any manufacturer's warranty in respect of the Goods; and
 - (3) it will obtain an assignment of any manufacturer's warranties that the relevant Goods will be free of Defects to the Principal.

4.4 Free Issue Materials

- (a) The Free Issue Materials will be made available for collection by the Supplier at the times and places specified in the Contract or as otherwise agreed by the parties.
- (b) The Supplier must:
 - (1) collect, load, transport and deliver to the Delivery Place (or such other agreed place) the Free Issue Materials;
 - (2) return and unload any unused Free Issue Materials to the Principal or as the Principal directs;
 - (3) prior to loading, inspect and, if necessary, test the Free Issue Materials in order to satisfy itself that they are satisfactory for the Supplier's purposes and, once incorporated into the Goods or installed/commissioned pursuant to the Services, will comply with the Contract in all respects; and
 - (4) keep records containing reasonable details of the Free Issue Materials and such other details required by the Principal from time to time.
- (c) Risk in Free Issue Materials passes to the Supplier upon loading and only passes back to the Principal if and when returned to the Principal and unloaded as required by the Contract.
- (d) The Principal accepts no liability for the Free Issue Materials and makes no representation or warranty in respect of the Free Issue Materials.
- (e) The Supplier warrants to the Principal that the Free Issue Materials will comply with the Principal's requirements and the Contract and, once incorporated into the Goods or installed/commissioned pursuant to the Services, will not cause the Goods or Services to fail to comply with the Contract and will meet the Principal's stated purpose.
- (f) Free Issue Materials will, upon incorporation into Goods, form part of

the Goods for the purposes of the Contract.

(g) If the Supplier is in possession of the Free Issue Materials at any time, the Supplier agrees that it will:

- (1) re-deliver possession of the Free Issue Materials to the Principal as required by the Contract and, in any event, prior to the date that is two (2) years after the Supplier last obtained possession;
- (2) not grant or permit to subsist a security interest or any other interest in the Free Issue Materials (whether that interest arises by operation of law or otherwise); and
- (3) not sell, lease, give up possession, deal with, modify or dispose of the Free Issue Materials in any way not expressly permitted by the Contract.

5. Other contractors and Site access

5.1 Other contractors

- (a) The Supplier acknowledges that other contractors may be engaged to provide related goods or services or to perform works or supply goods at the Site or Delivery Place.
- (b) The Supplier:
 - (1) will co-operate and coordinate with those other contractors;
 - (2) has taken into account the work of other contractors of which it has been advised in programming its work under this Contract.

5.2 Non-exclusive access

- (a) The Supplier acknowledges and agrees that, except to the extent expressly stated otherwise in the Contract:
 - (1) it is not entitled to exclusive access to the Site or Delivery Place;
 - (2) access to the Site will confer on the Supplier a right only to use and control as is necessary to enable the Supplier to deliver the Goods and perform the Services; and

(3) the Supplier must not obstruct the Principal or any of its Personnel from accessing the Goods or any place where the Goods are being prepared or stored or Services are being performed.

(b) The Principal must use reasonable endeavours to ensure that it does not impede the Supplier in the supply of the Goods and the performance of the Services.

5.3 Site risk

The Supplier is responsible for satisfying itself that the Delivery Place, Site and all other places accessed by the Supplier in performing the Contract are suitable for the Goods and Services.

6. Delays

- (a) The Supplier must give the Principal written notice as soon as practicable upon becoming aware that it is not able to or is unlikely to be able to perform its obligations by the time required by the Contract.
- (b) The Principal will act reasonably in considering any request for an extension of time.

7. Payment

7.1 Contract Price

Unless expressly stated otherwise in the Contract:

- (a) the Contract Price is inclusive of all costs, expenses, fees, duties, excises, imposts, levies and taxes (other than GST) incurred by the Supplier in performing the Contract;
- (b) the Contract Price (including the basis on which it is calculated) is not subject to adjustment or rise and fall; and
- (c) the Supplier must bear all customs and import duties levied.

7.2 Currency

Except to the extent expressly agreed otherwise by the Principal:

- (a) all payments under the Contract are to be made in Australian dollars; and
- (b) if the parties have agreed a payment will be made in any currency other than Australian dollars, the Supplier bears the risk of foreign exchange rate fluctuations on and after the date of the Contract and is not entitled to payment due to any fluctuations.

