

Purchase Order Terms and Conditions

1. INTERPRETATION

1.1 In these Purchase Order Terms and Conditions ("Terms and Conditions"):

Authorisation means any approval, licence, permit, registration, consent, certification, accreditation, declaration, exemption, notarisaton or waiver however it is described which is required for Law to be obtained from a governing agency in relation to the Project.

Prime means Prime Constructions (AUST) Pty Ltd (ABN 70 619 554 522) having its registered business office address at 36 Moffat Street North Cairns QLD 4870, and its related entities as defined under the Corporations Act 2001 (Cth).

Background IP means IP Rights in existence at the date of this PO or come into existence after the date of this PO other than in connection with this PO.

Prime Policies and Procedures means Prime's policies and procedures of conduct and operation as documented (and updated from time to time) via the Prime Integrated Management System ("IMS"). The currently valid and binding version of the Terms and Conditions are available via Prime website and upon written request to admin@primeaust.com.

BIFA means the Building Industry Fairness (Security of Payment) Act 2017 (Qld).

Business Day has the meaning set out in the BIFA.

Code means the National Construction Code 2016 and a Building Code issued by the Minister charged with the administration of the Building and Construction Industry (Improving Productivity) Act 2016 (Qld).

Completion means when the supply of Goods/Services under the PO is issued except for minor defects or omissions which do not prevent the Goods/Services from being reasonably capable of being used for their intended purpose and all as built drawings, warranties and certificates have been provided to Prime.

Completion Date means the date referred to as such in the PO, if applicable.

CP&E means Construct Plant and Equipment.

Defective means Goods/Services (or any aspect of them) which are not in accordance with the PO or which are damaged, deficient, faulty, inadequate or incomplete.

Delivery means the provision of the Goods/Services to the Delivery Address.

Delivery Address means the location specified on the PO where the Goods/Services are to be delivered.

Delivery Date means the date or period specified in the PO in which the Goods/Services shall be delivered to Prime, or if no date is specified the date notified to the supplier by Prime.

Day means calendar day.

Defects Liability Period means the period 12 months from the Delivery Date of the Goods/Services or from the date the Goods/Services are accepted whichever is the longer.

Direction includes agreement, approval, authorisation, certificate, decision, demand, determination, instruction, notice, order, permission, request or requirement.

Force Majeure means an event which is not within the control of the party claiming force majeure relief, and which by the exercise of reasonable care, that party is not able to prevent or overcome, including without limitation:

- an act of God;
- fires and earthquakes;
- natural or man-made viruses or diseases that result in major disruption such as but not limited to a pandemic;
- an act of war, riots or civil commotion and acts of public enemy's;

but specifically excludes:

- any occurrence which results from the wrongful act or wrongful omission of the affected party or the failure by the affected party to act in a prudent and proper manner and in accordance with Good Industry Practice;
- any failure by the affected party to reach agreement with any third party necessary to enable the affected party to perform its obligations under these Terms and Conditions; or
- in the case of the Supplier, breakdown of the Supplier's CP&E.

Good Industry Practice means the practices, methods and acts engaged in or approved by a person which, in the conduct of its undertaking, exercises that degree of due diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced persons and includes but is not limited to:

- compliance with all relevant Australian standards, regulations, industry codes of practice, Laws, and Legislative requirements;
- compliance with industrial awards;
- supplying conforming, fit for purpose Goods/Services in a workmanlike manner;
- supplying Goods/Services of merchantable quality, new materials and free from defects;

Goods/Services means all work to be carried out, provided and/or supplied by the Supplier in accordance with the PO including:

- any materials, supplies, plant, equipment, services, or other things to be supplied as part of the Goods by the Supplier to Prime, as specified in these Terms and Conditions (including as set out in any subsequent PO);
- all Goods/Services set out in the PO;
- other Goods/Services, functions responsibilities and obligations the PO provides that the Supplier has, or will perform or supply;
- all Goods/Services, responsibilities, and functions not specifically described in the PO but which are incidental to, or otherwise necessary for the Supplier to provide the Goods/Services under the PO;

and includes where applicable, the supply, hire or provision of any Goods/Services.

GST has the meaning given to that term under the New Tax System (Goods and Services Tax) Act 1999 (Cth).

Insolvency Event means the happening of any one of the following events in relation to the Supplier:

- the Supplier voluntarily or involuntarily suspends the payment of its debts;
- where the Supplier is a body corporate, it becomes an externally administered body corporate under the Corporations Act 2001 (Cth) or steps are taken towards it becoming an externally administered body corporate which are not withdrawn or dismissed within 14 days, or a controller (as that expression is defined in the Corporations Act 2001 (Cth)) is appointed to the Supplier or steps are taken for the appointment of a controller which are not reversed or abandoned within 14 days, or the Supplier is taken to have failed to comply with the statutory demand within the meaning of section 459E of the Corporations Act 2001 (Cth);
- where the Supplier is a natural person the Supplier commits an act of bankruptcy" as that expression is defined by the Bankruptcy Act 1966 (Cth).

IP Rights means all copyright and analogous rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets), know-how, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields.

Law/Legislation means the applicable Commonwealth and State legislation, regulations, by-laws and other subordinate legislation and Common Law and equity governing these Terms and Conditions.

Month means calendar month.

WH&SE means Work Health Safety & Environment.

