

Purchase Order Terms and Conditions

1 DEFINITIONS

In this Contract unless the context otherwise requires:

"Contract" means the Purchase Order and these Terms and Conditions;

"Contractor" means the party identified as the Contractor in the Purchase Order;

"Date for Delivery" means the date/s and/or time/s on which the Goods and/or Services/Works are to be delivered and/or provided to/at the Delivery Location, as specified in the Purchase Order or directed by the Principal;

"Date of Delivery" means the date/s and/or time/s on which the Goods and/or Services/Works are actually delivered and/or provided to/at the Delivery Location;

"Defective" means:

- (a) in relation to Goods: Goods which are not in accordance with this Contract or Goods failing to perform at a satisfactory level for the Principal's purposes or in accordance with the level of performance typically expected of goods of a similar specification;
- (b) in relation to Services/Works: Services/Works which are not in accordance with this Contract, have been omitted, are not of the standard of expected of a competent professional Contractor experienced in providing the same or similar Services/Works or are not in accordance with any reasonable Direction by the Principal;

"Defects Liability Period" means the period stated in the Contract after the Date of Delivery and/or completion of all the Services/Works;

"Delivery Location" means the location specified in the Purchase Order, or as otherwise directed by the Principal, to where the Contractor must deliver the Goods and/or Services/Works and, if not stated in the Purchase Order or in a Direction in relation to Goods, delivered FOT;

"Direction" means a direction, decision, demand, determination, instruction, notice, order, rejection or requirement of the Principal;

"FOT" means, in relation to delivery of the Goods, free on truck (or other transport) and includes the responsibility (and associated costs) for packing, loading, transportation and insurance (for the full replacement value of the Goods);

"Goods" means the goods, materials, equipment, articles, any other property or parts to be provided or products described and specified in the Purchase Order including all necessary ancillary and associated items, things or services;

"Insolvency Event" means in relation to a party: the bankruptcy, winding up or insolvency of that party; or that party enters into any scheme of arrangement or composition; or a receiver or administrator is appointed to any property of that party;

"Intellectual Property" means any intellectual or industrial property rights, whether registered or unregistered, including without limitation:

- (a) all patents, trade marks, copyright, designs, trade secrets, know-how and other rights in any design, materials, processes, documents and methods of working; and
- (b) all licences and other rights to use or to grant the use of any of the foregoing.

"Payment Claim" means the claim for payment made by the Contractor in accordance with this Contract.

"Price" means:

- (a) where there is a lump sum in the Purchase Order, that lump sum; or
- (b) where there are rates in the Purchase Order, the sum ascertained by multiplying those rates by the quantity properly delivered and performed in accordance with this Contract; or
- (c) where there are both rates and lump sums in the Purchase Order, the aggregate of the sums referred to in paragraph (a) and (b),

as adjusted under this Contract.

"Principal" means the party issuing the Purchase Order, unless stated otherwise in the Purchase Order;

"Project" means the project at which the Principal is carrying out its own works;

"Purchase Order" means the document issued by the Principal to the Contractor to order the Goods and/or Services/Works and includes any specifications, drawings or other documents that may be contained or referred to therein or annexed thereto;

"Site" means the location where the Principal is undertaking the Project;

"Services/Works" means the services and/or works described and specified in the Purchase Order including all necessary ancillary and associated items, things, works or services;

"Special Conditions" means provisions of the Purchase Order which are inconsistent with any term or condition of these Terms and Conditions;

"Terms and Conditions" means this document titled "Purchase Order Terms and Conditions";

"Variation" means any:

- (a) change in the quantity of the Goods and/or Services/Works including omitting any Goods or Services/Works with a view to undertaking the supply by itself or by a third party;
 - (b) change in the character or quality of the Goods and/or Services/Works; or
 - (c) any other change in the scope of the supply under this Contract,
- as directed by the Principal in writing and identified as a Variation.

2 INTERPRETATION

2.1 In this Contract unless a contrary intention appears:

- (a) clause headings are inserted for convenience only and will not be used in the interpretation of this Contract;
- (b) a reference to the word "including" and similar expressions are not words of limitation;
- (c) references to parties, clauses, schedules or annexures are references to parties, clauses, schedules or annexures to, or of, this Contract and a reference to this Contract includes any schedule or annexure;
- (d) a reference to this Contract or to any other agreement, deed or document, includes respectively, this Contract or that other agreement, deed or document as amended, novated, supplemented, varied or replaced from time to time;
- (e) a reference to a person includes a reference to a firm, body corporate, an unincorporated body or other entity however constituted;
- (f) a party includes the party's executives, administrators, successors and permitted assigns;
- (g) if a party consists of more than one person this Contract binds them jointly and each of them severally;
- (h) references to payments to any party shall be construed to include payments to another person upon the direction of such party;
- (i) references to any legislation, or to any section or provision of any legislation, includes any statutory modification or re-enactment or any statutory provision substituted for it, and any ordinances, by-laws, regulations and other statutory instruments issued under such legislation;
- (j) where a party executes this Contract in its capacity as a trustee, a reference to that party includes any substituted or additional trustee;
- (k) an obligation, covenant, representation or warranty on the part of more than one party shall be deemed to be an obligation, covenant, representation or warranty on the part of those parties jointly and each of them severally;