7.3 Invoicing

- (a) The Supplier must render tax invoices to the Principal for the Contract Price payable by the Principal at the times stated in the Contract or, if no times are stated on the next Business Day after the 20th calendar day of each month in which Goods or Services are supplied.
- (b) Each invoice must:
 - (1) note the Purchase Order number;
 - (2) specify the total amount payable in respect of the Goods or Services supplied or milestone to which the invoice relates; and
 - (3) include any other information reasonably required by the Principal.

7.4 Payment

- (a) Unless otherwise stated in the Contract, the Principal will pay each validly rendered invoice within 30 days of the end of the month in which the invoice was received.
- (b) Payment is made on account only and does not constitute acceptance by the Principal that Goods or Services comply with the Contract.
- (c) Nothing in the Contract will affect or limit any right on the part of the Supplier to refer any dispute to adjudication, or suspend performance of the Services, under any of the relevant sections of the *Building and Construction Industry Security of Payment Act 2009* (SA) or any similar legislation in another jurisdiction.

7.5 Disputed invoices

The Principal is not required to make payment under clause 7.4 in respect of any part of an invoice which is currently being disputed until that dispute is resolved or finally awarded under clause 18.

7.6 Set off

The Principal may set off against any amount owing by the Principal to the Supplier any amount which is owing by the Supplier to the Principal.

8. Title and risk

- (a) Unless otherwise stated in the Contract, title in the Goods will pass to the Principal on the earlier of acceptance or payment.
- (b) Risk in Goods passes to the Principal upon acceptance or when the Goods are delivered under clause 3.1(f)(2) (whichever occurs last).

9. Variations

- (a) The Principal may request a Variation at any time.
- (b) The Supplier must act reasonably in considering any Variation requested by the Principal.
- (c) If a Variation is accepted by the Supplier, any resulting adjustment to the Contract Price and any extension of time which the Supplier claims (if any) will be as expressly agreed in writing by the Principal.

10. Defects

- (a) If the Principal discovers a Defect at any time before the end of the Defects Liability Period, the Principal can direct the Supplier to rectify that Defect. The Supplier must rectify the Defect as soon as practicable in accordance with the Principal's direction.
- (b) At any time before the end of the Defects Liability Period the Supplier must notify the Principal if it becomes aware of a Defect and must, as soon as practicable, rectify the Defect.

- (c) If:
- (1) the Supplier fails to promptly comply with clause 10(a) or 10(b); or
 - (2) the Principal considers it necessary to urgently rectify the Defect in order to prevent risk to persons or property,
- the Principal may rectify the Defect and/or remove, replace or store defective Goods and the Supplier is liable for the Principal's costs incurred in doing so.
- (d) A further Defects Liability Period of twelve (12) months will apply to any rectification of a Defect commencing on the date that rectification is completed.
- the Goods by the Principal or the Owner do not and will not infringe the Intellectual Property Rights of any person; and
- (2) performing the Services and its other obligations under the Contract, does not and will not infringe the Intellectual Property Rights of any person.
- (b) The parties each retain ownership of their respective Intellectual Property Rights which arose prior to, or independently of, the Contract (**Existing IP Rights**).
- (c) The Supplier grants the Principal a non-exclusive, perpetual, irrevocable, transferable (including the right to sub-licence including to the Owner), royalty-free licence, to deal with its Existing IP Rights to the extent necessary for the Principal and the Owner to have the full use and benefit of the Goods and Services.

11. General warranties

- (a) The Supplier warrants and represents to the Principal that:
- (1) it has the capacity, authority and power, financial, technical and other resources, to enter into and perform its obligations under the Contract;
 - (2) it is not insolvent and nothing has occurred which would deem it to be insolvent;
 - (3) if it enters into the Contract in its capacity as trustee of a trust, it incurs obligations under the Contract in its personal capacity and in its capacity as trustee of the trust and is entitled to an unlimited right of indemnity in respect of the assets of the trust for those obligations.
- (b) The Supplier repeats each warranty in clause 11(a) on each day it has outstanding obligations under the Contract.
- (d) All Intellectual Property Rights in the Contract Material and any other Intellectual Property Rights created in the performance of the Contract vests in the Principal (or, where required by the Head Contract, in the Owner) immediately upon creation.
- (e) The Supplier must ensure the Principal and the Owner have a non-exclusive, perpetual, irrevocable, transferrable royalty-free licence to use, modify and exploit all Intellectual Property Rights of third parties in the Goods and Services to the extent necessary for the Principal and the Owner to have the full enjoyment, use and benefit of the Goods and Services.

12. Intellectual Property

- (a) The Supplier warrants and represents to the Principal that:
- (1) the supply of the Goods by the Supplier, the Goods and the use of

13. Information handling and security

13.1 Confidentiality

The Supplier must keep confidential all information from or concerning the Principal that it acquires, including as a result of the Contract. The Supplier's obligations under this clause will survive the expiry or termination of the Contract.

