

## 1. General

### 1.1. Definitions

**Customer** means GenusPlus Group and represents any of its individual trading entities or any combination of its trading entities.

**day** means a calendar day.

**Defects Liability Period** means:

- a. in relation to Services, the period commencing on the date of completion of the Services and lasting for a period of one (1) year thereafter; and
- b. in relation to Goods, the date of the final supply of the Goods to the nominated delivery point and lasting for a period of one (1) year thereafter.

**Goods** means all goods, equipment, materials, articles, or any other property or parts to be provided to the Customer by the Supplier under the Purchase Order and includes, without limitation, all ancillary activities such as design, manufacture, inspection, testing, expediting, quality assurance and control, painting, packaging and delivery as specified or required.

**GST** means the goods and services tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and its associated legislation and regulations (as amended from time to time).

**Purchase Order** means the purchase order (with a unique reference number) issued by the Customer to the Supplier, which identifies the Supplier and includes but is not limited to a brief description of the Services and/or Goods and includes the Purchase Order documents referred to under clause 1.4.

**Supplier** means the entity performing the Services and/or providing the Goods, as identified in the Purchase Order.

**Services** means the services as set out and further detailed in the Purchase Order.

### 1.2. Interpretations

- i) Words importing the singular are deemed to include the plural and vice versa. Headings and subheadings are inserted for convenience only and must not be used to interpret the text.
- ii) Words denoting a natural person shall include a corporation, trust, partnership, joint venture, association, body corporate or government authority.
- iii) A reference in this Purchase Order to dollars or \$ means Australian dollars and all amounts payable under this Purchase Order are payable in Australian dollars.
- iv) A reference in this Purchase Order to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced.
- v) A reference to the word "including" or "includes" is to be construed without limitation and the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities.
- vi) A reference to a party, clause, schedule, appendix, or attachment is a reference to a party, clause, schedule, appendix, or attachment to this Purchase Order.
- vii) Each provision will be interpreted without disadvantage to the party that drafted or proposed the provision.

- viii) Unless the Customer is expressly required under this Purchase Order to act reasonably in exercising a power, right or remedy, the Customer can exercise any power, right or remedy in its absolute and unfettered discretion and the Customer has no obligation to do so.
- ix) A reference to any legislation means a reference to that legislation as amended, substituted, consolidated, re-enacted, or replaced.

### 1.3. Assumption of risk

- i) Without limiting the Supplier warranties under clause 4, the Supplier warrants that it has carefully examined the site conditions and all documents furnished by the Customer and fully satisfied itself regarding all the conditions, risks (including design and constructability), contingencies and other circumstances which might affect the performance of the Services and/or the supply of the Goods.
- ii) The Supplier accepts responsibility and assumes the risk of all loss, delay, and disruption in connection with the site conditions (including latent conditions) and constructability problems. No increase in the Purchase Order price will be allowed for the Supplier's failure to ensure that it is fully informed regarding all the circumstances relating to the Purchase Order.
- iii) For the purpose of this clause, the 'site conditions' refer to the physical conditions on, under, above, over the surface, or in the vicinity of the site. The site conditions extends to the suitability of facilities, roads, shipping, berths, piers, wharves, infrastructure, utilities, transport, traffic, parking and repair facilities at the site or otherwise required by the Supplier in the performance of the Services and/or the supply of the Goods.
- iv) For the purpose of this clause, 'constructability problems' refer to any ambiguity, inadequacy, inconsistency, incompleteness or lack of co-ordination or integration in or between any one or more of the Customer supplied documents.

### 1.4. Purchase Order documents

The following documents together constitute the Purchase Order:

- i) Special Terms and Conditions (where applicable);
- ii) General Supplier Terms and Conditions (this document);
- iii) Specification(s);
- iv) Drawing(s); and
- v) any further documents attached or referred to in the above documents.

### 1.5. Ambiguities

If the Supplier discovers any ambiguity in the Purchase Order, it shall immediately notify the Customer in writing. The Customer will then direct the interpretation of the Purchase Order to apply. The determination of the Customer will be final and binding on the Supplier and have no effect on the Purchase Order price.

### 1.6. Use of Documentation

Documents prepared in relation to, or ancillary to the Purchase Order, must not be copied or used for any other purpose than the performance of the Services and/or supply of the Goods by the Supplier to the Customer, without the prior written approval of the Customer.

### 1.7. Confidentiality

Any information provided by the Customer to the Supplier, which is noted as, or which is by its nature, confidential, must not be disclosed to any third party without the prior written consent of the Customer. The obligations under this clause 1.7 shall be continuing obligations and shall survive the completion or termination of the Purchase Order for a period of 2 years from the completion or termination of the Purchase Order.

### 1.8. Privacy

- ii) The Supplier must not issue any information which includes details about the Services, Goods and/or the Purchase Order, for publication in any news or communication media, without the prior written approval of the Customer.
- iii) If the Supplier is provided with, or has access to, personal information under the Customer's control, the Supplier must:
  - iv) comply with the provisions of the Privacy Act 1988 (Cth);
  - v) use or collect the personal information for the sole purpose of providing the Services and/or Goods;
  - vi) protect the personal information from misuse and loss and from unauthorised access, modification, or disclosure; and
  - vii) destroy or permanently de-identify the personal information if that information is no longer needed to provide the Services and/or Goods.

### 1.9. Waiver

No failure or delay on the part of the Customer in exercising any of its rights under the Purchase Order shall be construed as constituting a waiver of any such rights.