- (l) the singular will include the plural and vice versa and a reference to any gender includes all genders; and
- (m) a reference to dollars or \$ is to Australian Dollar.

2.2 Unless otherwise stated, the order of precedence of any of the following documents forming part of the Contract, will be as follows:

- (a) Purchase Order;
- (b) Special Conditions'
- (c) these Terms and Conditions'
- (d) scope of services annexed and/or referred to in the Purchase Order.
- (e) specification(s) annexed and/or referred to in the Purchase Order;
- (f) drawing(s) annexed and/or referred to in the Purchase Order.

2.3 If the Contractor discovers any ambiguity in the Contract it shall immediately notify the Principal in writing. The Principal will then determine the correct interpretation of the Contract. The determination of the Principal will be final and binding on the Contractor and have no effect on the Price.

3 AGREEMENT TO SUPPLY GOODS AND/OR SERVICES/WORKS

3.1 The acceptance by the Contractor of a Purchase Order constitutes a contract for the supply of the Goods and/or Services/Works in accordance with the Terms and Conditions of this Contract. The Contractor agrees to supply the Goods and/or Services/Works to the Principal in consideration for the Price.

3.2 The Contractor is deemed to accept a Purchase Order on the first to occur of:

- (a) the Contractor acknowledging in writing that it accepts the Purchase Order; and
- (b) the Contractor commencing the supply of the Goods and/or Services/Works.

4 WARRANTIES

4.1 The Contractor warrants and represents that the Principal will have ownership of the Goods and/or the product of the Services/Works free of any charge, lien, encumbrance or any other interest by a third party and that the Principal will have the ownership of all Intellectual Property relating to the Goods and/or Services/Works.

4.2 The Contractor warrants and represents to have carefully examined all documents furnished by the Principal and fully satisfied itself regarding all the conditions, risks, contingencies and other circumstances which might affect the performance of the Services/Works and/or the supply of the Goods. No increase in the Purchase Order Price will be allowed for the Contractor's failure to ensure that it is fully informed regarding all the circumstances relating to the Purchase Order.

4.3 The Contractor shall comply with all applicable laws, by-laws, ordinances, regulations, proclamations, orders and rules and with the lawful requirements of public authorities and other authorities in any way related to the supply of the Goods and/or Services/Works, including without limitation all occupational health and safety laws.

4.4 The Contractor shall be responsible for the payment of all relevant Australian (Federal, State and Local Government) and overseas taxes, PAYG taxes, duties and charges payable with respect to the Goods and/or Services/Works. The Price will be deemed to be inclusive of all such taxes, duties and charges.

4.5 In relation to Goods, the Contractor warrants and represents that the Goods:

- (a) are new, of merchantable quality, are not Defective, are fit for the purposes for which the Principal requires them and are in accordance with the requirements of this Contract;
- (b) will be capable of operating satisfactorily and safely in the environment to which they will be exposed;
- (c) correspond with any sample and/or description made available by the Principal to the Contractor, or provided to the Principal by the Contractor; and
- (d) are in compliance with any applicable standards, including, but not limited to any applicable Australian Standards and any other relevant standards.

4.6 In relation to Services/Works, the Contractor must:

- (a) perform the Services/Works to the standard of professional care, skill, judgement and diligence expected of a competent professional Contractor experienced in providing the same or similar services and in accordance with the requirements of this Contract;
- (b) follow any reasonable direction by the Principal;
- (c) rectify all errors and omissions in the Services/Works, at no cost to the Principal; and
- (d) utilise the nominated personnel to perform the Services/Works.

5 DIRECTIONS

5.1 The Contractor and its personnel, consultants and subcontractors must comply with the Principal's Directions whether oral or in writing.

6 ACCESS

6.1 The Contractor acknowledges that if the Contractor enters the Site or any other premises, the Contractor must take all measures necessary to protect people and property, avoid unnecessary interference with the passage of people and vehicles and prevent nuisance and unnecessary noise and disturbance.