13.2 Confidential Information

- (a) Subject to clause 13.2(b), each party must not disclose Confidential Information of the other party without the prior written consent (which consent will not be unreasonably withheld).
- (b) Confidential Information may be disclosed if:
 - (1) at the time of disclosure, it is in the public domain, but not as a result of a breach of this clause 13 or some other obligation of confidentiality;
 - (2) required to be disclosed for the purposes of performing its obligations under the Contract;
 - (3) disclosed to professional advisors, bankers, investors or financial advisors on a confidential basis;
 - (4) required by government policy, law, court order or listing rules of the Australian Stock Exchange;
 - (5) required in order for the Principal to comply with any direction of a regulatory body; or
 - (6) necessary or desirable to be disclosed to give effect to the licences of Intellectual Property Rights granted to a party under the Contract, subject to the restrictions on disclosure specified in these Conditions.
- (c) If the Supplier requires disclosure of Confidential Information of the Principal to be made to its subcontractors for the purposes of performing its obligations under the Contract, the Supplier must first procure confidentiality undertakings (on terms satisfactory to the Principal) from its subcontractors.

13.3 Privacy obligations

The Supplier must:

- (a) use Personal Information provided by the Principal or collected by the Supplier under the Contract only for the purposes of performing the Contract;

- (b) not do any act or engage in any practice that would be a breach of an Australian Privacy Principle under the *Privacy Act 1988* (Cth) if done or engaged in by the Principal and must not do or omit to do anything that causes the Principal to be in breach of an Australian Privacy Principle; and
- (c) comply with any directions or recommendations of any government agency in respect of Personal Information or privacy practices, to the extent that they are not inconsistent with the Contract.

13.4 Data Breach requirements

- (a) The Supplier must immediately notify the Principal of any actual or suspected Data Breach relating to any Personal Information collected, stored or retained relating to the Supplier's obligations under the Contract and comply with all reasonable directions of the Principal in relation to any actual or suspected Data Breach.
- (b) The Supplier must provide the Principal with all assistance and information it reasonably requires in order to enable the Principal to comply with its obligations in relation to Personal Information.

14. Compliance

14.1 General compliance

Without limiting any other provision in the Contract, the Supplier must comply with all relevant laws and Authorisations in performing the Contract and all requirements under any codes and standards which the Principal has made the Supplier aware are binding on the Principal or are otherwise required to be complied with in performing the Contract.

14.2 Chain of Responsibility Laws

To the extent heavy vehicles are used in the supply of the Goods or the provision of the Services, the Supplier:

- (a) acknowledges that it is the primary duty holder under the COR Laws with

- responsibility for developing chain or responsibility systems;
- (b) must ensure that any heavy vehicles are appropriately maintained with loads that do not exceed vehicle mass or dimension limits, are appropriately secured, and operators carrying freight containers have a valid “container weight declaration” (as defined under the COR Laws) and drivers do not exceed speed limits or regulated driving hours, do not drive while impaired by fatigue and observe minimum rest requirements;
 - (c) must proactively provide reasonable assistance to the Principal to enable the Principal to satisfy its duties and responsibilities under COR Laws;
 - (d) must obtain and maintain, and ensure the Supplier’s Personnel obtain and maintain, all approvals required to enable the applicable activity, function or task to be undertaken lawfully;
 - (e) must undertake any audits or monitoring as requested by the Principal to demonstrate compliance with this clause 14.2; and
 - (f) warrants that it is familiar with and has the capability and resources to comply with COR Laws and will ensure that its Personnel will comply with all COR Laws.
- (b) The Supplier must, and must ensure that its Personnel:
 - (1) undertake any induction before entering a new Site;
 - (2) comply with directions given by any principal contractor under WHS Law at the Site; and
 - (3) comply with any plans or policies regarding safety, health, emergencies or access to site provided by the Principal or any person in control of the Site.
 - (c) The Supplier must have and maintain all certificates, licenses and approvals required by law, Australian Standards and Codes of Practice specified under WHS Law and must have in place and maintain a safe system of work for the provision of the Goods and Services including:
 - (1) use of personal protective equipment; and
 - (2) restrictions on the use of drugs and alcohol.
 - (d) The Supplier must promptly report to the Principal, in writing, details of any safety hazard, near miss, incident or accident that occurs at Site or whilst the Supplier is performing the Services.