Owner means the principal under any contract in which Prime is the contractor and for which the Goods/Services are supplied and includes the Owner's Personnel.

Personnel means:

- in relation to Prime, any of its employees, agents or representatives;
- in relation to the Suppliers, any of its employees, sub-contractors, their subcontractors, agents and representatives involved either directly or indirectly in the provision of the Goods/Services;
- in relation to a subcontractor, any of its employees, agents and representatives involved either directly or indirectly in the provision of the Goods/Services; and
- in relation to the Owner, any of its agents, contractors, employees' successors and permitted assigns.

Project means the project so described in the PO.

Project IP means all intellectual property and intellectual property rights created arising or in any way coming into existence in connection with the Project or the supply of Goods/Services pursuant to the PO.

PO means a document entitled "Purchase Order" and issued by Prime to the Supplier for the supply of Goods/Services.

PO Sum means:

- where Prime has accepted a fixed price, the fixed price specified in the PO;
- where Prime has accepted rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the schedule of rates specified in the PO; or
- where Prime has accepted a fixed price and schedule of rates, the aggregate of the sums referred to in paragraphs a) and b), but excluding any additions or deductions which may be required to be made under the PO.

QBCC Act means the Queensland Building and Construction Commission Act 1991 (Qld).

Site means any area where the Goods/Services are to be delivered or the location where the Project is being performed.

Specification means any specification for the Goods/Services included in the PO and any modification of such Specification notified to the Supplier by Prime.

Supplier means the legal entity to which the PO is addressed.

Warranty Period means the period of 24 months commencing on the date of delivery of the Goods/Services or twelve (12) months from the date in which the Goods/Services are accepted whichever is the longer.

2. SUPPLY OF GOODS/SERVICES

2.1 In consideration of payment of the PO Sum by Prime, the Supplier must supply the Goods/Services as specified in any PO placed by Prime. The Supplier acknowledges that time is of the essence in respect of the Supplier's obligations to supply the Goods/Services.

2.2 Where the PO relates to any Goods/Services the subject of a contract between the Supplier and Prime, the terms and conditions of that contract will prevail to the extent of any inconsistency with these Terms and Conditions.

2.3 The PO commences on the commencement date so described in the PO and expires on the Completion Date.

2.4 Nothing in the PO confers upon the Supplier any exclusivity or obligation to request or acquire any minimum level in respect of the Goods/Services supplied.

3. PRIME POLICIES AND PROCEDURES

3.1 The Supplier shall ensure that it and its Personnel comply with the Prime Policies and Procedures. The Supplier is expected to read and understand and acknowledges that it has been given access to and has read and understands, the latest version of the Prime Policies and Procedures. The Prime Policies and Procedures may be updated from time to time by Prime and the onus is upon the Supplier to regularly review the Prime Policies and Procedures. (The currently valid and binding version of the Prime Policies and Procedures are available upon written request to admin@primeaust.com.)

3.2 The Supplier must ensure that in complying with the obligations under this Clause reference has been given to the latest version of the Prime Policies and Procedures. Prime reserves the right to audit the Supplier's compliance with the Prime Policies and Procedures.

4. WORK HEALTH, SAFETY (WH&S) & ENVIRONMENT

4.1 This Clause 4 applies to the extent the Supplier or any of its Personnel are required to be on or near the vicinity of the Site for the purposes of the supply of the Goods/Services.

4.2 The Supplier shall promptly, and at all times during the supply of the Goods/Services under the PO, take all measures and precautions necessary to ensure all Goods/Services are in accordance with the PO, and ensure that the Supplier's Personnel demonstrate Good Industry Practice and comply with all applicable health, safety & environmental regulations, policies, procedures of Prime and the Owner. These shall include, without limitation any rules or regulations which Prime may be operating under whilst on the Site, and includes any requests or Directions made by Prime or the Owner to initiate corrective actions for any deficiencies or non-compliances.

4.3 In supplying the Goods/Services the safety of the Supplier's Personnel while on the Site shall be the responsibility of the Supplier. The Supplier indemnifies Prime and Prime Personnel from any death, injury, damage, expense, loss or liability arising from the Supplier's non-observance of any requirements of this Clause. The Supplier warrants it will do all things necessary to ensure the health, safety and welfare of its Personnel including (but not limited to):

- ensuring all plant, equipment and substances are maintained and stored in a safe condition and are appropriate for the task for which they are intended;
- providing and maintaining all necessary safety clothing and personal protective equipment for the Supplier's Personnel;
- providing induction safety and health training prior to any person commencing supply of any Goods/Services under the PO and providing regular ongoing training;

4.4 The Supplier agrees to, and shall, cooperate and provide any and all assistance to promptly make available all relevant records and Personnel necessary for any WH&SE audit or assessment for the purpose of ensuring statutory standards and requirements and any standards or requirements of Prime or the Owner are met by the Supplier and its Personnel (and if applicable, its suppliers) in the course of the supply of the Goods/Services. If Prime

considers that the supply of the Goods/Services are not being carried out in accordance with WH&SE requirements and obligations, Prime may direct that the supply of the Goods/Services cease immediately until the matter is rectified and/or may notify the relevant Authority.

5. EMPLOYEE RELATIONS

5.1 The Supplier is responsible for conducting its industrial and employee relations and delay or disruption in the provision of the Goods/Services that may arise as a consequence.