### 1.10. Subcontracting and Assignment

The Supplier must not subcontract nor assign all or any part of the Purchase Order without the prior written approval of the Customer. On request by the Customer, the Supplier must provide the Customer with full particulars of any work to be subcontracted together with details of the proposed subcontractor prior to entering into any subcontract. The Customer's approval of any subcontractor under this clause 1.10, will in no way relieve the Supplier of any of its obligations under the Purchase Order.

### 1.11. Entire Agreement

The Purchase Order constitutes the entire agreement between the Customer and the Supplier. The parties shall not be bound by or liable for any statement, representation, promise or understanding not set forth herein. Nothing contained in proposals, correspondence, discussions, or negotiations prior to the date of the Purchase Order has any effect on the Purchase Order unless specifically incorporated herein.

### 1.12. Communications

- i) The Customer and the Supplier are each required to appoint a representative with authority to discharge their respective duties under this Purchase Order. Any change to the appointment of a representative must be communicated in writing to the other party.

- ii) No direction by the Customer will have authority under this Purchase Order unless it is communicated to the Supplier by the nominated Customer representative.
- iii) Any notice or other communication required under the Purchase Order shall be delivered in writing and shall be in a form which can be read, copied, and recorded conveniently. Verbal instructions or directions from the Customer shall be confirmed in writing to the Supplier within a reasonable time. A notice shall take effect from the time when it is delivered to or received at the nominated address of the parties.
- iv) The Supplier's nominated representative must make themselves available to attend regular meetings on behalf of the Supplier to review and coordinate the performance of the Services and/or the supply of the Goods with the Customer and their client.
- v) When requested by the Customer, the Supplier must provide reports and data in relation to the performance of the Services and/or supply of the Goods. The reports and data must be presented to a standard and at times acceptable to the Customer.

### **1.13. Licences and laws**

- i) The Supplier shall comply with all applicable laws, by-laws, ordinances, regulations, proclamations, orders, rules and with the lawful requirements of public authorities and other authorities in any way related to the supply of the Goods and/or the performance of Services, including without limitation all occupational health and safety laws.
- ii) The Supplier must obtain and maintain all licenses and approvals required for the performance of the Services and/or the supply of the Goods. The Supplier must provide the Customer with copies of all licenses and approvals when requested by the Customer.

## **2. Insurances**

### **2.1. Insurance policies**

Prior to the commencement of the Services and/or supply of the Goods, the Supplier must effect and maintain:

- i) public and product liability insurance to the value of \$20 million (unless otherwise stated);
- ii) workers compensation insurance as required by law;
- iii) motor vehicle third party damage insurance and death or injury cover as required by law;
- iv) professional indemnity insurance (as applicable, for example Design Engineers), which is to be maintained for no less than 7 years after the completion of the Purchase Order; and
- v) such other insurances required by the Customer or required by law, upon terms acceptable to the Customer.

### **2.2. Potential claims**

The Supplier must, as soon as practicable and in writing, inform the relevant insurer and the Customer of any occurrence that may give rise to a claim under or in connection with any insurance required under this Purchase Order and keep the Customer informed of all developments concerning the claim.

### 2.3. Policy requirements

- i) The Supplier's insurance policies must cover the Supplier for all indemnities in favour of the Customer under this Purchase Order and the Supplier's liability at law in connection with this Purchase Order.
- ii) The Supplier's insurance policies must include a principal's indemnity extension in favour of the Customer, a cross liability clause and waiver of subrogation in favour of the Customer.

### 2.4. Deductibles

- i) In the event that there is a deductible payable under any of the Customer's insurance and the Supplier is responsible for the loss or damage giving rise to the insurance claim, the Supplier shall be responsible for paying the deductible.
- ii) In the event that there is a deductible payable under any of the Supplier's insurance, the Supplier shall be responsible for paying the deductible.

## 3. Indemnity and Liability

### 3.1. Indemnity

- i) The Supplier must indemnify and keep indemnified the Customer and its officers, employees, and agents against:
  - a. any loss or damage to property, whether within or outside the site; or
  - b. any claim or loss due to any act, omission, breach, or non-performance of the Purchase Order by the Supplier;
  - c. any claim or loss suffered or incurred in connection with:
    - i. illness, injury to or death of any person;
    - ii. the loss or damage of any third-party property;
    - iii. actual or alleged infringement of intellectual property rights or confidential information; or
    - iv. breach or violation of any applicable laws,

in each case, in connection with the performance of the Services and/or supply of the Goods.

- ii) Each indemnity in this Purchase Order is a continuing obligation, separate and independent from the Supplier's other obligations. This clause 3.1 will survive the completion or earlier termination of the Purchase Order.
- iii) For the purpose of this clause, 'claim' means any claim for payment of money (including damages, compensation or otherwise) or for a reduction or alleviation of rights or obligations under this Purchase Order, arising out of or in any way in connection with the Purchase Order or otherwise arising at law or in equity, including under statute, in tort (including for negligence, negligent misrepresentation or otherwise), for restitution, quantum meruit, waiver, estoppel or otherwise.
- iv) For the purpose of this clause, 'loss' means any loss (whether direct, indirect or consequential), debt, obligation, cost (including legal costs, deductibles or increased premiums), expense, damages, fine, penalty, compensation, charge or any other liability whether actual, prospective, contingent or currently ascertainable or not.