6.2 The Contractor must ensure that its employees, representatives and agents act in a safe and lawful manner and that they comply with all relevant safety legislation and with the Principal's safety standards and policies when they are on the Site or on any other premises.

7 DELIVERY OF THE GOODS AND/OR SERVICES/WORKS

7.1 The Goods will be delivered to the Delivery Location on the Date for Delivery, or, if no date is specified, as soon as is reasonably possible and in accordance with any Direction given by the Principal. Delivery may be required on any day.

7.2 The Services/Works must be:

- (a) commenced immediately upon the acceptance by the Contractor of a Purchase Order or as otherwise directed by the Principal;
- (b) completed on or before the Date for Delivery; and
- (c) carried out at the Delivery Location/Site.

7.3 The Principal may, at its sole discretion, amend the Date for Delivery to an earlier or later date by giving notice to the Contractor of the new Date for Delivery. The Contractor must not deliver the Goods and/or Services/Works until the amended later Date for Delivery and is not entitled to claim any additional payments as a result of the amended later Date for Delivery.

7.4 On the Date of Delivery, the Contractor (unless otherwise directed by the Principal), at its expense, shall promptly unload the Goods at the area(s) of the Delivery Location as directed by the Principal.

7.5 The Contractor must:

- (a) provide to the Principal a detailed program for the projected supply of the Goods and/or Services/Works and strictly abide by that program;
- (b) advise the Principal when the Goods have been dispatched to the Delivery Location and provide the anticipated delivery time;
- (c) advise the Principal when the Goods arrive at the Delivery Location;
- (d) ensure that the Goods are undamaged upon arrival to the Delivery Location;
- (e) ensure that all Goods are clearly marked and identified;
- (f) ensure that any employees or contractors present at the Delivery Location/Site observe the rules of the Delivery Location/Site, including any personal protective equipment requirements;
- (g) in the event that the Goods are damaged or destroyed during delivery to the Delivery Location, indemnify the Principal in relation to any losses in relation to that damage or destruction;