5.2 The Supplier must ensure the terms and conditions of employment of all of its Personnel engaged in the supply of the Goods/Services under the PO are at all times regulated by an agreement made under the Fair Work Act 2009 (Cth).

5.3 Prime may, at any time, request the Supplier to withdraw any of its Personnel from providing any part of the Goods/Services and upon such request the Supplier must promptly arrange for the person to cease being involved in any way in the provision of the Goods/Services notwithstanding any provision in any other contract. The Supplier must replace the person with a person of suitable ability, experience and qualifications within a reasonable time period specified by Prime.

6. STATUTORY REQUIREMENTS

6.1 The Supplier shall obtain all applicable Authorisations required and comply with the requirements of all Law and Legislation and the requirements of all persons exercising statutory authority affecting the supply of the Goods/Services.

6.2 The Supplier shall give all notices, make all applications and pay all fees necessary to comply with these requirements.

6.3 In this Clause, the terms "person in the chain of responsibility", "building product", "Minister", "non-conforming building product" and "required information" each have the respective meanings given to those terms in the QBCC Act.

6.4 The Supplier acknowledges that, to the extent that the Supplier is a person in the chain of responsibility, it has obligations under Part 6AA of the QBCC Act in relation to non-conforming building products and warrants that:

- no building products incorporated into the Goods/Services are non-conforming building products or the subject of a warning statement issued by the Minister; and
- it, and its sub-subcontractors, will provide all required information for a building product incorporated into the Goods/Services to Prime prior to installation of the building product into the Goods/Services.

6.5 To the extent that the Supplier engages its own subcontractors, the Supplier must ensure that its subcontractors agree to include the relevant contract terms set out in subclause 6.3 to 6.8 in their subcontracts.

6.6 The Supplier installs a building product without the required information, Prime will be entitled to, in its sole and absolute discretion, direct the Supplier to remove the building product from the Goods/Services and replace it with a building product that is not a non-conforming building product at the Supplier's cost.

6.7 The Supplier indemnifies and shall keep indemnified Prime against all loss, costs, liabilities, claims, damages or expense contributed to any breach of its obligations under subclauses 6.3 to 6.8 or by any failure of the Supplier to comply with its obligations under the QBCC Act in relation to building products.

6.8 For the avoidance of doubt, the indemnity contained in Clause 6.7 survives the termination, cancellation or completion of this PO.

6A. PROJECT BANK ACCOUNTS

This Clause 6A applies if the Supplier has been notified that the PO is subject to Chapter 2 of BIFA.

The Supplier acknowledges and agrees that:

- Prime has established the Project Bank Account (as defined by section 9(1) of BIFA) in accordance with Part 3 of BIFA;
- in accordance with BIFA:

- all amounts certified in a payment schedule (as that expression is defined in BIFA) as due and owing to the Supplier by Prime will be paid by electronic transfer to the Supplier's nominated bank account from the Project Bank Account – General;
- if any retention moneys are withheld by Prime, those retention moneys may be held by Prime in the Project Bank Account – Retention;
- any amounts the subject of a payment dispute (as defined by section 29 of BIFA) must be held by Prime in the Project Bank Account – Disputed Funds;

6A.3 The Supplier must inform Prime of any change to the Supplier's nominated bank account details as soon as practicable after it becomes aware of the change in details and must provide Prime with any additional information regarding the Supplier's nominated bank account that Prime may reasonably request from time to time, within the time requested;

6A.4 Prime is required to provide details to the Owner of the Supplier's nominated bank account and of payments made to the Supplier and, notwithstanding any other clause of this PO, the Supplier authorises the disclosure of this information;

6A.5 Payments to and withdrawals from the Project Bank Account are strictly subject to the requirements of BIFA, and nothing in this PO shall require Prime to withdraw any moneys or act in any way inconsistent with the requirements of BIFA; and

6A.6 The Supplier shall have no claim against Prime in circumstances where Prime has acted in accordance with BIFA.

7. QUALITY

7.1 The Goods/Services shall match the description referred to in the PO.

7.2 If the Supplier gave Prime a sample or demonstration of the Goods/Services, the Goods/Services supplied shall be of the same nature and quality as the sample/demonstration.

7.3 The Supplier shall, if required by Prime, establish and maintain a quality system which conforms to the requirements of any applicable Australian Standards and the PO. The Supplier will also provide Prime with access to the Supplier's premises and quality system to permit verification activities and quality auditing.

8. DELIVERY, TITLE & RISK

8.1 The Supplier must deliver the Goods/Services to the Delivery Address by the Delivery Date.

8.2 The Supplier must ensure the Goods/Services are supplied safely and are suitably packed to avoid damage in transit or in storage.

8.3 Packages must be clearly marked with the PO number, item number, destination, quantity, description, date and method of dispatch and weight on each package.

8.4 Full unnumbered title of the Goods/Services shall pass to Prime upon the earlier of:

- Prime making payment in full to the Supplier for the Goods/Services under the PO; or
- The Goods/Services being delivered to the Delivery Address and accepted by Prime.

8.5 Risk in the Goods/Services will remain with the Supplier until the Goods/Services are delivered to the Delivery Address and accepted by Prime.