### 3.2. Liability

- i) To the extent permitted by law, the Customer will not be liable to the Supplier for any indirect or consequential loss under the Purchase Order, in tort (including negligence), in equity or otherwise at law.
- ii) The maximum aggregate value for which the Customer may be liable to the Supplier in connection with the Purchase Order is limited to the price of the Purchase Order.

## 4. Completion of Works

- i) The Supplier must ensure that its personnel perform and complete the Services and/or supply the Goods in accordance with:
  - a. the Purchase Order;
  - b. relevant Australian standards;
  - c. best industry practice;
  - d. manufacturers specifications/instruction; and
  - e. any direction by the Customer.
- ii) The Supplier warrants that:
  - a. prior to the Purchase Order date:
    - i. it has fully informed itself as to the nature and character of the Services and/or Goods; and
    - ii. it has fully examined and satisfied itself as to the accuracy and sufficiency of the Purchase Order and any further disclosed information in relation to the performance of the Services and/or supply of the Goods;
  - b. it has not relied in any way on the skill or judgement of the Customer and it has relied entirely on its own independent analysis and investigations in deciding to enter into this Purchase Order;
  - c. it accepts and has made adequate allowance in the price and time for performance and/or supply, for all risks associated with the performance of the Services and/or supply of Goods;
  - d. from the time title in the Services and/or Goods passes to the Customer under this Purchase Order, the Services and/or Goods will be free from any encumbrance, lien, mortgage, security interest, charge, or any other third-party interest;
  - e. the Services and/or the Goods will:
    - i. upon completion, be fit for purpose and meet the requirements described in, or reasonably inferred from this Purchase Order (including with respect to the design life or service life of the Services and/or Goods or any component thereof);
    - ii. comply with all laws;
    - iii. continue to comply with the warranties referred to in this clause 4 at all relevant times after completion;
    - iv. be free from defects, including quality, safety, and latent defects;

- f. it will perform the Services and/or supply the Goods in a safe manner, free from risks to health, safety and environment including (without limitation) in compliance with all work health and safety and environmental laws and applicable industrial awards and agreements;
  - g. it will comply with all of the Customer's policies notified to the Supplier from time to time, including without limitation, the Customer's 'Code of Conduct' and the 'Safety Non-Negotiables';
  - h. it will not knowingly do or permit anything which might damage the name or reputation, or invite adverse public criticism, of the Customer and its officers, employees, agents, and its clients; and
  - i. any information given or representation made to the Customer in connection with the Services and/or Goods is accurate, current and is not misleading or deceptive in any respect.
- iii) The Supplier acknowledges and agrees that the Customer is relying on the skill, knowledge, experience, and judgement of the Supplier in relation to the planning of the Services and/or Goods and the choice of plant and materials, systems, and services for related works.
- iv) The Supplier acknowledges and agrees that the Supplier's warranties under this Purchase Order remain unaffected, notwithstanding:
- a. any ambiguity, inaccuracy, insufficiency or inadequacy in this Purchase Order or any document furnished by the Customer;
  - b. inspection, testing, approval, payment, or consent by the Customer in relation to any Services performed and/or Goods supplied by the Supplier;
  - c. any variation to the Services and/or Goods; or
  - d. the suspension, termination, or completion of this Purchase Order.

#### **4.1. Supplier Qualifications**

- i) The Supplier represents and warrants to the Customer that both the Supplier and Supplier personnel have the necessary skills, competency, qualifications, authorisations, experience, and resources to successfully perform the Services and/or supply the Goods in accordance with the requirements of the Purchase Order. Any records of skills, competency, qualifications, authorisations, experience, and resources must be made available to the Customer at any time upon request.
- ii) The Customer may, acting reasonably, direct the Supplier at its cost to remove a member of the Supplier's personnel from the performance of the Services and/or supply of Goods at any time, and to replace such personnel promptly at no extra cost to the Customer, and the Supplier must comply.

#### **4.2. Supplier Onboarding**

The Supplier agrees and has made adequate allowance in the price for the Supplier's personnel, plant, and equipment to undergo the necessary onboarding requirements in relation to the Purchase Order.

#### **4.3. Supplier information**

- i) The Supplier gives consent for information concerning its employees, suppliers, agents, and representatives, to be utilised and retained by the Customer, its clients, associated parties, and law enforcement as reasonably required for legitimate business and/or legal/compliance purposes.

- ii) Personal data includes any information relating to any identifiable individual whether living or deceased. Actions taken in relation to personal data may include collecting, using, disclosing, recording, organising, storing, transferring, amending, deleting, destroying, retrieving, accessing, hosting, disseminating, or otherwise handling to, with, or by the Customer, its clients, insurers, and/or law and regulatory enforcement, to the extent of relevant jurisdiction and client and the Customer requirements. The Supplier acknowledges that it has gained consent from these individuals to this end.

#### 4.4. Accommodation, flights, and travel

Unless otherwise provided under the Purchase Order, the Supplier is responsible for the arrangement, cost and coordination of all accommodation, flights, and travel for the performance of the Services and/or supply of the Goods.

#### 4.5. Site Access

- i) The Supplier must inform its personnel of all applicable site access requirements, policies, procedures, and site rules pertaining to the site at which the Services are to be performed and/or the Goods are to be delivered and/or installed. This includes, but is not limited to, attending site inductions, adhering to security processes, undergoing medical assessments, undergoing fitness for work testing on site, and safety, health, environment, and quality requirements.
- ii) The Customer is not required to provide the Supplier with exclusive possession of the site. The Supplier agrees to coordinate with the Customer and its other contractors at the site in order to complete the Services and/or supply the Goods without causing delay or disruption to the work being performed by the Customer or its other contractors at the site.
- iii) If the Supplier believes the Customer has not provided sufficient and safe access to those parts of the site required for the Supplier to perform the Services and/or supply the Goods, the Supplier must immediately notify the Customer in writing.
- iv) Without limiting the warranties under this Purchase Order, the Supplier acknowledges and agrees that the price includes adequate allowance to meet the site access and coordination requirements under this clause 4.5.