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- (h) ensure that the Goods have a delivery docket attached to them at the time they are delivered to the Delivery Location, that it is signed by the person delivering the Goods.
- (i) at the time of delivery, have the delivery docket signed by the Principal's representative, stating the time and Date of Delivery. Signed delivery dockets will be evidence of delivery only and will not constitute or be deemed to constitute acceptance of the Goods by the Principal.
- 7.6 Without prejudice and in addition to its other rights under this Contract, if the Contractor:
- (a) delivers the wrong type, quantity or quality of Goods then the Principal may accept or reject, entirely or in part the Goods delivered and where the Goods are to be returned to the Contractor, shall be packaged and returned at the Contractor's expense;
- (b) delivers the Goods at a time or place other than the Date for Delivery and the Delivery Location, then the Principal may refuse or reject the Goods, and the Principal may, without prior notice, procure the Goods from another Contractor, and the Contractor will be liable for any additional costs incurred by the Principal.
- 8 INSPECTION AND TESTING**
- 8.1 At any time, the Principal is entitled to inspect, examine and test the Goods and/or Services/Works. No inspection or testing, nor the results of the inspection or testing by the Principal will in any way relieve or reduce the obligations of the Contractor to the Principal under the Contract or otherwise.
- 8.2 At all reasonable times, the Principal has the right to carry out site inspections, examinations and testing at the Contractor's premises or any other premises where the Goods are being manufactured or stored.
- 8.3 The Contractor must:
- (a) provide to the Principal, at the Principal's request, copies of all technical and safety/quality documentation and information relating to the Goods and/or Services/Works and all other reasonable assistance; and
- (b) ensure that the Principal is provided with access to the Contractor's premises or any other premises where the Goods are or were being manufactured or stored, to enable the Principal to inspect, examine and test the Goods and/or Services/Works.
- 8.4 If the inspections, examinations or tests show Defective Goods and/or Services/Works, the costs incurred by the Principal in conducting the inspection, examination and tests will be a debt due from the Contractor to the Principal.
- 8.5 If, at any time, it is apparent to the Principal that there are Defective Goods and/or Services/Works, the Principal may, at its sole discretion:
- (a) return those Defective Goods to the Contractor;
- (b) direct the Contractor to rectify any omissions or defects in the Defective Goods and/or Services/Works within a period of time determined at the Principal's discretion;
- (c) direct the Contractor to replace the Defective Goods within a period of time determined at the Principal's discretion; and/or
- (d) withhold any payment due to the Contractor.
- 8.6 In the event that the Contractor fails to comply with such a Direction within the time specified by the Principal, then the Principal may have the work of rectification, removal and/or replacement carried out by a third party(ies) and the cost of doing so will be a debt due from the Contractor to the Principal. All costs associated with repairing, reinstating or replacing Defective Goods and/or Services/Works, any other materials or part of the Project affected, or any other losses incidental to the failure of the Goods and/or Services/Works, will be to the account of the Contractor.
- 9 CARE OF THE WORKS**
- 9.1 The Contractor is responsible for the care of the Works, construction plant and things entrusted to the Contractor for the purpose of the Works. During the Defects Liability Period, the Contractor is responsible for any loss of or damage to the Works caused by the Contractor or any of its subcontractors, employees or agents.
- 9.2 If loss or damage occurs to the Works/Site during the period of the Contractor's care, the Contractor shall, at its cost, rectify such loss or damage.
- 10 DEFECTS LIABILITY PERIOD**
- 10.1 Unless stated otherwise in this Contract, the Defects Liability Period will commence at the day of completion of all of the Works or delivery of the Goods and will continue for a period of eighteen (18) months thereafter.
- 10.2 At any time up to the expiry of the Defects Liability Period, the Principal may direct the Contractor to rectify any defect. The Contractor must comply with any Direction within the time stated in the Direction, or if no time is stated, within a reasonable time.
- 10.3 If the Contractor fails to comply with a Direction given under this clause, or where the rectification work is required urgently, the Principal may perform the work or have the work performed by others. The cost to the Principal of having the work performed will be charged to the Contractor.
- 11 TRANSFER OF TITLE AND RISK**
- 11.1 Title in the Goods will be transferred to the Principal upon the earlier of:
- (a) payment for the Goods by the Principal; or
- (b) the Date of Delivery.
- 11.2 Risk of the Goods remains with the Contractor and only transfers to the Principal when the Goods are either:
- (a) collected from the Contractor's premises by the Principal. The Goods are deemed to be collected after they have been loaded onto the Principal's or its agent's transport; or
- (b) delivered to the Delivery Location, unloaded and the delivery docket has been signed by the Principal's representative.
- 12 PAYMENT**
- 12.1 The Price and/or each rate making up the Price is fixed, is exclusive of GST (unless stated otherwise) and will not be subject to adjustment for rise and fall or for exchange rate variations. Unless expressly stated in this Contract, no other sums, fees or charges will be payable in relation to the Goods supplied or Services/Works performed, or in relation to this Contract generally.
- 12.2 The Contractor must, on the last calendar day of each month, submit to the Principal a Payment Claim. Each Payment Claim must:
- (a) contain sufficient detail for the Principal to calculate the amount owing;
- (b) quote a Purchase Order reference number;
- (c) be provided in a format approved by the Principal and constitute a valid tax invoice; and
- (d) include all supporting documentation.
- If the Contractor submits a Payment Claim:
- (e) later than required; or
- (f) earlier than required,
- then the Principal may treat the Payment Claim and deem it as though it was not submitted until the period for submission immediately following actual submission.
- 12.3 The amount payable by the Principal to the Contractor in relation to each Payment Claim is calculated as follows:
- (a) if rates apply, by applying the rates to the quantities of Goods delivered and/or Services/Works performed by the Contractor in accordance with this Contract, as measured by the Principal;
- (b) otherwise, by the Principal's valuation of the Goods and/or Services/Works supplied and work completed to the date of the Payment Claim (as a proportion of the Price);
- (c) by subtracting any other amounts due from the Contractor to the Principal under the Contract; and