9. SUPPLIER WARRANTIES

9.1 In addition to any warranties implied by Law, the Supplier warrants that the Goods/Services shall conform to the requirements of the PO and are in accordance with the requirements of Good Industry Practice.

9.2 The Supplier warrants that it will not interfere with the activities of Prime or the activities of any other person at the Delivery Address or Site.

9.3 The Supplier acknowledges and agrees that any warranty or indemnity provided by the Supplier under the PO is provided for the benefit of Prime.

9.4 The Supplier shall not carry out any supply of Goods/Services which requires it or its personnel to be registered, licensed, or certified under any relevant law, including but not limited to the QBCC Act and the Labour Hire Licensing Act 2017 (Qld), unless it:

- is appropriately registered, licensed, or certified; and
- can lawfully carry out that work.

9.5 The Supplier warrants and assures Prime that it holds the appropriate licence required under the QBCC Act or otherwise to undertake and perform all of the supply of Goods/Services.

9.6 To avoid doubt, the Supplier must not undertake or perform any supply of Goods/Services if it does so requires a licence under the QBCC Act that the Supplier does not hold.

10. DEFECTS LIABILITY & TESTING

10.1 Prime will not be deemed to have accepted the Goods/Services until the Goods/Services have been inspected. For the avoidance of doubt, payment shall not be deemed to constitute acceptance of the Goods/Services.

10.2 Prime may at any time direct that any Goods/Services provided under the PO be examined or tested by a person nominated by Prime. The Supplier shall provide such assistance and samples and make accessible such parts of the Goods/Services as may be required. On completion of the tests the Supplier shall make good the Goods/Services so they fully comply with the specifications and requirements of the PO.

10.3 Costs of and incident to testing shall be paid by the Supplier unless the test shows that the Services provided are in accordance with the PO.

10.4 Prime may at any time prior to the expiration of the Warranty Period, reject the Goods/Service if Prime believes the Goods/Service is Defective or does not meet the requirements set out in the PO. Prime may unpack, inspect and test the Goods/Services for this purpose.

10.5 If Prime discovers any material or Goods/Services which are not in accordance with the PO or if the Goods/Services cease to be fit for the purpose required by Prime prior to the Completion Date without default on the part of Prime, Prime may, at its absolute discretion, direct the Supplier to, within a specified time at the discretion of Prime:

- remove the defective Goods/Services at the expense of the Supplier; and/or
- replace or repair the defective Goods/Services with conforming Goods/Services as required by the PO at the expense of the Supplier.

10.6 If the Supplier fails to comply with a direction under this Clause within the time specified in that direction, Prime will be entitled to engage another person to complete some or all of the supply of Goods/Services, the cost of which, as reasonably estimated by Prime, (including the estimated cost of repairing, re-performing or making good (as the case may be) any Defective Goods/Services) will be a debt due to the Supplier to Prime.

10.7 Prime may set-off any amount claimed to be due, whether under this Clause, these Terms and Conditions or pursuant to any other agreement or arrangement between the parties, from any money due from Prime to the Subcontractor.

11. GST

11.1 For the purposes of this Clause, the expressions "adjustment note", "Australian Business Number", "GST" and "tax invoice" shall have the meanings assigned to them in legislation including A New Tax System (Goods and Works Tax) Act 1999 (Cth).

11.2 If GST is imposed on any supply of Goods/Services by the Supplier under or in connection with this PO, the Supplier may recover from Prime, in addition to the PO Sum, an amount equal to the GST payable in respect of that Supply.

11.3 Prime need not make a payment to the Supplier under Clause 12 until the Supplier is registered for the purpose of GST and has provided Prime with a valid tax invoice which states the following:

- PO number;
- Supplier's name;
- Supplier's Australian Business Number;
- the words "tax invoice" stated prominently; GST inclusive price;
- total amount of GST payable;
- the date of issue;
- Prime's name;
- Prime's address or Australian Business Number; and
- which satisfies the requirements of Clause 12.1.

12. PRICE, INVOICING & PAYMENTS

12.1 To enable Prime to have sufficient information to assess a payment claim, any payment claim on account of the PO Sum or other amounts payable by Prime to the Supplier must:

- be issued promptly once the supply of Goods/Services is completed and in any event within the period expiring 2 months from the completion of the supply of the Goods/Services such date being the final date upon which the payment claim may be given;
- be sent by email to Prime at admin@primeaust.com;
- be in the form of a valid tax invoice as required under Clause 11.3;
- set out or attach sufficient details, calculations, supporting documentation and other information of all amounts claimed by the Supplier to enable Prime to fully and accurately determine (without the need to refer to any other documentation or information) the amounts then payable by Prime to the Supplier under the PO; and
- include any other information about the PO Sum or the supply of Goods/Services reasonably required by Prime.

12.2 Prime is not required to assess a payment claim, and may withhold payment in full, until a valid payment claim is received by Prime in accordance with Clause 12.1. After receiving a valid payment claim from the Supplier rendered in accordance with Clause 12.1, if Prime is of the opinion that the moneys due from Prime to the Supplier are less than the amount claimed in the Supplier's payment claim, Prime will, within 15 Business Days of receipt of the Supplier's payment claim in accordance with Clause 12.1, issue a payment schedule which identifies the payment claim to which it relates, states the amount of the payment, if any, that Prime proposes to make, and states the reasons for any difference.