#### 4.6. Supply of Goods

- i) All Goods supplied must be fit for the purpose and meet the requirements described in, or reasonably inferred from this Purchase Order. Unless otherwise specified in the Purchase Order, the Supplier must only use Goods that are new and undamaged.
- ii) Goods supplied must comply with all applicable:
  - a. Australian standards;
  - b. codes and specifications required under the Purchase Order; and
  - c. requirements of government authorities and all applicable laws, including without limitation all obligations in relation to work health and safety and environment.
- iii) All Goods supplied for use in construction must be accompanied with complete supplier/manufacture warranties and accurate material traceability documentation, such as factory testing documentation, materials certification, calibration certification and any other information required to satisfy quality criteria described in, or reasonably inferred from the Purchase Order.
- iv) Title in the Services and/or Goods transfers to the Customer on the earlier of:



- a. delivery to site, the Customer's premises or nominated delivery location; and
- b. payment by the Customer for that part of the Services and/or Goods.
- v) Without limiting the Supplier warranties under this clause 4, the Supplier must indemnify the Customer from and against any claim or loss that the Customer may suffer or incur in connection with any encumbrance, lien, mortgage, security interest, charge or any third party interest in the Services performed and/or Goods supplied in connection with the Purchase Order.
- vi) Until the completion of the Purchase Order, the Supplier bears the risk of any loss or damage to:
  - a. the Services and/or Goods;
  - b. unfixed plant and materials;
  - c. the Supplier's equipment;
  - d. any plant and materials free issued to the Supplier; and
  - e. any item brought to site, the Customer's premises or nominated delivery location by the Supplier.

#### 4.7. Services performed

- i) The Services performed by the Supplier under this Purchase Order must be fit for the purpose and meet the requirements described in, or reasonably inferred from this Purchase Order. The workmanship must be of a high quality and standard. The Services, including the workmanship, must be performed at all times: in accordance with:
  - a. best industry practice and professional standards;
  - b. codes and specifications required under the Purchase Order; and
  - c. requirements of government authorities and all applicable laws, including without limitation all obligations in relation to work health and safety and environment.
- ii) Unless otherwise provided in the Purchase Order, the Supplier is responsible to identify and protect all existing infrastructure and utilities at, and in the vicinity of, the site where the Services are being performed and/or Goods are being supplied. Without limiting any other clause of this Purchase Order, the Supplier indemnifies the Customer for any damage, claim or loss to infrastructure and utilities during the performance of the Services and/or supply of the Goods.
- iii) If requested by the Customer for review, the Supplier must:
  - a. provide the Customer with copies of the task-based risk assessment (such as Job Hazard Analysis or equivalent), 'Safe Work Method Statements' and any other documents prepared for the planning and risk assessment of the work health, safety and environmental risks related to the performance of the Services and/or supply of the Goods; and
  - b. participate in any planning and risk assessment meetings or workshops with the Customer and its clients.
- iv) The Supplier must at all times keep the site and their plant and equipment clean, tidy, and free of refuse.

#### 4.8. Supply of plant, equipment, tooling, and vehicles

- i) The Supplier must only supply and utilise plant, equipment, tooling, and vehicles which are suitable, in good working condition and meets or exceeds all applicable legislative requirements and

Australian standards. In addition, the Supplier shall only supply mobile plant and vehicles which meet or exceed all applicable regulatory standards for use on gazetted roads and site entry.

- ii) The Supplier must ensure that all plant, equipment, tooling, and vehicles are serviced, tested, and maintained, at a minimum, in accordance with the program recommended by the manufacturer. When requested by the Customer, the Supplier must provide records of following in relation to plant, equipment, tooling, and vehicles:
  - a. servicing, testing and maintenance; and
  - b. completed risk assessments, inspections and/or operator's manuals.

#### **4.9. Quality standards**

- i) The Supplier must comply with the standards of quality specified in the Purchase Order and, in all cases, relevant legislative requirements and Australian standards. If no standards are specified, the Supplier must comply with the best practice industry standards applicable to the Services and/or Goods concerned.
- ii) If requested by the Customer for review, the Supplier must provide the Customer with copies of the 'Inspection Test Plan', 'Inspection Test Report', 'Factory Inspection Test Report', 'Type Testing Report', 'Manufacture Data Report' and other documents prepared for the management and control of quality related to the performance of the Services and/or supply of the Goods.

#### **4.10. Work health, safety, and environmental incidents**

- i) The Supplier must notify the Customer's representative of any work health, safety and environmental incident (including incidents reportable to government authorities) which arises out of or in connection with performance of the Services and/or supply of the Goods, as soon as possible and in any event no later than sixty (60) minutes after its occurrence. The Supplier must provide the Customer with a copy of any incident notification documentation provided to a government authority or other authorised party.
- ii) If requested by the Customer, the Supplier must:
  - a. provide to the Customer copies of all other documents relevant to a work health, safety, and environmental incident; and
  - b. authorise the Customer and its representatives, agents, or clients to conduct interviews with any of the Supplier's personnel regarding all matters relevant to the incident.
- iii) If directed by the Customer, the Supplier must complete and submit to the Customer a full investigation into a work health, safety, and environment incident within seven (7) days of its occurrence.
- iv) No increase in the Purchase Order price will be allowed for the Supplier's requirement to comply with the Customer's direction under and requirements of this clause 4.10.