- (d) by deducting retention money pursuant to this Contract.
- 12.4 The Principal must assess each Payment Claim within twenty one (21) days of the date the Payment Claim was deemed to have been made. If the Payment Claim is not assessed within time, the Payment Claim is deemed to be disputed in full.
- 12.5 The Principal must pay the Contractor the amount calculated by the Principal as payable in relation to the Payment Claim by the 42nd day following the end of the month in which the Payment Claim was deemed to have been made.
- 12.6 Following the delivery of the last Goods and/or Services/Works, the Contractor will submit its final Payment Claim and releases the Principal from any liability to make any other payments (other than the final Payment Claim as assessed) to the Contractor.
- 12.7 Payment for the Goods and/or Services/Works does not constitute acceptance of the Goods and/or Services/Works but is a payment on account only.
- 12.8 Without limiting the Principal's rights under any provision in this Contract, the Principal may deduct from any sums due to the Contractor (including in respect of a Payment Claim or any retention) any sum which the Principal asserts is or may become payable by the Contractor to the Principal, whether or not:
- (a) the Principal's right to payment arises by way of damages (whether liquidated or unliquidated), debt, restitution or otherwise; or
- (b) the factual basis giving rise to the Principal's right to payment arises out of this Contract, any other Contract, or is independent of any Contract.
- Nothing in this clause will affect the right of the Principal to recover from the Contractor the whole of any such sum or any balance that remains owing.
- 13 RETENTION**
- 13.1 Unless specified otherwise in the Purchase Order, retention of 10% of each payment will be held by the Principal to ensure the Contractor's performance of all and any of its obligations under this Contract.
- 13.2 The Principal will release the Contractor's retention at the end of the Defects Liability Period subject to all defects having been rectified to the satisfaction of the Principal.
- 13.3 The Principal is entitled to utilise the Contractor's retention to pay for any costs, expenses or damages which the Principal claims that it has incurred or might in the future incur as a consequence of any act or omission of the Contractor which the Principal asserts constitutes a breach of the Contract.
- 14 VARIATIONS**
- 14.1 The Principal may, at any time, issue a Variation and the Contractor must perform the Variation. The Contractor must provide an estimate of the cost of the Variation and the impact on the Date for Delivery within seven (7) days of the issue of the Variation.
- 14.2 If the Contractor considers that a Direction from the Principal is a Direction for a Variation but which does not comply with the formal requirements of a Variation, in order to have any entitlement arising from the Direction, the Contractor must, within seven (7) days of the Direction and before commencing work pursuant to the Direction, notify the Principal in writing that the Contractor considers the work is a Variation together with an estimate of the cost of the Variation and the impact on the Date for Delivery.
- 14.3 Where the Principal issues a Variation, the Price will be altered by an amount calculated in the following order or priority:
- (a) to the extent that the parties have agreed the amount of the alteration, then the amount agreed;
- (b) to the extent that this Contract provides for the amount of the alteration, then that amount;
- (c) to the extent that the rates contained in this Contract apply, by applying those rates to the quantities properly supplied in accordance with this Contract;
- (d) failing any of the above being applicable, then by the amount reasonably assessed by the Principal.
- 14.4 To have any entitlement to any extra payment or for an extension of time as a consequence of performing a Variation or the Goods or Services/Works the subject of a Direction which it considers to be a Direction for a Variation, the Contractor must strictly comply with the requirements of this clause 14.
- 15 EXTENSION OF TIME**
- 15.1 The Principal may, by notice in writing to the Contractor, extend the Date for Delivery. The Principal is not under any circumstances obliged to exercise this discretion reasonably or for the benefit of the Contractor. The Contractor is not entitled to claim any additional payments as a result of the later Date for Delivery.
- 15.2 If performance of the Works/Services or delivery of Goods is likely to be delayed for any reason, the Contractor must notify the Principal in writing within 24 hours of the alleged cause of delay arising giving particulars of the delaying event, the likely effect on the Date for Delivery and what measures the Contractor is taking to mitigate the delay.
- 15.3 The Contractor is only entitled to an extension to the Date for Delivery when:
- (a) the Contractor can demonstrate that it actually has been or will be delayed in achieving the Date for Delivery by a Variation or any act or omission by the Principal, the Principal's other subcontractors, agents, consultants or employees;
- (b) the cause was beyond the reasonable control of the Contractor;
- (c) the Contractor has not contributed to the cause and taken all reasonable steps to mitigate the effect of the delay; and
- (d) the Contractor has given all notices strictly in accordance with the requirements of this clause 15.
- 15.4 Where one period of delay has more than one cause, and if one or more of those causes is not a cause for which the Contractor is entitled to claim an extension of time, the Contractor will have no entitlement to an extension of time for that period of delay.
- 15.5 Where the Contractor wishes to make a claim for an extension of time then it must give a notice in writing to the Principal within seven (7) days of the commencement of the cause of the delay which provides full detailed particulars of the cause of the delay, how that cause has delayed or will delay it from achieving the Date for Delivery, the period of the delay (including the dates of commencement and, if applicable, conclusion of the delay) and the extension of time claimed.
- 15.6 The Principal will determine the period of any extension of time to the Date for Delivery to which the Contractor is entitled as a consequence of the alleged cause of the delay. A failure of the Principal to grant a reasonable extension of time will not cause the Date for Delivery to be set at large.
- 15.7 The Contractor's sole remedy for delay shall be an extension of time to the Date for Delivery as provided in this Contract and the Contractor shall not be entitled to any costs, losses, expenses or damages as a result of or in connection with any delay or extension of time.
- 15.8 Except as provided in this clause, the Contractor will have no entitlement to claim any extension of time or any costs in relation to delay or disruption.
- 16 LATE DELIVERY**
- 16.1 The Contractor indemnifies the Principal from any loss, cost, damage or expense suffered or incurred by the Principal by reason of the Goods and/or Services/Works not being delivered by the Date for Delivery.