14.3 Environmental obligations

The Supplier must, in carrying out its obligations under the Contract, comply with all applicable environmental laws and perform its obligations in an environmentally sensitive manner that does not and is not likely to degrade the quality of the environment or cause any contamination at the Site.

15. Work health and safety

- (a) The Supplier must, and must ensure that its Personnel, comply with WHS Law in relation to the supply of the Goods and the provision of the Services.

16. Breach and indemnity

16.1 Breach

- (a) If the Supplier materially breaches the Contract, or advises the Principal that it is not or will not be able or willing to perform all of its obligations under the Contract, then subject to any other provision of the Contract, and without limiting any other right or remedy the Principal may have arising from that breach or advice, the Principal may:
 - (1) terminate the Contract by writing to the Supplier; and/or
 - (2) acquire the Goods or Services (or the nearest reasonably available substitute) from a third party.
- (b) Any additional cost to the Principal of acquiring substitute Goods or Services

from a third party is payable by the Supplier to the Principal.

16.2 Indemnity

(a) The Supplier must indemnify and keep indemnified the Principal and each of its Personnel (each an **Indemnified Person**) from and against any and all Liabilities suffered or incurred by the Indemnified Person:

(1) in relation to loss of or damage to any real or personal property, or injury to, illness or death of any person caused by the Supplier or any of its Personnel in connection with this Contract; or

(2) as a consequence of any:

(A) negligent act or omission or wilful misconduct; or

(B) breach of the Contract,

by the Supplier or any of its Personnel.

(b) The Supplier's obligation to indemnify under this clause 16.2 is separate and independent of any other obligation and survives termination, completion or expiry of the Contract.

(c) The Supplier's liability to indemnify will be reduced proportionally to the extent any Liabilities are caused or contributed to by the Principal.

16.3 Liability cap

The aggregate liability of the Supplier to the Principal under the indemnity in clause 16.2 is limited to ONE MILLION DOLLARS (\$1,000,000.00) for each event, provided however that no limit applies in respect of any Liability of the Supplier for or in respect of:

(a) any claims against the Principal in respect of personal injury, death, loss or damage to any property or any other third party liability;

(b) events or circumstances in respect of which insurance proceeds are (or, if the Supplier had complied with the Contract, would have been) available to cover that Liability; or

(c) the wilful misconduct, fraud or gross negligence of the Supplier or any of its Personnel.

16.4 Consequential Loss

(a) Except as provided in Clause 16.4(b), no party will be liable to the other party for any Consequential Loss suffered or incurred by the other party arising out of or in connection with this Contract.

(b) The exclusion of the liability of the Supplier for Consequential Loss suffered or incurred by the Principal does not apply to:

(1) a claim by any person against the Principal in respect of personal injury (including illness), death, loss or damage to any property;

(2) third party claims arising from a breach of Laws by the Supplier or the Supplier's Personnel;

(3) liability covered by insurance proceeds that would be recoverable under an insurance policy required by this Contract;

(4) liability caused by wilful misconduct, gross negligence, abandonment or fraud by the Supplier or the Supplier's Personnel; or

(5) liability caused by a breach of clause 12 or 13 by the Supplier or the Supplier's Personnel.

16.5 Proportionate liability

(a) The parties exclude the operation of Proportionate Liability Legislation from the Contract, except to the extent it relates to any claim against the Principal.

(b) If Proportionate Liability Legislation does apply, then the Supplier agrees that it:

(1) is solely liable for any claim by the Principal in connection with an act or omission by the Supplier involving a failure to take reasonable care, negligence, a breach of duty or other wrongdoing; and

- (2) indemnifies the Principal for any loss or claim the Principal is not entitled to recover from the Supplier as a result of the application of Proportionate Liability Legislation.

17. Insurance

The Supplier must effect and maintain public liability and professional indemnity insurance against the risks referred to in clause 16.2 and any other insurance stated in the Contract, and will provide evidence to the Principal of the currency of that insurance upon request by the Principal.

18. Dispute Resolution

18.1 Notice of dispute

- (a) If a Dispute arises between the Supplier and the Principal, the Dispute must be dealt with in accordance with this clause 18.
- (b) Where a Dispute arises, either party may give a notice (**Dispute Notice**) to the other party specifying:
 - (1) the Dispute;
 - (2) particulars of the party's reason for being dissatisfied; and
 - (3) the position that the party believes is correct.