#### **4.11. Testing and Inspection**

- i) The Goods and/or Services must be tested in accordance with the requirements of the Purchase Order, including those codes and specifications required under the Purchase Order and, in all cases, relevant legislative requirements and Australian standards and manufacturer specifications/instructions.
- ii) Unless otherwise stated in the Purchase Order, the Supplier acknowledges and agrees that all required tests and the costs thereof have been allowed for in the price and are the responsibility

of the Supplier. The results of tests shall be promptly supplied to the Customer in writing in a form acceptable to the Customer.

- iii) The Customer will have the right to inspect, test and assess performance of the Services and/or the Goods and the Supplier must give the Customer access to the Supplier's premises for such purposes during its normal working hours. The Services and/or Goods will not be accepted by the Customer until inspected and approved by the Customer. Any inspection, testing or assessment of the Services and/or Goods by the Customer will not relieve the Supplier from its obligations to comply with the requirements of the Purchase Order and will in no way impair the Customer's right to require subsequent rectification of non-conforming Services and/or Goods.

#### **4.12. Defects Liability Period and warranty**

- i) During the Defects Liability Period, the Customer may give written notice to the Supplier of any failure or defect in the Services and/or Goods and the time when rectification must be completed. The Supplier must, without delay and at no cost to the Customer, promptly rectify any failure or defect in the Services and/or Goods.
- ii) The Supplier acknowledges and agrees that the rectification of a failure or defect must be in a manner acceptable to the Customer and may, without limitation, require the Supplier to re-perform the Services and/or replace the Goods. The Supplier further acknowledges and agrees that all rectification must be performed at times and in such a way as to minimise disruption to the Customer and or other third parties impacted by the failure, defect, or rectification. If the Supplier fails to rectify any failure or defect within the time required by the Customer, the Customer may rectify the Services and/or Goods itself or have the rectification undertaken by a third party. All costs so incurred will be a debt due and payable by the Supplier to the Customer which may be deducted from moneys otherwise owing to the Supplier by the Customer.
- iii) If elected in writing by the Customer, any Services and/or Goods rectified during the Defects Liability Period may be subject to a further full Defects Liability Period, commencing on the date of completion of any such rectification.
- iv) In addition to the Defects Liability Period and without limiting the Supplier warranties under this Purchase Order or any other warranties available to the Customer against the Supplier at law or in equity, the Supplier remains liable to the Customer for latent defects in the Services and/or Goods for a period of 6 years following completion of the Purchase Order.
- v) Without limiting any of the Supplier warranties, indemnities, liabilities and obligations under this Purchase Order or otherwise at law or in equity, the Supplier acknowledges and accepts to indemnify the Customer for any direct, indirect or consequential loss, damage or claim caused or contributed by any failure or defect in the Services and/or Goods. This indemnity remains unaffected by any variation, suspension, completion, or termination of this Purchase Order.

## **5. Delivery / Delay**

### **5.1. Packaging & delivery**

- i) Unless otherwise specified in the Purchase Order, the Supplier acknowledges and agrees that the price includes all costs for packing, protecting, loading, transportation, unloading and insurance (for the full replacement value of the Goods) to the nominated site or delivery point for the Goods.
- ii) Without limiting the Supplier warranties under clause 4, the Supplier must indemnify the Customer from and against any claim or loss that the Customer may suffer or incur in relation to the delivery of Goods in connection with this Purchase Order.

## 5.2. Shipping

All consignments supplied to the Customer or bought onto the Customer's premises or sites by the Supplier or their transport provider must, as a minimum, include:

- i) a consignment note;
- ii) the Purchase Order Number;
- iii) a concise identification of all items shipped;
- iv) a summary of outstanding or back order items on the Purchase Order;
- v) a complete record of Goods traceability, including quality and testing documentation;
- vi) relevant safety data sheets (hazardous chemicals); and
- vii) for items with a weight in excess of 25kg, must be supplied and packaged in a manner that is ready for transport using a forklift or similar assisted means.

## 5.3. Performance and delay

- i) The Supplier must perform the Services and/or supply the Goods by the dates required under the Purchase Order. The Supplier must take all reasonable steps to prevent and mitigate any delay in the performance of the Services and/or supply of the Goods and must immediately (within forty-eight (48) hours) notify the Customer of any actual or potential delay. Where a delay prevents the Supplier completing the Services and/or supplying the Goods by the dates required under the Purchase Order, the Supplier must submit a fully evidenced extension of time claim to the Customer within seven (7) days of the delay occurring.
- ii) Subject to the Supplier having carried out reasonable prevention and mitigation steps and the notification and claim submission requirements under this clause 5.3, the Supplier will be entitled to an extension of time to complete the Services and/or supply the Goods where the delay is a result of:
  - a. a breach of this Purchase Order by the Customer;
  - b. a variation to the Purchase Order;
  - c. the suspension of the Services and/or supply of the Goods directed by the Customer, or
  - d. a force majeure event,in each case, where the Supplier has not caused or contributed to the delay and limited to delays that prevent the performance of the Services and/or supply of the Goods by the required date under the Purchase Order.
- iii) Where the Customer has approved an extension of time under this clause, but with the exception of delays resulting from a variation or force majeure event, the Supplier shall be entitled to the direct cost reasonably incurred by the Supplier as a result of the extension of time. The direct cost shall not include, and the Supplier is not entitled to additional payment for, any additional amount for the Supplier's indirect personnel, offsite overheads, or margin.
- iv) For the purpose of this clause, 'force majeure event' means any of the following events or circumstances:
  - a. earthquake, tsunami, cyclone, or storm but not including reasonably foreseeable weather conditions (including wind) at site;