12.3 Within 30 days of the end of the month in which the valid tax invoice is received by Prime, Prime shall pay the Supplier the PO Sum for the Goods/Services.

12.4 The amount due to the Supplier will be the value of the Goods/Services supplied to Prime inclusive of all costs incurred by the Supplier (including all charges for packing, insurance and delivery of the Goods/Services) less amounts already paid and other amounts due from the Supplier to Prime which Prime is entitled to deduct. The price is inclusive of all taxes and duties, except GST.

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12.5 If any 2ms due to either party remains unpaid, after the date or the expiration of the period within which they should have been paid, then interest at 2% above the Reserve Bank Cash Rate, shall be payable from but excluding the due date for payment to and including the date upon which the monies are paid.

12.6 For clarity, the parties agree that no reference dates (as defined by section 67 of BIFA) shall arise between the date Completion is achieved by the Supplier and the date the Supplier issues its final payment claim on expiry of the Defects Liability Period.

13. VARIATIONS

13.1 The Supplier shall not vary the supply of Goods/Services under PO except with the prior written approval of Prime.

13.2 Prime may omit any part of the supply of Goods/Services under PO if it has carried out by others, and any action under this Clause will not invalidate or constitute a repudiation of the PO or these Terms and Conditions.

13.3 The Supplier will not be entitled to claim payment for any variation not directed in writing by Prime.

13.4 Unless Prime and the Supplier agree upon a price for a variation, the variation shall be valued by Prime in accordance with Clause 13.5. Prime may direct the Supplier to provide a detailed quotation for the Goods/Services of a variation.

13.5 In valuing a variation, if the PO prescribes specific rates or prices to be applied in determining the value, those rates or prices shall be used. To the extent that this does not apply, reasonable rates or prices shall be used in any valuation.

14. INDEMNITY AND LIABILITY

14.1 The Supplier is liable for self indemnity (and keep indemnified) Prime and Prime's Personnel from and against any liability and/or any loss or damage of any kind whatsoever, arising directly or indirectly from any one or more of the following:

- any breach of the Supplier's obligations or any breach of any warranty of the PO by the Supplier;
- any negligent act or omission or willful misconduct by the Supplier or its Personnel arising out of the supply of the Goods/Service under the PO;
- the illness, injury or death of any of the Suppliers Personnel arising out of or in connection with the Supply of the Goods/Services under the PO;
- any loss or damages arising out of or in connection with any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused or contributed to by the supply and/or use of the Goods/Services by the Supplier.

14.2 The Supplier shall indemnify Prime against any and all costs incurred by Prime as a result of any statutory liability imposed on Prime in respect of the Supplier's Personnel.

14.3 The Supplier's liability to indemnify Prime shall be reduced proportionally to the extent an act or omission of Prime contributed to the liability.

14.4 The provisions of this Clause 14 shall survive termination of the PO for any reason.

14.5 Notwithstanding anything to the contrary, Prime shall not be liable to the Supplier for any consequential, indirect or special loss or damages of any nature whatsoever whether based on warranty, tort (including negligence) or otherwise including (but not limited to) those arising out of delay, loss of product, loss of production, business interruption, loss of revenue or loss of profits.

14.6 The effecting of any or approval of any or all insurance provided under the PO shall not in any way limit the liabilities or obligations of the Supplier under other provisions of the PO.

15. DEFAULT AND TERMINATION

15.1 If at any time the Supplier suffers an Insolvency Event, Prime may immediately terminate the PO by notice in writing to the Supplier.

15.2 If:

- the Supplier or any Supplier Personnel commits an act of gross negligence, willful misconduct, fraud or dishonesty in respect of any matter undertaken or required to be undertaken under the PO;
- the Supplier commits a breach of the PO (incorporating these Terms and Conditions) which is capable of remedy and fails to remedy that breach at its own expense and to the reasonable satisfaction of Prime within 7 days of a notice by Prime specifying the nature of the breach;
- the Supplier commits a breach of any provision of the PO (incorporating these Terms and Conditions) which is not capable of remedy;
- Prime forms the opinion that it is unlikely, having regard to the Supplier's rate of progress and resources, that the Supplier will complete the supply of Goods/Services by the Completion Date;
- the Supplier, without reasonable cause, suspends all or any part of the supply of Goods/Services and/or indicates its intention to do so;
- the Supplier assigns or subcontracts or attempts to assign or subcontract all or any part of its obligations under the PO, without the prior written consent of Prime;
- the Supplier has any licence, registration or certificate required to lawfully carry out or undertake to carry out the supply of Goods/Services suspended or cancelled; or
- Prime is expressly entitled to exercise a right of termination under any other provision of the PO (incorporating these Terms and Conditions), Prime may:
 - terminate the PO in whole or in part with immediate effect, by notice to the Supplier;
 - take all or any part of the supply of Goods/Services out of the control of the Supplier and engage another person to complete some or all of that part of the supply of Goods/Services, the cost of which (as reasonably estimated by Prime) will be a debt due by the Supplier to Prime; or
 - apply additional resources and equipment, whether direct employees or otherwise, to assist the Supplier in the completion of the supply of Goods/Services, the cost of which (as reasonably estimated by Prime) will be a debt due by the Supplier to Prime.

15.3 Prime may at any time terminate the PO in whole or in part, without cause by giving the Supplier no less than 14 days' notice in writing and the effective date thereof.