18.2 Negotiation

- (a) If a Dispute Notice is issued under clause 18.1(b), the Dispute will be referred to the Senior Negotiators.
- (b) Each party will appoint their respective Senior Negotiators to resolve the Dispute and notify the other party of these appointments within 10 Business Days of the Dispute Notice being issued under clause 18.1(b).
- (c) The Senior Negotiators must within:
 - (1) 20 Business Days of receipt of the Dispute Notice under clause 18.1(b); or
 - (2) any longer period of time as the Senior Negotiators agree,

meet and undertake genuine and good faith negotiations with a view to resolving the Dispute within 40 Business Days of receipt of the Dispute Notice under clause 18.1(b).

18.3 Litigation

- (a) If, within 80 Business Days of the Dispute Notice being given under clause 18.1(b) or any longer period of time as the Senior Negotiators may agree, the Senior Negotiators cannot resolve the Dispute then the Dispute must be resolved by the courts of South Australia.
- (b) Unless a party and its Senior Negotiator has complied with the procedure to resolve the Dispute by negotiation of the Dispute under clause 18.2, that party may not commence litigation under this clause 18.3.

18.4 Continuity

Despite the existence of a Dispute, the Supplier must continue to perform its obligations under the Contract (including continuing to carry out the Services and supply the Goods).

18.5 Injunctive or urgent relief

Nothing in this clause 18 prejudices either party's right to institute proceedings to seek injunctive or urgent declaratory relief in respect of a Dispute under this clause 18 or any other matter arising under the Contract.

19. Contracting

19.1 No sub-contracting

- (a) The Supplier may not sub-contract the performance of any matter or thing required by the Contract without the prior written consent of the Principal.
- (b) Without limiting clause 19.1(a), the Supplier must ensure that any subcontract it enters expressly requires the subcontractor:
 - (1) to have the same awareness and obligations as the Supplier under clause 13.3; and
 - (2) to observe the same obligation as the Supplier under this

clause 19.1(b) in relation to subcontracts.

19.2 Assignment

- (a) The Supplier must not directly or indirectly transfer or assign the Contract, or any part share or interest in it, without the prior written approval of the Principal.
- (b) The Principal may at any time, without having to obtain the Supplier's consent, assign any or all of its right, title and interest as the Principal under the Contract to any related body corporate without cost or penalty.

19.3 Novation

- (a) The Principal may at any time and at its sole discretion novate this Contract to any person or entity who is solvent and appears able to make the payments required by this Contract and to comply with the Principal's other obligations under this Contract without any further consent from the Supplier.
- (b) The Supplier, for the purposes of that novation, must promptly, when directed by the Principal and without being entitled to compensation, execute any document or documents that may reasonably be required to effect a novation of this Contract, including without limitation a novation deed or agreement in the form approved by the Principal (acting reasonably).

19.4 Withdrawal

The Principal may withdraw the Purchase Order by writing to the Supplier at which time:

- (a) the Contract will terminate;
- (b) the Supplier must do all things reasonably necessary to mitigate its loss;
- (c) the Supplier's sole entitlement for such termination will be payment of:
 - (1) the value of that proportion of the Goods and Services supplied but not yet paid for by the Principal;
 - (2) the cost (including a reasonable amount for profit and overhead) of

Goods properly ordered for which the Supplier has paid or is legally bound to pay, provided that the value of the Goods is not included in the amount payable under Clause 19.4(c)(1) and title in the Goods has already vested in the Principal or will vest in the Principal upon payment; and

- (3) where appropriate, reasonable costs of demobilising from the Site.

19.5 Relationship

Except as expressly stated otherwise in the Contract, the Contract does not create a relationship of employment, trust, agency or partnership between the parties.

20. Head Contract

20.1 Acknowledgement

The Supplier acknowledges that where there is a Head Contract, the Principal has entered this Contract for the purpose of performing its obligations under the Head Contract.

20.2 Warranties

Where there is a Head Contract the Supplier agrees:

- (a) to provide all reasonable assistance to the Principal to enable it to perform its obligations under the Head Contract;
- (b) to comply with all reasonable directions from the Principal that arise because of, or in connection with, the Head Contract;
- (c) that the Principal may assign any and all warranties of Goods and Services provided by the Supplier under the Contract to the Owner; and
- (d) to enter into a direct subcontractor deed if requested by the Owner.

21. Building Code

21.1 Application

For the purposes of this clause 21 only, building work in bold has the same meaning as in subsection 3(4) of the Building Code 2016.

The provisions of this clause 21 apply if:

- (a) this Contract is connected with a project, construction work and/or **building work** which is:
- (1) undertaken for or on behalf of the Australian Government; or
 - (2) undertaken as part of building and construction projects to which the Australian Government has contributed funding; or
 - (3) the Building Code is expressly stated to apply to the Contract in the Purchase Order.