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17 HEALTH AND SAFETY

17.1The Contractor must provide to the Principal, Safety Data Sheets (SDS) and identify potential hazards in the use and application of material substances prior to or on delivery of the Goods. Such information must include measures and precautions to be taken in storing and handling the Goods.

17.2Where plant and equipment is supplied by the Contractor to the Principal, the Contractor must ensure:

- (a) the plant and equipment is in safe working order, repair and condition and complies with current occupational health and safety legislation or codes of practice; and
- (b) a compliance certificate is provided by the Contractor to the Principal confirming that the plant and equipment is in compliance with current occupational health and safety legislation or codes of practice; and safe operating instructions, logbooks, manuals and risk assessments are provided and operators have received an induction in the safe use of the plant and equipment.

17.3The Contractor shall at all times keep the Works and the Site clean and tidy.

17.4Upon the completion of the Works, the Contractor shall remove all of its plant and equipment and leave the Site clean and tidy.

17.5If the Contractor fails to comply with any requirement in this clause, the Principal shall make the necessary arrangements and the cost thereof will be withheld from payments to the Contractor.

18 INDEMNITY AND LIABILITY

18.1The Contractor will be liable for, and must indemnify the Principal and keep the Principal indemnified from and against any liability and any loss or damage of any kind whatsoever arising directly or indirectly from or in connection with any breach of this Contract by the Contractor, except to the extent that any liability, loss or damage is caused or contributed to by the Principal's wilful misconduct or negligence.

18.2The provisions of this clause will survive the expiration or termination of this Contract.

18.3Every exemption, limitation, defence, immunity or other benefit contained in this Contract to which the Principal is entitled will also be held by the Principal's personnel.

18.4It is not necessary for the Principal to incur expense or make payment before enforcing a right of indemnity conferred by this Contract.

18.5Notwithstanding any other clause in this Contract, the Principal's aggregate liability whether under or for breach of this Contract, or at law or in equity, will be limited (to the extent permitted by law) to the greater of the:

- (a) Price; or
- (b) proceeds (if any) of any relevant insurance coverage maintained by the Principal under this Contract less the amount of any deductible paid by the Principal in relation to that coverage.

18.6Notwithstanding any other provision in this Contract and to the full extent permitted by law, the Principal will not be liable to the Contractor, on any basis (including negligence, tort, contract, statute or otherwise), for any loss of profits, loss of business, loss of revenue, loss of goodwill, cost of capital, loss of use of property, loss of anticipated saving, increase in capital costs, increase in operating costs or any other financial or economic loss or indirect, special, incidental, or consequential loss or consequential damage arising under or in connection with this Contract.

18.7It is agreed that to the extent permitted by law the operation of Part 1F of the Civil Liability Act 2002 WA (and any equivalent statutory provision in any other State or Territory) is excluded in relation to any claims brought by the Principal against the Contractor in connection with this Contract whether such claims are sought to be enforced in contract, tort or otherwise.

19 INSURANCE

19.1The Contractor must effect and maintain the following insurance policies for the duration of the Contract:

- (a) if the Contractor is responsible for transporting the Goods or any other items, transit insurance covering damage to Goods and any other items to be incorporated or used in relation to the Goods, while in transit;
- (b) public liability insurance that provides cover of at least \$20 million per event in relation to liability arising out of personal injury, death, disease or illness or liability to third parties for loss or damage to property caused by or in connection with the Goods and/or Services/Works or otherwise in relation to the Contractor's performance of this Contract;
- (c) workers' compensation insurance against its liability to its employees or persons deemed to be employees as required under any applicable legislation; and
- (d) if the Contractor must carry out any design work or other professional services, professional indemnity insurance that provides cover of at least \$5 million per event that covers any liability of the Contractor in respect of a breach of duty owed by the Contractor in the course of the performance of the Contractor's business or profession, whether as a result of Contract, negligence or otherwise and misleading or deceptive conduct.

19.2If the Contractor fails to comply with any provisions relating to insurance, the Principal may, but is not obliged to, effect, renew, or pay the premium due in respect of the relevant insurance policies, and may recover the cost of doing so as a debt due from the Contractor.

19.3Within five (5) calendar days of the Purchase Order and immediately following the renewal of each insurance policy, the Contractor must provide the Principal with evidence, to the satisfaction of the Principal, that the Contractor has satisfied all of its insurance obligations under this Contract.