- b. fire or explosion (which is not caused by the party asserting the force majeure event);
  - c. epidemic or quarantine by order of any government agency;
  - d. war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, act of terrorism, rebellion, riot, revolution, insurrection, martial law, or confiscation by order of an authority;
  - e. ionising radiations or contamination by radioactivity from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel; or
  - f. industrial strike which affects Australia generally and is not directed by the affected party,  
  
but only where those events or circumstances are beyond the reasonable control of the party asserting the force majeure event, which the party could not reasonably have provided against before entering into the Purchase Order and which the exercise of reasonable care by the party would not have been able to prevent or overcome.
- v) To the extent the performance of the Services and/or supply of the Goods is delayed and a party is effected by a force majeure event, that party will not be in breach of or otherwise liable to the other party for any delay or non-performance of its obligation under this Purchase Order. Where the effected party of a force majeure event is the Supplier, the Customer is not liable or obliged to provide any financial relief to the Supplier as a result of the force majeure event. If a force majeure event subsists so that the effected party is unable to perform all or a material part of its obligations under this Purchase Order for 6 consecutive months as a consequence of the force majeure event, either party may terminate this Purchase Order with immediate effect.
- vi) In the event the Purchase Order is terminated by the Customer under this clause 5.3, the Supplier shall only be entitled to claim for those Services performed and/or Goods supplied up to the date the force majeure event was notified by one party to the other party.

#### **5.4. Variations**

- i) The Supplier must not vary the Services and/or Goods under the Purchase Order unless directed in writing by the Customer's representative.
- ii) If the Supplier believes that a variation in the Services and/or Goods has occurred, the Supplier must immediately (within twenty-four (24) hours) notify the Customer and the Supplier must submit a fully evidenced variation claim to the Customer within seven (7) days of the variation occurring.
- iii) Subject to the Supplier having complied with the notification and claim submission requirements under this clause, the Customer will notify the Supplier in writing:
  - a. that the Customer agrees that a variation in the Services and/or Goods has occurred and the value of the variation claim that is approved; or
  - b. that the Customer does not agree that a variation in the Services and/or Goods has occurred, and, on this basis, the Supplier's variation claim is not approved.
- iv) The Supplier shall be entitled to the reasonable direct cost to be incurred by the Supplier as a result of the variation and a five percent (5%) margin for indirect personnel, offsite overheads, contingency and profit.
- v) The performance of variation Services and/or supply of Goods must not commence until the Supplier has received written approval by the Customer under this clause 5.4.

- vi) During the term of the Purchase Order and on request by the Customer in writing, the Supplier must provide a detailed written quotation for any variation proposal requested by the Customer. Where the Customer approves the variation proposal, the Supplier must complete the variation to the Services and/or Goods by date stated in the variation proposal.
- vii) For the purpose of this clause, the 'term' of the Purchase Order is that period of time between the date of the Purchase Order and the date when all Services are complete and/or Goods are supplied under the Purchase Order.

## 6. Suspension and termination

### 6.1. Suspension

- i) The Customer may, at any time by written notice, suspend all or part of the Purchase Order for any reason whatsoever. Upon receipt of a notice of suspension, the Supplier will cease performance of the Services and/or supply of the Goods in accordance with the direction of the notice. The Supplier must recommence the Services and/or supply of Goods under the Purchase Order within forty-eight (48) hours of being directed to do so by the Customer.
- ii) The Supplier will not be entitled to payment by the Customer for any costs it may incur as a result of any such suspension where the reason for the suspension was caused or contributed to by the Supplier.

### 6.2. Termination by Default

- i) Subject to clause 6.2 (ii), in the event of a substantial breach of the Purchase Order by the Supplier, the Customer may issue the Supplier a 'Breach Notice'.
- ii) Any Breach Notice must be in writing and:
  - a. contain a Statement that it is a Breach Notice;
  - b. identify and give details of the Purchase Order;
  - c. identify and give details of the breach; and
  - d. state the remedy sought and date required.
- iii) The Supplier, at no cost or impact to the Customer, must remedy the breach in accordance with the Breach Notice to the Customer's satisfaction and without delay.
- iv) Where the Supplier fails to remedy the breach to the satisfaction of the Customer within seven (7) days of the receipt of the Breach Notice, or the breach is not capable of remedy, the Customer may by written notice, terminate the Purchase Order, in whole or in part.
- v) In addition to clause 6.2(iv), the Customer may terminate the Purchase Order with immediate effect, by notice to the Supplier, where:
  - a. the Supplier or the Supplier's personnel breaches the Customer's 'Code of Conduct' or 'Safety Non-Negotiables';
  - b. the Supplier or the Supplier's personnel engage in wilful default, wilful misconduct, or fraud in respect of any matter in connection with this Purchase Order;
  - c. the Supplier has committed more than three breaches of the Purchase Order for which the Customer has issued a Breach Notice for; or

- d. the Supplier abandons performance of all or a substantial part of the Services and/or supply of the Goods.
- vi) In the event the Purchase Order is terminated by the Customer under this clause 6.2:
  - a. the Supplier shall only be entitled to claim for those Services performed and/or Goods supplied up to the date the termination notice is received by the Supplier; and
  - b. any additional costs incurred or required to be incurred by the Customer to complete or have a third party complete the Services and/or supply the Goods in excess of what the Customer would have paid the Supplier under the Purchase Order, shall be a debt due and payable by the Supplier to the Customer.

