

GOODS AND/OR SERVICES

1. **Purchase Order**
 - 1.1. The Supplier must supply the Goods and/or Services to the Company in accordance with, and as specified in, this Purchase Order, in consideration of payment of the Price by the Company.
 - 1.2. This **Purchase Order** comprises the: Purchase Order Form (including any Specification); these Purchase Order Terms and Conditions; and any documents of the Company annexed to the Purchase Order Form and/or these Purchase Order Terms and Conditions.
 - 1.3. No document provided by the Supplier will form part of this Purchase Order, unless specified on the Purchase Order Form as an annexure. This includes the Supplier's terms and conditions provided by the Supplier in respect of the Goods and Services (including as printed on consignment notes or other documents). Those terms and conditions will be of no legal effect and will not constitute part of this Purchase Order (even if a representative of the Company signs those terms and conditions or annexes the terms and conditions to this Purchase Order).
 - 1.4. The Company will provide a Purchase Order number which must be quoted on all invoices and correspondence.
 - 1.5. The Supplier must not vary the Goods and/or Services specified as to be supplied under this Purchase Order without the written agreement of the Company.
 - 1.6. The Supplier may request changes to the Purchase Order Form, by written notice to the Company Contact, in response to which the Company may (but shall be under no obligation to) issue a changed Purchase Order Form.
 - 1.7. The Supplier does not have the exclusive right to provide the Goods and/or Services to the Company. Accordingly, the Company may at its sole discretion retain other suppliers or providers of goods and/or services similar to the Goods and/or Services and other related goods and/or services. Other than as provided on the Purchase Order Form, the Company is not expected or required to purchase any minimum level of Goods and/or Services.
2. **Services**
 - 2.1. The Supplier must supply all parts or goods necessary for the proper completion of Services in accordance with this Purchase Order.
 - 2.2. If the Supplier provides Services at the Site, the Supplier must comply with the Company's Site Standards and Procedures.
 - 2.3. The Supplier must perform the Services by the date specified in this Purchase Order Form or, if no date is specified, within a reasonable time of the date of the Purchase Order Form being finalised.
 - 2.4. The Supplier must notify the Company as soon as it becomes aware that the Services may not be performed by the time specified in the Purchase Order Form.
3. **Goods**
 - 3.1. The Supplier must deliver the Goods to the Delivery Point by the Delivery Date.
 - 3.2. The Supplier must ensure that the Goods are suitably packed to avoid damage in transit or in storage and in such a way to comply with any applicable Laws.
 - 3.3. Packages must be marked with the Purchase Order number, item number, Delivery Point, contents, quantity, date and method of dispatch and weight of each package.
 - 3.4. The Supplier must supply any incidental services reasonably required in connection with the supply of the Goods, including as specified in the Purchase Order Form.
- 3.5. If the Supplier provides incidental services at Site, the Supplier must comply with the Site Standards and Procedures.
- 3.6. The Supplier must notify the Company as soon as it becomes aware that the Goods may not be delivered by Delivery Date specified in the Purchase Order Form.
4. **Supplier's Warranties - Services**
 - 4.1. The Supplier warrants that any Services provided under this Purchase Order will:
 - 4.1.1. Meet the Company's requirements as set out in the Specification and the Purchase Order Form;
 - 4.1.2. Be provided in a skilful and competent fashion with all due care and skill;
 - 4.1.3. Be provided in accordance with Good Industry Practice;
 - 4.1.4. Conform to all applicable Laws; and
 - 4.1.5. Not infringe the Intellectual Property Rights of any person.
 - 4.2. Where the Services involve the Supplier working on or affixing parts to Existing Plant, the Supplier warrants that:
 - 4.2.1. Those parts will properly connect to the Existing Plant and will operate correctly with, and not damage, the Existing Plant; and
 - 4.2.2. Neither the Services nor any parts will adversely impact on, nor cause any deterioration or diminution in the performance of, the Existing Plant.
5. **Supplier's Warranties - Goods**
 - 5.1. The Supplier warrants that any Goods provided under this Purchase Order will:
 - 5.1.1. Be free from defects;
 - 5.1.2. Be free of any security interest or other encumbrance;
 - 5.1.3. Be fit for their purpose;
 - 5.1.4. Be of merchantable quality;
 - 5.1.5. Conform with any sample provided;
 - 5.1.6. Be new as at the date of supply (unless specified to the contrary in the Purchase Order Form);
 - 5.1.7. Conform to all applicable Laws; and
 - 5.1.8. Not infringe the Intellectual Property Rights of any person.
 - 5.2. The Supplier warrants that any incidental services supplied in connection with the supply of the Goods will:
 - 5.2.1. Meet the Company's requirements as set out in the Specification;
 - 5.2.2. Be provided in a skilful and competent fashion;
 - 5.2.3. Be provided in accordance with Good Industry Practice;
 - 5.2.4. Conform to all applicable Laws and
 - 5.2.5. Not infringe the Intellectual Property Rights of any person.
 - 5.3. Where Goods are intended to be affixed to Existing Plant, or where the Supplier will be providing incidental services in relation to Existing Plant, the Supplier warrants that:
 - 5.3.1. The Goods will properly connect to the Existing Plant and will operate correctly with, and not damage, the Existing Plant; and
 - 5.3.2. Neither the Goods nor any incidental services will adversely impact on, nor cause any deterioration or diminution in the performance of, the Existing Plant.
6. **Compliance with Laws including Work, Health, Safety and Environmental Management**
 - 6.1. The Supplier must be aware and comply with, and ensure that the Supplier's Personnel are aware of and comply with:
 - 6.1.1. All applicable Laws in performing its obligations;
 - 6.1.2. All Site Standards and Procedures; and
 - 6.1.3. All lawful directions and orders given by the Company Contact or any person authorised by Law or the Site Standards and Procedures to give directions to the