21.2 Declarations and acknowledgements

- (a) The Supplier declares that neither it or any Supplier Personnel are subject to an Exclusion Sanction.
- (b) The Supplier declares, and must ensure during the term of this Contract, that it and any Supplier Personnel will comply with the Building Code 2016.
- (c) Compliance with the Building Code 2016 does not relieve the Supplier from responsibility to perform the Contract, or from liability for any Defect arising from compliance with the Building Code 2016.
- (d) The Supplier must notify the ABCC of any breach or suspected breach of the Building Code 2016 as soon as practicable but no later than 2 Business Days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.
- (e) The Supplier acknowledges the powers and functions of the ABC Commissioner and the ABCC under the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) and the Building Code 2016 and will ensure that it and any Supplier Personnel complies with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including but not limited to requests for entry, requests to interview any person, requests to produce records or documents, and responding to requests for information

concerning matters relating to the Building Code 2016.

- (f) If the Contract, or the Head Contract, states that a Workplace Relations Management Plan is required, the Supplier must comply with the Workplace Relations Management Plan approved by the ABCC.

21.3 Subcontracting

The Supplier must:

- (a) only enter into a subcontract for any of the Goods and Services where:
 - (1) the subcontractor is not covered by, and does not have related bodies corporate covered by, an Enterprise Agreement (as defined in the *Fair Work Act 2009* (Cth)) that does not meet the requirements of section 11 of the Building Code 2016; and
 - (2) the subcontractor is not subject to an Exclusion Sanction or is excluded from undertaking work funded by a state or territory government unless approval to do so is provided by the ABC Commissioner;
- (b) ensure as far as is reasonably practicable that any subcontractor take remedial action to rectify non-compliant behaviour;
- (c) only enter into a subcontract for any of the Goods or Services where:
 - (1) the subcontractor has submitted a declaration of compliance, including the further information outlined in Attachment A to the declaration of compliance, in substantively the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code 2016 (located in Part 4 in the document titled Model Clauses Type B-Indirectly Funded available on the ABCC website (www.abcc.gov.au)); and
 - (2) the subcontract with the subcontractor contains clauses in

substantively the same form as the model contract clauses applicable to contractors and subcontractors in relation to the Building Code 2016 (located in Part 5 in the document titled Model Clauses Type B-Indirectly Funded available on the ABCC website (www.abcc.gov.au));

- (d) only use products in **building work** that comply with the relevant Australian standards published by, or on behalf of, Standards Australia; and
- (e) ensure that any agreement entered into in relation to the Works with a subcontractor requires the subcontractor to only use products in relation to the Works that comply with the relevant Australian standards published by, or on behalf of, Standards Australia.

22. Miscellaneous

22.1 Directions by the Principal

Where the Contract states a direction is to be or may be given by the Principal, that direction may be given by an authorised representative of the Principal.

22.2 Notices

- (a) Notices required or permitted to be given under the Contract must be sent in writing by ordinary prepaid post to the address of the intended recipient set out in the Purchase Order.
- (b) Notices given in accordance with this clause will be deemed given when in the ordinary course of post that notice should have been delivered.

22.3 Goods and Services Tax

- (a) The Contract Price (and any other amounts payable for Goods or Services) is fixed, subject to clause 7.1, and exclusive of any goods and services tax (or other similar tax or impost) payable. The Principal must pay to the Supplier goods and services tax in addition to the Contract Price.
- (b) The Supplier must be registered and must provide its Australian Business

Number and tax invoices promptly in accordance with the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

22.4 Time of the essence

Unless expressly stated otherwise, time is of the essence in respect of the Supplier's obligations under the Contract.

22.5 No waiver

The Principal has not waived any breach of the Contract unless and until it has provided a specific waiver in writing. A waiver only applies to past breaches unless specifically stated otherwise.

22.6 Amendment

No amendment of, nor addition to, the Contract is binding unless it is in writing and executed by the parties to the Contract.

22.7 Vienna Convention

The 1986 United Nations Convention on Contracts for the International Sale of Goods adopted at Vienna, Austria on 10 April 1980 and opened for signature and also for accession on 11 April 1980 and any Act or other law which gives effect to this convention does not apply to the Contract.

22.8 Severance

- (a) If the Contract is a 'consumer contract' or 'small business contract' (each as defined in the Australian Consumer Law in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) (**ACL**)) and a term of that Contract would, but for this clause, be 'unfair' (as defined in section 24(1) of the ACL), the Principal may only apply or rely upon that term to the extent that doing so is reasonably necessary to protect the Principal's legitimate interests.
- (b) If, notwithstanding clause 22.8(a), any provision of the Contract is void, unenforceable or illegal, it must be read down to the extent necessary for it to be valid and enforceable. If it cannot be read down, the provision must be severed but only to the extent necessary for the Contract to be valid and enforceable.