15.4 In the event of termination under Clause 15.3 Prime shall pay to the Supplier (less any amounts previously paid and subject to any rights Prime may have to suspend, withhold or set-off payments):

- the price for the Goods/Services provided to Prime prior to the effective date of termination and not included in any previous payment by Prime;
- the cost of materials reasonably ordered by the Supplier for the purpose of providing the Goods/Services, which the Supplier is legally liable to accept and cannot otherwise utilize, but only if the materials become the property of Prime;
- the reasonable costs of complying with any Direction given by Prime upon, or subsequent to, termination.

15.5 On the expiration or earlier termination of the PO, the Supplier must:

- stop work to the extent required by Prime;
- take such action as necessary and as Prime directs, for the transfer, protection and preservation of the Prime Property;
- do its best to minimise the cost of termination to Prime;
- within 14 days of termination or expiration, return to Prime (or if requested, erase and/or destroy) all copies in any form of the applicable IP in the possession or control of the Supplier and/or the Supplier's Personnel.

15.6 If the Supplier is indebted to Prime as at the Completion Date, including pursuant to Clause 15A.1(h), Prime may retain the goods, CP&E, documents or other things until the debt is satisfied. If after 7 days' notice the Supplier fails to pay the debt, Prime may sell the goods, CP&E or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the Supplier.

15A. STEP-IN

15A.1 Without limiting Clause 15.1, if Prime is entitled to terminate the PO pursuant to Clause 15.1, Prime may elect to instead exercise any or all of the rights and perform the obligations of the Supplier under this PO through an officer, delegate subcontractor or nominee of the Contractor ("Step-in Rights") by giving written notice to the Supplier to that effect ("Step-in Notice").

15A.2 If Prime exercises its Step-in Rights:

- Prime may exercise its Step-in Rights from the date of the Step-in Notice;
- the Supplier irrevocably appoints Prime, and such other persons as are from time to time nominated or appointed by Prime, jointly and severally as its attorney with full power and authority to exercise its Step-in Rights;
- the Supplier's rights and the Supplier's obligations which the Supplier cannot practically perform under the PO will be suspended to the extent practicable or necessary to permit Prime to exercise its Step-in Rights (this includes but is not limited to the suspension of all payment rights under Clause 12);
- all costs, losses and expenses (including all legal costs and expenses on a full indemnity basis) incurred by Prime in exercising the Step-in Rights shall be a debt due from the Supplier to Prime;
- Prime may cease to exercise its Step-in Rights at any time on giving written notice to the Supplier and in any event will cease to exercise its Step-in Rights on the date set out in that notice ("Step-out Date"), and on and from the Step-out Date the Supplier must immediately recommence performance of the Supplier's obligations which were suspended under this subclause; and
- Prime will not have any liability to the Supplier, and the Supplier will not be entitled to make any claim, arising out of or in connection with the exercise of Step-in Rights by Prime and the Supplier releases Prime from all claims and loss arising from or in connection Prime's exercise of its Step-in Rights to the maximum extent permitted by law.

16. INTELLECTUAL PROPERTY

16.1 Prime and the Supplier acknowledge ownership of all Background Intellectual Property ("IP") remains vested in its creator.

16.2 The Supplier gives Prime a non-exclusive, royalty free licence to use all the Supplier's Background IP to the extent necessary to enable Prime to exercise rights in the Project IP.

16.3 The Supplier grants to Prime a perpetual, irrevocable, non-exclusive and royalty free licence for Prime and others engaged by Prime to use, adapt, modify and copy the Supplier's Background IP.

16.4 The Supplier acknowledges and agrees all Project IP is vested in Prime and is Prime's property as and when created and the Supplier hereby assigns all rights, title and interest in and to the Project IP to Prime.

16.5 The Supplier warrants that it owns the IP Rights in the Supplier's Background IP and that the supply of the Goods/Services does not and will not infringe the rights (including IP Rights) of any third party. The Supplier indemnifies Prime, and Prime's Personnel against any loss or damage (including fees and other legal costs in defending any action) arising out of or in connection with any breach of Clause 16 and shall be liable to Prime for all costs associated with providing any equivalent goods which do not infringe any IP Rights of any third party.

16.6 The Supplier agrees to provide all reasonable assistance Prime may request to protect the IP Rights in the Project IP and/or Prime's Background IP.

16.7 The Supplier must not disclose, reproduce or otherwise deal with the IP, or allow any other person to do the same, for any purpose other than to provide the Goods/Services pursuant to the PO.

17. FORCE MAJEURE

17.1 A party will not be liable for any delay or failure to perform any of its obligations under the PO (other than an obligation to pay money) if as soon as possible after the beginning of the Force Majeure affecting the ability of the party to perform any of its obligations under the PO, it gives a notice to the other party that complies with this Clause 17.1. A notice given under Clause 17.1 must:

- specify the obligations the Supplier cannot perform;
- fully describe the Force Majeure;
- estimate the time during which the Force Majeure will continue; and
- specify the measures proposed to be adopted to remedy or abate the Force Majeure.

17.2 The party prevented from carrying out its obligations under the PO as a result of Force Majeure must:

- remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible; and
- take all action reasonably practicable to mitigate any liabilities suffered by the other party as a result of its failure to carry out its obligations under the PO.