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- Supplier.
- 6.2. The Supplier must, in supplying the Goods or performing the Services, co-operate with, do all things necessary to assist and refrain from doing anything that may impede the Company, its officers, employees, agents and contractors in discharging their obligations under any Law.
 - 6.3. The Supplier must in supplying the Goods or performing the Services ensure that the Supplier's Personnel entering the Site perform the Services or deliver the Goods in a safe manner and in a way that does not prejudice safe working practices, safety and care of property and continuity of work at the Site.
 - 6.4. The Supplier must, before performing any of its obligations on the Site, provide the Company with written risk assessments and safe work procedures (which must be consistent with the Supplier's obligations under applicable Laws and the Site Standards and Procedures), including a safe work method statement where required by the applicable Laws.
 - 6.5. The Supplier must, in supplying the Goods or performing the Services, take all reasonable steps to co-operate with the Company, Company Contact and any other Company contractor at or near the Delivery Point or the Site. The Supplier must not interfere with the Company's activities or the activities of any other person at the Delivery Point or the Site.
 - 6.6. Where the Supplier supplies or uses Plant in supplying the Goods or performing the Services, the Supplier agrees that it:
 - 6.6.1. Has management and control of the Plant until the Company accepts the Plant.
 - 6.6.2. Must obtain and provide to the Company all relevant information about the Plant, including, but not limited to the information that the Supplier must obtain and provide under the applicable Laws.
 - 6.6.3. Is responsible for ensuring that all obligations regarding registration of the Plant under the applicable Laws have been complied with.
 - 6.6.4. .
 - 6.7. The Supplier must undertake and successfully complete the Supplier Safety Management Programme to ensure that the Supplier's operations meet the Site Standards and Procedures.
- 7. Testing and Acceptance**
- 7.1. The Company may test, or may require the Supplier to test, the Goods and/or Services.
 - 7.2. The Company will advise the Supplier immediately when it is satisfied that those Goods and/or Services comply with this Purchase Order and can be accepted.
 - 7.3. If the Company considers that the Goods and/or Services do not comply with this Purchase Order, the Company may at its option reject those Goods and/or Services (in which case both parties will be relieved of any further obligation to rectify those Goods and/or Services), or require the Supplier to immediately rectify, re-perform or replace those Goods and/or Services at its cost.
- 8. Warranty Period**
- 8.1. The Supplier must at its cost rectify any defects in Goods supplied under this Purchase Order notified to the Supplier by the Company during the 12 months after acceptance of those Goods.
- 9. Ownership and Risk**
- 9.1. The Company will have title to the Goods on the earlier of their delivery or when the Company pays for those Goods.
 - 9.2. The Company will have risk and responsibility in the Goods when the Company takes delivery of those Goods.
- 9.3. Delivery will be deemed to have occurred when the Goods have been unloaded at the Delivery Point and the delivery has been accepted.
- 10. Price**
- 10.1. The Company must pay the Price not later than 30 days after the last day of the month in which a valid tax invoice for the accepted Goods and/or Services is received, except where the Company disputes the invoice, in which case the Company may notify the Supplier accordingly and withhold payment of the disputed part of the invoice pending resolution of the dispute.
 - 10.2. Unless otherwise specified on the Purchase Order Form, the Price is payable in Australian currency and is not subject to variation.
 - 10.3. The Price is inclusive of:
 - 10.3.1. All charges for packaging, packing, insurance, and delivery of the Goods in accordance with this Purchase Order.
 - 10.3.2. The cost of 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 the performance of (and in conjunction with) the Services.
 - 10.3.3. The Supplier's compliance with its obligations under this Purchase Order; and
 - 10.3.4. All Taxes.
- 11. Assignment & Subcontracting**
- 11.1. The Company may assign and/or novate its rights and obligations under this Purchase Order at any time. The Company shall notify the Supplier of any such assignment or novation, but shall not be required to obtain its consent.
 - 11.2. The Supplier must not assign or sub-contract its rights or obligations under this Purchase Order without the Company's prior written consent.
- 12. Supplier's Personnel**
- 12.1. The Supplier must keep full and proper records of work performed by the Supplier (including records of the hours worked by each of the Supplier's Personnel in providing Services) and provide a copy to the Company on request.
 - 12.2. Neither the Supplier, nor any of the Supplier's Personnel, is an employee or agent or partner of the Company.
- 13. Intellectual Property Rights**
- 13.1. Subject to the terms of this clause 13, a party's Background IP remains vested in that party.
 - 13.2. All Intellectual Property Rights in anything created or supplied by the Supplier in the course of providing Services vests in the Company upon its creation.
 - 13.3. The Company grants the Supplier the right to use anything provided by the Company to the Supplier solely for the purposes of this Purchase Order, but the Supplier must return any such things to the Company at the end of this Purchase Order or upon demand.
 - 13.4. The Supplier shall indemnify the Company and keep the Company indemnified from and against any losses, costs, damages and expenses arising in connection with the breach of any Intellectual Property Rights of the Company or any third person (including but not limited to claims by the Supplier's Personnel).