22.9 Governing law

The Contract is governed by the laws of the jurisdiction identified in the Purchase Order (and if no jurisdiction is identified, the laws of South Australia) and the parties irrevocably consent to the non-exclusive jurisdiction of the courts of that jurisdiction and courts of appeal from them in respect of any proceedings arising in connection with the Contract.

22.10 Costs

Unless otherwise stated in the Contract, each party bears its own costs of negotiating, preparing and performing its obligations under the Contract.

22.11 Further acts

The parties will do all things and execute all documents required to permit or facilitate the performance of the transactions contemplated by the Contract.

22.12 Special Conditions

The parties agree that any Special Conditions set out in the Purchase Order will be incorporated into the Contract.

22.13 Defined terms

In these Conditions, unless a contrary intention is apparent:

ABCC means the Australian Building and Construction Commission referred to in subsection 29(2) of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth);

ABC Commissioner has the meaning given in section 5 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth);

Authorisation means any approval, declaration, authorisation, certificate, consent, exemption, filing, licence, notarisation, permit, registration, ruling, statutorily required policy of insurance or waiver (and any renewal or variation) by or with an Authority;

Authority means:

- (a) any government or regulatory department, body, instrumentality, minister, agency or other authority; or

- (b) any other person exercising an authority granted to it under an applicable law;

Building Code means The Code for the Tendering and Performance of Building Work 2016 in force pursuant to section 34 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth);

Business Day means a day other than a Saturday or Sunday or a day that is partly or wholly observed as a public holiday in the State of South Australia;

Conditions means these General Conditions for the Supply of Goods and Services;

Confidential Information means any information which the Principal identifies is confidential or commercially sensitive and includes all technical, proprietary and operational information, drawings, techniques, processes, know-how, methods of working, data and specifications, trade secrets, customer information and other commercially valuable information of any kind, and the terms of the Contract;

Consequential Loss means any loss of business or production and any loss of actual or anticipated profit or revenue but does not include loss of this Contract or loss suffered by the Principal in connection with the Head Contract;

Contract means the contract between the Principal and the Supplier for the supply of the relevant Goods and Services referred to in clause 1.3;

Contract Material means those documents and materials created or required to be created under the Contract and to be handed over to the Principal;

Contract Price means the total amount payable by the Principal for the supply of all Goods and the performance of all Services under the Contract, being either:

- (a) the fixed lump sum amount set out in the Contract; or
- (b) the total fees, charges and disbursements of the Supplier in performing the Contract calculated at the agreed rates or on the agreed basis set out in the Contract;

COR Laws means laws relating to fatigue management, speed and mass, dimension and load restraint compliance requirements generally referred to as “Chain of Responsibility” laws or “Heavy Vehicle” laws;

Data Breach means any deliberate or inadvertent unauthorised access to, use or disclosure of Personal Information including any “eligible data breach” as defined in the *Privacy Act 1988* (Cth);

Defect means a Good or Service that is defective or does not conform with the Contract;

Defects Liability Period means, unless otherwise stated in the Contract, a period of twelve (12) months commencing on the date the Goods were accepted or Services were performed under the Contract;

Delivered Duty Paid or DDP means:

- (a) in the case of Goods to be imported by the Supplier, that term as defined by the International Chamber of Commerce Incoterms (2010 Release); and
- (b) in the case of Goods not so imported, means delivery to the Delivery Place in all respects at the Supplier's cost;

Delivery Place means the place for delivery of the Goods or Services;

Dispute means any dispute, controversy, or claim of any kind or type, whether based in contract, tort, statute, regulation, or otherwise, arising out of, relating to, or connected with the Contract, the Goods or the Services, including any dispute concerning the formation, existence, validity, interpretation, performance, breach, or termination of the Contract;

Excluded Terms has the meaning given by clause 1.5;

Exclusion Sanction has the same given in subsection 3(3) of the Building Code 2016;

Free Issue Materials means any materials, equipment and machinery supplied by the Principal for the purpose of or in connection with the Supplier supplying the Goods or Services;

Goods means:

- (a) goods referred to in the Purchase Order;
- (b) any other goods expressly or impliedly agreed to be supplied to the Principal by the Supplier in connection with the Purchase Order; and
- (c) any other goods supplied to the Principal by the Supplier, to the extent these Conditions apply to the supply of those goods;