19.4Compliance with all provisions relating to insurance is a condition precedent to payment. The Principal shall not be in breach of this Contract should payment be delayed or withheld due to the Contractor's non-compliance with such provisions.

20 DEFAULT

20.1In addition to any other rights that the Principal has under this Contract or at law, if the Contractor commits a breach of any obligation in this Contract which, in the Principal's opinion is capable of remedy, the Principal may give the Contractor a written notice of default. A notice provided under this clause must specify the breach and the date by which the Contractor must rectify the breach.

20.2Time is of the essence and if the Contractor has not performed any of its obligations under this Contract within the prescribed time periods, the Principal is entitled, at its sole discretion, to treat such a breach as a breach which is not capable of remedy.

20.3If:

- (a) the Contractor fails to rectify the default within the time specified in a notice given under clause 20.1;
- (b) the breach is, in the Principal's opinion, not capable of being remedied; or
- (c) an Insolvency Event occurs in relation to the Contractor (and the Corporations Act 2001 (Cth) does not prevent the Principal from exercising its rights under this Agreement because of that Insolvency Event),

the Principal may, by notice in writing, do either or both of the following:

- (d) suspend payments due or which may become due under this Contract; and
- (e) either:
 - (i) immediately take over the incomplete Goods and/or Services/Works and the Contractor's plant and equipment at the Site, and at its option have the Goods and/or Services/Works completed and delivered by itself or others; or

- (ii) terminate this Contract, in which case the respective rights and liabilities of the parties will be the same as they would be at common law if the Contractor had wrongfully repudiated the Contract.

20.4If the Principal exercises the power in clause 20.3(e)(i) then, when the Goods and/or Services/Works have been completed and delivered and when anything else the Contractor was obligated to undertake pursuant to this Contract has been done, the Principal must calculate the difference between:

- (a) the additional cost of having the Contractor's obligations completed by itself or others, and any other loss, cost, damage or expense suffered or incurred by reason of the Contractor's default; and
- (b) the amount of suspended payments and security (including any retention) called on by the Principal.

20.5If the calculation results in a shortfall to the Principal, the Contractor must pay the amount of the shortfall to the Principal within seven (7) days of a written demand for payment.

20.6If the Principal commits a substantial breach of this Contract the Contractor may give the Principal a written notice of default. A notice provided under this clause must specify the breach and the date by which the Principal must rectify the breach, which must not be earlier than twenty eight (28) days from the date of the notice. If the Principal does not remedy the breach within the required period, the Contractor may terminate the Contract by notice immediately. The Contractor will have no right to terminate the Contract unless it has strictly complied with this clause. The Contractor has no other rights for the Principal's breach of this Contract (including no right to suspend its obligations) other than under this clause. In any case, interest on overdue payments will not be payable by the Principal.

21 TERMINATION FOR CONVENIENCE AND SUSPENSION

21.1The Principal may in its absolute discretion terminate the Contract, in whole or in part, for its convenience, by providing notice to the Contractor.

21.2Upon receipt of the notice of termination for convenience, the Contractor must not place any further orders for Goods or incur any further liabilities for the purposes of the Contract and comply with any Directions contained in the notice of termination for convenience.

21.3In the event of termination for convenience of the Principal, the Contractor may only claim payment from the Principal for any Goods and/or Services/Works supplied in accordance with the Contract at the date of termination and not included in any previous payment.

21.4No action taken by the Principal under this clause will operate to prejudice the rights, remedies, powers, authorities and discretions of the Principal and the accrued liabilities of the Contractor (all of which must continue in full force and effect as if there had been no such termination) with respect to the Goods and/or Services/Works that are completed and delivered in accordance with the Contract.

21.5The Principal may, at any time by written notice, suspend all or part of the provision of any Goods and/or Services/Works for any reason whatsoever. Upon receipt of a notice of suspension, the Contractor will cease the provision of the Goods and/or Services/Works in accordance with the Directions of the Principal. The Contractor must recommence provision of the Goods and/or Services/Works within forty eight (48) hours of a Direction to do so by the Principal. In the event of a suspension directed the Principal, the Contractor is not permitted to claim payment from the Principal for any costs resulting from such suspension.

22 GST

22.1In this clause GST means GST within the meaning of A New Tax System (Goods and Services Tax) Act 1999 (as amended) and terms which are defined in that Act have the same meaning as those terms have in that Act.

22.2Unless otherwise expressly stated, the Price and any other amounts due to the Contractor are exclusive of GST.

22.3In addition to any payment obligation of the Principal for a taxable supply in connection with this agreement, the Principal must pay to the Contractor the GST payable by the Contractor on any taxable supply under this Contract.