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14. Indemnity and Insurance

- 14.1. The Supplier must indemnify the Company and keep the Company indemnified from and against any losses, costs, damages and expenses arising in connection with:
- 14.1.1. The loss of, or damage to, the property of any person;
- 14.1.2. The death of, or injury to, any person.
- 14.2. The Supplier must effect and maintain:
- 14.2.1. A policy of public liability and product liability insurance in which the limit is not less than \$20 million for any one claim;
- 14.2.2. A policy of professional indemnity insurance in which the limit is not less than \$5 million for any one claim, and each insurance policy must note the interests of the Company; and
- 14.2.3. A policy of motor vehicle insurance for third party loss or damage.

15. Termination

- 15.1. Without limiting the Company's other rights, the Company may terminate this Purchase Order with immediate effect by notice to the Supplier if:
- 15.1.1. The Supplier fails to comply with any of its obligations under this Purchase Order and fails to remedy the breach within 10 business days after receiving notice requiring it to do so; or
- 15.1.2. Without cause, on 30 days' notice to the Supplier.
- 15.2. Subject to clause 7 and/or 8, if the Company terminates this Purchase Order under clause 15.1.2:
- 15.2.1. The Company must pay for any part of the Goods delivered or Services performed prior to termination;
- 15.2.2. If the Supplier has shipped any Goods before termination but the Goods have not been delivered to the Delivery Point at the date of termination, the Company must, subject to clause 7, accept those Goods when delivered, and pay the Price for them; and
- 15.2.3. If the Supplier has not shipped the Goods at the time of termination, on receiving written notice of termination, the Supplier must stop manufacture of the Goods in accordance with, and to extent specified in the notice, and do everything possible to mitigate any costs incurred in relation to the Goods. To the extent that the Goods were manufactured or fabricated in accordance with any specification prepared by the Supplier specifically for the Company (as advised to the Company), the Company must reimburse the Supplier in respect of any expenditure reasonably incurred by the Supplier prior to the date of termination which is directly attributable to the placing of this Purchase Order and which the Supplier is not able to recoup or otherwise mitigate in some other way.

16. Notices

- 16.1. A notice under this Purchase Order must be in writing and sent via email, post or facsimile to the address on the Purchase Order Form.

17. Governing Law and Jurisdiction

- 17.1. This Purchase Order and any dispute arising out of or in connection with it or its subject matter or formation (including non-contractual disputes) will be governed by, construed and take effect in accordance with the

governing law of South Australia.

- 17.2. The Courts having jurisdiction in South Australia have jurisdiction to determine any proceedings in relation to this Purchase Order.

18. Confidentiality

- 18.1. The Supplier must not, and must ensure that the Supplier's Personnel do not, without the written approval of the Company, disclose or use Confidential Information other than as strictly necessary for the purpose of fulfilling the Supplier's obligations under this Purchase Order.
- 18.2. The rights and obligations under this clause 18 continue after the termination of this Purchase Order.

19. No Waiver

- 19.1. No party will be deemed to have waived any right under this Purchase Order unless the waiver is in writing and signed by that party. A failure to exercise, or delay in exercising, any right under this Purchase Order will not operate as a waiver of that right.

20. General

- 20.1. This Purchase Order records the entire agreement between the parties as to its subject matter. It supersedes all prior contracts, obligations, representations, conduct and understandings in relation to its subject matter.
- 20.2. There shall be no amendment, variation or modification of this Purchase Order, except by written agreement of each party.
- 20.3. This Purchase Order may be executed by exchange of facsimile or .pdf copies and in any number of counterparts. No party shall be bound by this Purchase Order unless and until all parties have executed and exchanged a counterpart.