18. CONSTRUCTION PLANT & EQUIPMENT

18.1 If required to provide CP&E on Site, the Supplier agrees to provide the CP&E at its own risk and expense and shall ensure that all CP&E:

- is properly manufactured to a specification of merchantable quality and is fit for the purpose for which it is intended;
- is of such safety standard as Prime is entitled to expect;
- complies with all relevant Laws and Australian industry and safety standards;
- is inspected and tested to ensure it is safe and fit for purpose before use at the Site (and appropriate certification records to this effect are maintained); and
- is operated by appropriately skilled, licensed and qualified Supplier's Personnel.

18.2 The Supplier shall ensure and is obligated to perform all required servicing, maintenance, repairs and for the supply of equipment, materials, wearing parts, tyres and consumables for all CP&E supplied under the PO to a safe, operable, and in accordance with Good Industry Practice throughout the term of the PO.

18.3 Prime may reject any item of CP&E which it determines is unsuitable for the purposes of the PO. If any item is so rejected, then it shall either be (at the sole discretion of Prime) repaired or replaced to the reasonable satisfaction of Prime within 7 days of notification by Prime.

18.4 If the Supplier fails to comply with a Direction to cease using unsafe CP&E, Prime may perform, or have performed, the obligation on the Supplier's behalf and the costs and expenses incurred by Prime are recoverable from the Supplier as a debt due and payable to Prime.

18.5 Any CP&E or other property that Prime provides to the supplier to enable it to complete its obligations under the PO ("Prime Property") remains the property of Prime and must only be used for the purposes of fulfilling the Supplier's obligations under the PO. Prime may register a security interest under the *Personal Property Securities Act 2009 (Cth)* over and in respect of all Prime property that is provided to the Supplier under this Clause or otherwise.

18.6 Should the Suppliers Personnel be permitted to use any CP&E belonging to Prime, then such use shall be on the condition that no warranty or other liability on the part of Prime will be created or implied as to the condition or suitability of the CP&E.

18.7 The Supplier must keep Prime's CP&E well maintained, in good working order and is responsible for and must compensate Prime for, any loss, wear or damage to Prime's CP&E by the Supplier's Personnel.

18.8 If the Supplier is providing CP&E to Prime ("Dry Hire") the Supplier warrants that CP&E shall be provided in accordance with Clause 18.1 a) – d) inclusive.

18.9 The Supplier further warrants that the equipment shall achieve a minimum availability during the hire of 90%.

18.10 Prime shall (if the CP&E is supplied by the Supplier as Dry Hire):

- ensure the Supplier's CP&E is operated by suitably skilled and qualified Prime Personnel;
- withstand under the care of Prime, Prime is responsible for the operation and direct supervision of the Supplier's CP&E;
- if the Supplier's CP&E is required to be maintained by Prime, it shall be maintained in accordance with original equipment manufacturer ("OEM") specifications;
- take proper care of the supplier's CP&E and keep the Supplier's CP&E in good working order and condition (reasonable wear and tear excepted);
- ensure the CP&E is used in accordance with the OEM or Supplier's instructions and recommendations and only used for Prime business operations and for the purpose for which they are designed;
- not part with possession of the supplier's CP&E except to the extent permitted by this PO;
- not modify the Supplier's CP&E in any unauthorised manner;
- Prime shall return the Supplier's CP&E to the Supplier in good working order and condition (reasonable wear and tear excepted) on the Completion Date.

18.11 Prime shall only be liable to the Supplier for the actual hours the CP&E works. If minimum hours apply to the Hire, Minimum hours shall be reduced proportionately to the extent the equipment does not meet the availability requirement specified in Clause 18.9.

18.12 In the event of a breakdown of the Supplier's CP&E, Prime shall notify the Supplier as soon as practicable of the breakdown ("Breakdown Notice"), within 48 hours (or such time agreeable by Prime in writing) of receipt of the Breakdown Notice, the Supplier shall, at the supplier's expense, repair or replace the CP&E to the satisfaction of Prime. If the Supplier does not repair or replace the CP&E to the satisfaction of Prime, Prime may at its sole discretion, repair or replace the equipment, any expense incurred by Prime shall be a debt due and payable by the Supplier to Prime.

19. CONFIDENTIALITY AND MEDIA

19.1 The Supplier shall not (except in the proper course of its duties under the PO or as required by Law or Prime) disclose to any person any information relating to Prime of which it has come into the possession of as a result of the PO or the negotiations preceding the PO.

19.2 The Supplier shall ensure the information is kept confidential and return or destroy the same within 3 days following written request by Prime.

19.3 The Supplier may not discuss the Goods/Services or the PO with any third party or the media nor make any public statement about the PO or anything related to the subject matter of the PO without the prior written consent of Prime.