Head Contract means the contract identified in the Purchase Order, or as otherwise advised by the Principal to the Supplier, being the contract for which the Goods and Services are being procured;

Intellectual Property Rights means intellectual property and rights including any copyright, trademarks, patents, designs, circuit layout rights, the right to protect confidential information, know-how and trade secrets and any application or right to apply for registration of any of those rights;

Liability means all liabilities, damages, remedies, losses, penalties, fines, costs, expenses (including legal fees), demands, claims and proceedings of any nature;

Owner means the party for whom the Principal is to perform work under the Head Contract;

Personal Information is as defined in the *Privacy Act 1988* (Cth);

Personnel means, in relation to a party, any employee, officer, agent, contractor or subcontractor of that party (but excluding the other party and its Personnel);

Principal means the principal referred to in the Purchase Order;

Principal's requirements means those requirements of the Principal to be met by the supply of the Goods or the Services, as advised by the Principal to the Supplier on or prior to the date of the Purchase Order;

Proportionate Liability Legislation means section 72 of the *Development Act 1993* (SA) and Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA) as applicable and as amended;

Purchase Order means a purchase order in the form set out in the Schedule or similar formal confirmation issued by the Principal to the Supplier including a unique invoicing number and confirmation of the maximum authorised value of Goods or Services to be procured by the Principal;

Senior Negotiators means, in respect of a party, the senior negotiator appointed by that party in accordance with clause 18.2(b) or any replacement person as notified in writing to the other party from time to time;

Services means:

- (a) the services referred to in the Purchase Order;
- (b) any other services expressly or impliedly agreed to be supplied to the Principal by the Supplier in connection with the Purchase Order; and
- (c) any other services supplied to the Principal by the Supplier, to the extent these Conditions apply to the supply of those services;

Site means the places and locations to be made available to the Supplier by the Principal for the purpose of the Supplier performing the Services or for any other purpose under the Contract;

Supplier means the supplier referred to in the Purchase Order;

Variation means any increase, decrease or omission to the Goods or Services to be supplied or performed under the Contract; and

WHS Law means the *Work Health and Safety Act 2012* (Cth), related regulations, legislative instruments and any equivalent laws in any jurisdiction relating to the protection or safety of workers.

22.14 Interpretation

In the Contract, unless a contrary intention is apparent:

- (a) a reference to a clause number is a reference to a clause of these Conditions;
- (b) references to natural persons include corporations and vice versa;

- (c) a provision of these Conditions must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of these Conditions or the inclusion of the provision in the Contract;
- (d) words such as “include” or “including” are not words of limitation;
- (e) if a party includes two or more persons, an obligation of those persons is joint and several, a right of those persons is held by each of them separately, and any other reference to that party is a reference to each of them separately;
- (f) where a word or phrase is defined or given meaning, any other part of speech or grammatical form has a corresponding meaning; and
- (g) the plural includes the singular and vice versa.

Schedule – Purchase Order

| | | |
|--|---|--|
|  |  | |
| 95 Womma Road Edinburgh North, SA 5113 Australia Phone: 08 8340 6666 Fax: 08 8340 6688 ABN: 99 007 531 115 | Purchase Order No: XXXXXXXX | Page 1 of 1 Deliveries only accepted. Monday to Friday - 7.00 am to 2.30 pm. |

Supplier:
Sample Supplier

| Order Date | Due Date | Terms | Buyer |
|------------|------------|-----------------------|-------|
| XX/XX/XXXX | XX/XX/XXXX | 14 Days Actual | |

| Line | Part ID/Description | U/M | Quantity | Unit Price | Tax | Extd Price |
|------|---------------------|-----|----------|------------|-----|------------|
| 1 | | EA | | | | |

Approved By: _____

This Purchase Order is subject to the Principal's General Conditions for the Procurement of Goods and Services available at: xxx

It is Century Products policy to defer payment for all goods and services supplied until such time as a valid tax invoice has been received. The Purchase Order number and Century Part Numbers must appear on all related correspondence, shipping papers and invoices. Century Products reserves the right to refuse receipt of goods which are not accompanied by the relevant /correct documentation, including but not limited to delivery advice. Unless an agreement in writing states otherwise, all goods /services will be supplied on ~~ECM~~ +45 day terms. Any variation to this order must be notified in writing to Century Products prior to commencement of supply.

| | |
|----------------------|--------------|
| Order Sub Total : | AUD\$ |
| GST : | |
| Order Total : | AUD\$ |

All goods and services must be supplied to the relevant Australian Standards.