21. Definitions

Authority means any national, state, provincial, regional, territorial, local or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body.

Background IP means any intellectual property owned or licensed by a party which that party makes available, contributes, brings to or uses in connection with this Purchase Order.

Company means the entity named as such in the Purchase Order Form.

Company Contact means the person specified as such in the Purchase Order Form.

Confidential Information means the terms of this Purchase Order and the Company's information made available to the Supplier at any time in connection with this Purchase Order and the Goods and/or the Services, together with any information that concerns the business, operations, finances, plans or customers of the Company (or the Company's related entities) disclosed to or acquired by the Supplier (including any information that is derived from such information), but does not include information which:

- a) is or becomes public knowledge other than by a breach of this Purchase Order;
- b) is in the Supplier's possession without restriction in

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relation to disclosure on or before the date on which it is disclosed to or acquired by the Supplier; or

- c) has been independently developed by the Supplier or acquired from a source which was not subject to a duty of confidentiality to the Company.

Consumption Tax means value-added Tax, sales Tax, goods and services Tax, or any analogous thereto, but excludes any statutory late payment interest or penalties.

Delivery Date means the delivery date specified as such on the Purchase Order Form.

Delivery Point means the place for the delivery of the Goods specified as such on the Purchase Order Form.

Existing Plant means plant or equipment of the Company not supplied by the Supplier under this Purchase Order.

Good Industry Practice means that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a diligent, skilled, well resourced and experienced provider of goods and/or services of the type supplied under this Purchase Order.

Goods means the goods, if any, required to be provided by the Supplier under this Purchase Order (including any parts of the goods specified) and including goods or parts supplied as part of the supply of any Service.

Intellectual Property Rights means all intellectual property rights, including copyright, trademarks, patents, designs, circuit layout rights, the right to protect confidential information and any application or right to apply for registration of any of those rights.

Law means all legislations, including regulations, bylaws, orders, awards, codes of practice and proclamations with which a party is legally required to comply, together with all Authority requirements, guidelines, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals) with which a party is legally required to comply.

Personnel means directors, employees, agents, contractors or subcontractors.

Plant means any plant, structure or equipment.

Price means the price or rates specified as such in the Purchase Order Form.

Purchase Order has the meaning given to it in clause 1.2 of these Purchase Order Terms and Conditions.

Purchase Order Form means the document issued by the Company, containing, among other things, the description of the Goods and/or Services.

Purchase Order Terms and Conditions means clauses 1 to 22 contained in this document.

Services means services, if any, required to be provided by the Supplier under this Purchase Order (including any part of the specified services and any ancillary services).

Site means the place described as such in the Purchase Order Form as the place for use or storage of the Goods by the Company or for the performance of the Services.

Site Standards and Procedures means all of the Company's standards, policies, and procedures that apply at the Site in

relation to safety, health, the environment, industrial relations, workplace bullying and harassment and personal conduct.

Specification means the detailed requirements and specifications for the Goods and/or Services, and their delivery and/or performance, as set out in the Purchase Order Form.

Supplier means the party or parties named as such in the Purchase Order Form.

Supplier Safety Management Programme means the Company nominated process to be undertaken by Suppliers as a condition of the provision of Goods and/or Services to the Company. This process is utilised by the Company to ensure compliance with site requirements and continuous improvement of workplace health and safety. Processes may include, but are not limited to: safety observations; audits; information briefings; site-specific training; and, awareness programs.

Tax includes all present or future taxes, fees, levies, duties, imposts, assessment, royalties, tariffs, fees and charges imposed or assessed in respect of this Purchase Order by all Authorities including income tax, payroll tax, statutory pension or superannuation contributions and workers compensation payments and contributions, customs duty, excise, and stamp duty, as well as interest, penalties and additions thereto; but does not include Consumption Tax.

22. **Interpretation**

In this Purchase Order, unless the context otherwise requires:

- 22.1. Headings are for ease of reference only and will not affect the interpretation
- 22.2. References to a person include an individual, company, corporation, partnership, firm, joint venture, association, trust or unincorporated body of persons.
- 22.3. References to any party to this Purchase Order include that party's successors and permitted assigns.
- 22.4. References to the singular include the plural and vice versa.
- 22.5. References to clauses are to clauses in these Purchase Order Terms and Conditions.
- 22.6. The interpretation of a provision of this Purchase Order shall not be affected or influenced by the party who drafted or proposed it.
- 22.7. Reference to a "day", "month" or "year" shall mean, respectively, a calendar day, calendar month and calendar year.
- 22.8. Any references to the term "includes", "including" or any similar derivatives shall not imply any limitations.
- 22.9. Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.