22.4If this Contract requires a party to pay for, reimburse or compensate against any expense or liability (reimbursable expense) incurred by the other party (payee) to a third party, the amount to be paid, reimbursed or compensated is the amount of the reimbursable expense net of any input tax credit to which the payee is entitled in respect of the reimbursable expense (net amount).

23 NOTICES

23.1A notice, demand, certification, process or other communication relating to this Contract must be in writing in English, must refer to this Contract and may be given by an agent of the sender. A communication may be given by being:

- (a) personally delivered;
- (b) left at the party's current address for notices;
- (c) sent by email to the email address specified in this Contract. Where no email address is specified then notice shall be deemed to have been effectively given if it is sent to an email address which can be demonstrated by the sending party to be an email address in use by the receiving party;
- (d) sent to the party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (e) sent by fax to the party's current fax number for notices.

23.2A communication is given if posted:

- (a) within Australia to an Australian address, four (4) days after posting; or
- (b) in any other case, fourteen (14) days after posting.

23.3A communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

23.4If a communication is given after 5.00 pm in the place of receipt it is taken as having been given on the next day.

24 CONFIDENTIALITY

24.1The Contractor must not, and must ensure that each of its sub-contractors does not, without the express prior written consent of the Principal, divulge to third parties or use for their own or any other purposes:

- (a) any information relating to the Project; and
- (b) any information relating to the Goods and/or Services/Works, unless that information has been published or made available to the public at large, other than due to a breach of an obligation of confidentiality.

24.2If the Contractor is provided with, or has access to, personal information (as defined in Privacy Act 1988 (Cth)), the Contractor must:

- (a) comply with the provisions of the Privacy Act 1988 (Cth);
- (b) use or collect the personal information for the sole purpose of providing the Goods and/or Services/Works;
- (c) protect the personal information from misuse and loss and from unauthorised access, modification or disclosure; and
- (d) destroy or permanently de-identify the personal information if that information is no longer needed to provide the Goods and/or Services/Works.

25 ASSIGNMENT AND SUBCONTRACTING

25.1The Contractor will not subcontract or engage any sub-contractor or at any time purport to charge, assign or encumber this Contract without the prior consent in writing of the Principal and then only on such terms as the Principal in its discretion will approve.

26 GENERAL

26.1This Contract is governed by the laws of Western Australia and the parties submit to the exclusive jurisdiction of the courts of Western Australia.

Purchase Order Terms and Conditions

26.2 Unless otherwise stated in this Contract, none of the Terms and Conditions of this Contract will be varied, waived, discharged or released either at law or equity, except with prior consent, in writing by both parties. Any waiver provided in writing is limited to the relevant specified instance and is not a general waiver.

26.3 Every provision of this Contract shall be deemed to be severable and if any provision of this Contract shall be void or illegal or unenforceable for any reason then the same shall be deemed to be severed and omitted here from and this Contract with such provision thus severed and omitted and with such consequent amendment as may be necessary shall otherwise remain in full force and effect.

26.4 This Contract constitutes the entire, final and concluded agreement between the parties in respect of the Goods and/or Services/Works. Subject to the other express terms of this Contract, no prior or subsequent representation, quotations or terms and conditions (whether verbal or in writing) by the Principal or the Contractor, or any of their respective employees or agents, will bind the parties. The Contractor warrants that it did not rely upon any the Principal provided information, representations or statements for the purposes of entering into this Contract and that it did so upon its own investigations and determinations. To the extent that the Contractor's terms and conditions are supplied with Goods and/or Services/Works the subject of a Purchase Order, the Contractor's terms and conditions shall be of no legal effect and shall not constitute part of the contract for supply and purchase of those Goods and/or Services/Works.

26.5 The Contractor is an independent contractor of the Principal and this Contract does not constitute a partnership or a joint venture or employment relationship between the Parties, or authorise a party to assume or create any obligations on behalf of another party except as specifically permitted under this Contract.

27 PRINCIPAL'S POLICIES AND PROCEDURES

27.1 The Principal adheres to various corporate policies ("Corporate Policies") of which the full texts of the Corporate Policies are available on the Principal's website at www.malilithium.com/CorporateGovernance.html

27.2 The Contractor agrees to abide by the terms of the Corporate Policies in force from time to time and to cooperate with the Principal to support and comply with the Corporate Policies to the extent relevant to the Contractor's Works/Services or scope for supply of Goods.

27.3 The Contractor must notify the Principal without delay of any breach of any Principal's Corporate Policies by the Contractor or its subcontractors, agents or representatives.