### 6.3. Termination for insolvency

- i) In the event a party is under an insolvency event (or an event reasonably analogous with insolvency), the other party is entitled to terminate the Purchase Order by written notice with immediate effect.
- ii) In the event the Purchase Order is terminated by the Customer under this clause 6.3:
  - a. the Supplier shall only be entitled to claim for those Services performed and/or Goods supplied up to the date the termination notice is received by the Supplier; and
  - b. any additional costs incurred or required to be incurred by the Customer to complete or have a third party complete the Services and/or supply the Goods in excess of what the Customer would have paid the Supplier under the Purchase Order, shall be a debt due and payable by the Supplier to the Customer.

### 6.4. Termination at Customer's option

- i) Notwithstanding any other provisions of the Purchase Order, the Customer may terminate the Purchase Order by giving fourteen (14) days written notice to the Supplier.
- ii) In the event the Purchase Order is terminated by the Customer under this clause 6.4, and provided the Supplier is not in default, the Customer shall pay the Supplier:
  - a. for Services performed and Goods supplied prior to the date for termination specified in the notice to the Supplier; and
  - b. all reasonable direct costs incurred by the Supplier as result of the termination, excluding off-site overheads, profit, indirect or consequential loss.
- iii) The Supplier acknowledges and agrees that the Customer's liability to the Supplier for termination of the Purchase Order under this clause 6.4, is limited to those costs set out within this clause 6.4 and the Customer has no further liability to the Supplier under this Purchase Order or otherwise at law or in equity in connection with the termination of the Purchase Order under this clause 6.4.

### 6.5. The effect of termination

Termination of the Purchase Order under any clause of this Purchase Order has no effect on the warranties, indemnities, and liabilities of the Supplier to the Customer, pursuant to this Purchase Order or otherwise at law or in equity.



## **7. Price and Payment**

- i) The Supplier acknowledges and agrees that, unless otherwise stated in the Purchase Order, the Supplier acknowledges and accepts that the price includes all:
  - a. items, works and services necessary to perform the Services and/or supply the Goods;
  - b. costs and expenses that may be incurred by the Supplier in connection with this Purchase Order, including the performance of the Services and/or the supply of the Goods and all costs and expenses incurred by the Supplier prior to the date of the Purchase Order;
  - c. full allowance for the risks, liabilities, contingencies, and other circumstances arising in connection with, or which may impact, the Supplier's Services and/or supply of Goods;
  - d. risks, liabilities, and obligations of the Supplier expressed or implied in the Purchase Order; and
  - e. escalation or rise and fall, including the cost of materials or labour, all taxes, charges, imports, and fees of any nature,

whether specifically mentioned or not within any pricing schedule attached or referenced in this Purchase Order.

- ii) The Supplier acknowledges and agrees that it is responsible for the payment of all relevant Australian (federal, state, and local government) and overseas taxes, goods, and services taxes, PAYG taxes, duties, and charges payable with respect to the Services and/or Goods. The Purchase Order price is deemed to be inclusive of all such taxes, duties, and charges.

### **7.1. Payment Schedule**

- iii) The Customer shall pay the Supplier in accordance with the agreed payment schedule attached or referenced in the Purchase Order. If no payment schedule has been specifically defined then the Supplier will invoice the Customer at the completion of each stage of progress performing the Services and/or supply of Goods, as determined by the Customer.
- iv) Unless otherwise stated in the Purchase Order, prices and rates exclude GST.
- v) For the purpose of a fixed lump sum price, the Customer does not warrant the content, correctness, accuracy, or completeness of the breakdown of a fixed lump sum or any bill of quantities. The Supplier is not entitled for any change to that price because of any error, inaccuracy, or incompleteness of any bill of quantities accompanying the price or as otherwise set out in the Purchase Order.
- vi) For the purpose of a schedule of rate price, each unit rate is fixed and subject to re-measurement of the total quantities performed/supplied.

### **7.2. Invoices**

- i) Unless otherwise specified in the Purchase Order, invoices for payment must be submitted to the Customer for payment following performance of the Services and/or delivery of the Goods.
- ii) Where the duration of the Services and/or supply of Goods exceeds one month in duration, the Supplier may invoice the Customer each month for all Services performed and/or Goods supplied during the month.
- iii) When requested by the Customer, the Supplier must provide all reasonable evidence (e.g. invoices for materials) to support any invoice or other claim under this Purchase Order.



- iv) The Customer shall make payment for invoices based on 'thirty (30) days from end of month of the invoice date', unless otherwise agreed in writing by the Customer's representative.
- v) Without limiting any other clause or requirement of the Purchase Order, the Supplier must comply with the following conditions for payment:
  - a. the Supplier has provided the Customer with all relevant and current insurance certificates of currency which have not expired;
  - b. the Purchase Order reference number must be quoted on all invoices;
  - c. in relation to a Supplier providing Services:
    - i. the Supplier, as required by law or on request by the Customer, must include with each invoice, a statement that all remuneration or other amounts payable by the Supplier to any of its employees, consultants or subcontractors have been paid by law or under any industrial instrument in respect of the Services; and
    - ii. the invoice must be accompanied by a report summarising the combined number of worked hours by all persons involved in performing the Services under the Purchase Order during the calendar month.
- vi) Invoices that do not meet the conditions for payment under this clause 7.2, including but not limited to a failure quote a Purchase Order reference number, will be returned to the Supplier for rectification and resubmission.
- vii) Without limiting any other right, the Customer may have under this Purchase Order or at law, the Customer may deduct, retain, withhold or set-off from any moneys or payment due to the Supplier for:
  - a. any debt or other moneys due from the Supplier to the Customer (whether under this Purchase Order or not);
  - b. the amount of any claim which the Customer has or may have against the Supplier (whether under this Purchase Order not); and
  - c. amounts the Customer deems reasonably necessary or appropriate to protect it from loss in connection with identification of failures, defects, or the termination of the Purchase Order under clause 6.2 and 6.3.

### **7.3. Goods and Services Tax (GST)**

- i) If GST has application to any Services performed and/or Goods supplied by the Supplier under or in connection with this Purchase Order, the Supplier may, in addition to the consideration payable or to be provided for the supply, subject to issuing a tax invoice, recover from the Customer an additional amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable or to be provided by the Customer for the supply by the prevailing GST rate.
- ii) All amounts payable by the Customer to the Supplier by way of reimbursement of an amount paid or payable by the Supplier to any other person, or calculated on the basis of amounts incurred or to be incurred by the Supplier, will be calculated on the basis of such amounts paid or payable by the Supplier, or costs incurred or to be incurred by the Supplier, excluding any applicable amount in respect of GST incurred by the Supplier to the extent to which the Supplier is entitled to an input tax credit in respect of such GST or amount.

## 8. Relationship

- i) In relation to the performance of Services and for the purpose of all work health and safety laws, the Supplier acknowledges and agrees that it will perform the Services as an independent contractor.
- ii) The parties acknowledge and agree that nothing in the Purchase Order will be construed so as to constitute the Supplier as an employee of the Customer or constitute a partnership between the parties or so as to constitute either party as the agent or legal representative of the other party.
- iii) The Supplier acknowledges and agrees that the Customer is relying on the skill, knowledge, experience, and judgement of the Supplier for the purpose of the Supplier performing its obligations as an independent contractor.
- iv) Without limiting any of the Supplier warranties, indemnities, liabilities and obligations under this Purchase Order or otherwise at law, the Supplier acknowledges and accepts to indemnify the Customer for any direct, indirect or consequential loss, damage or claim caused or contributed by any failure by the Supplier performing its obligations as an independent contractor.

## 9. Intellectual Property

- i) Any intellectual property rights in any sketches, plans, drawings, designs, reports, or documents prepared by the Supplier in performance of the Services under the Purchase Order will, upon its creation, vest in the Customer.
- ii) Any intellectual property owned by the Supplier prior to the execution of the Services under the Purchase Order will remain the property of the Supplier. The Supplier grants the Customer a non-exclusive, transferable, royalty free, irrevocable, and perpetual licence to use, reproduce, configure, adapt, and modify any intellectual property owned by the Supplier and used by the Supplier performing the Services and/or supplying the Goods.

## 10. Disputes

The parties agree that disagreements or differences arising between the Customer and the Supplier in connection with the Purchase Order must be settled without delay or impact to the on-time performance of the Services and/or supply of the Goods. In the event a disagreement or difference remains unresolved between the Customer and the Supplier, either party may raise a dispute by written notice to the other party. The representatives of the parties under the Purchase Order must meet and attempt to resolve the dispute. The written notice of a dispute must clearly state it is a dispute notice submitted pursuant to this clause 10.

### 10.1. Unresolved disputes

In the event a dispute between the parties remains unresolved within seven (7) days of the dispute being notified in writing, the parties senior management must meet and attempt to resolve the dispute.

### 10.2. Australian Commercial Disputes Centre

- i) If the parties cannot resolve a dispute within twenty-one (21) days of the dispute being notified in writing, the parties agree that the dispute must then be referred to the Australian Commercial Disputes Centre ("ACDC") for mediation. The dispute must be heard within thirty (30) days after it is referred to the ACDC.
- ii) Neither party may litigate until the procedures in this clause 10 have first been complied with.

## **11. Applicable Law**

- iii) Unless otherwise specified, the Purchase Order will be governed and construed in accordance with the laws in place in the state or territory in which the Purchase Order is issued. The Customer and the Supplier submit to the non-exclusive jurisdiction of the courts of the said state or territory.
- iv) For the purpose of this clause and where stated elsewhere in this Purchase Order:
  - a. 'law' includes legislation, common law, principles of equity, licenses, and government authority requirements;
  - b. 'legislation' includes subordinated or delegated legislation, proclamations, regulations, by-laws, orders, notices, rules of court, town planning schemes, resolutions or other instruments made under or by the authority of any such legislation as amended, consolidated, re-enacted, or replaced;
  - c. 'licenses' includes permits, consents, approvals, determinations and permissions which are required from a government authority or under legislation (including any conditions or requirements under any of them); and
  - d. 'government authority' includes national, state, local, regional, territorial or municipal government, ministry, governmental department or authority, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body, having jurisdiction over, or aspect of the performance of, this Purchase Order.
- v) The Supplier acknowledges and accepts the risk for any change in law after the date of the Purchase Order to the extent that the change in law relates to matters of employment, labour, industrial relations, payroll tax, corporate tax, business administration, trade practices and international trade, customs and duties.