19.4 The provisions of this Clause 19 shall survive termination of the PO.

20. INSURANCE

20.1 Before commencing a supply of Goods/Services under the PO, the Supplier shall effect and maintain with an insurer on terms approved in writing by Prime, suitable policies in respect of the following insurances:

- Worker's Compensation insurance, complying with all statutory requirements providing any compulsory statutory workers compensation benefits in respect of the Supplier's "workers", as that expression is defined by the *Workers Compensation and Rehabilitation Act 2002* (202);
- Motor Vehicle insurance which is compulsory under the Laws for the time being in force in the State or Territory where the Goods/Services are supplied governing the use of registered motor vehicles. The limit of liability shall not be less than \$20 Million for any one occurrence and unlimited as to the number of occurrences.
- Comprehensive (including Third Party) insurance covering all mechanically-propelled vehicles required to be licensed in the State or Territory where the Goods/Services are supplied, in an amount of not less than \$20 Million in respect of any one incident or series of incidents arising out of one event and unlimited to the number of events.
- Insurance covering the Supplier's CP&E, including all mobile equipment, tools, tackle, Personnel effects, and the like, and all other property for which the Supplier is responsible, for an amount of not less than market value (unless otherwise insured to the satisfaction of Prime).
- Third Party Public and Product Liability insurance covering the Supplier against liability with respect to injury (including death) and/or property damage in respect of the supply of Goods/Services under the PO with a liability limit of not less than \$20 Million in respect of any one claim and unlimited as to the number of claims (with the exception of Products Liability which shall be for an amount of \$20 Million for any one claim and in the aggregate), including Prime as an additional insured with respect to the liability incurred as a result of the acts or omissions of the Supplier and provide a waiver of subrogation in favour of Prime. The policy of insurance taken out under this clause must extend to and cover all persons upon the Site including workers, contractors, agents and others engaged by Prime.
- Professional Indemnity Insurance, if the Services to be supplied include Professional Services, the Supplier must take out professional indemnity insurance in respect of the services to cover liability to a limit of not less than \$20 Million in relation to any one claim.

20.2 All insurances under Clause 20.1 shall be maintained for the duration of the PO, with the exceptions being:

- Workers Compensation insurance which shall be maintained for so long as the Supplier's Personnel or those for whom the Supplier is responsible are located on the Site; and
- Professional Indemnity insurance which shall be in force for 7 years following completion of the PO.

20.3 The Supplier acknowledges that it is responsible for the maintenance of any other insurance required by Law or regarded as sound commercial practice.

20.4 Upon written request the Supplier shall provide to Prime a Certificate of Currency for each of the policies to be effected by it under the PO.

20.5 If, after being requested in writing to do so, the Supplier fails to provide evidence of compliance with its insurance obligations under the PO to Prime's satisfaction, Prime may, without prejudice to other remedies:

- affect and keep in force any such insurance;
- refuse payment under the PO until evidence of compliance with the Supplier's insurance obligations is provided to the satisfaction of Prime;
- recover from the Supplier any costs incurred by Prime in effecting the required insurances.

21. WORKING HOURS

21.1 No part of the Services referred to in the PO and executed on the Site shall be executed outside the roster cycle (where applicable), ordinary working hours or on other than ordinary working days without Prime's prior written consent. Working hours applicable to the Site are as agreed between Prime and the Supplier.

21.2 Prime may from time to time, by notice in writing to the Supplier and subject to reasonable notice, vary the roster cycle and workforce hours of the Supplier.

22. CLEANING UP

The Supplier shall keep the Site clean and tidy and on completion of the Services will remove all the Supplier's CP&E and leave the Site clean and tidy and ready for immediate use.

23. DISPUTE RESOLUTION

23.1 Prime and the Supplier must follow the requirements of this Clause 23 if a dispute arises in connection with the PO including a dispute concerning a claim in tort, under statute, or on any other basis in Law or equity available under the Law governing the PO ("Dispute") and then, only after a period of 28 days after receipt of such Dispute Notice has elapsed may either party commence legal proceedings (with the exception of seeking injunctive or urgent declaratory relief).

23.2 If a dispute arises either party may by hand or registered post give the other party a written notice of dispute ("Dispute Notice") identifying and detailing the Dispute including notice that it is a notice under this Clause 23.

23.3 Within 7 days of receipt of a Dispute Notice, representatives of the parties having authority to bind the parties shall confer to resolve the Dispute or agree on a method of doing so and whether that method shall be binding.

24. MISCELLANEOUS

24.1 Waiver of any right arising from a breach of the PO must be in writing and executed by Prime. Prime not exercising a right, remedy or power at any time does not mean Prime cannot exercise it later.

24.2 The PO shall be governed by and construed in accordance with the Laws of the State of Queensland and the parties submit to the jurisdiction of the Courts of Queensland.

24.3 The PO contains the entire agreement between the Supplier and Prime and no regard shall be had to any prior dealings between the parties, whether oral or in writing. To the extent the Supplier's terms and conditions are supplied with the Goods/Services, those terms and conditions will be of no legal effect and will not constitute part of the PO (even if signed by any representative of Prime).

24.4 Should any of the PO be invalid, illegal, unenforceable or void, that part shall be severed from the PO. The remaining terms will not be affected, and the PO will be construed as if such invalid, illegal, unenforceable or void term had never been included in the PO.

24.5 The Supplier shall not, without the prior written approval of Prime, assign, novate or subcontract the PO or any payment or obligation hereunder.

24.6 Nothing in the PO constitutes a joint venture, agency, partnership or any other fiduciary relationship between Prime and the Supplier. At all times during the performance of the Supplier's obligations under the PO, the Supplier is an independent contractor and not an employee or agent of Prime.

24.7 Upon completion, termination or cancellation of the PO and prior to the final payment to the Supplier, the Supplier shall fully release Prime (and Prime Personnel) from any and all liability in relation to the PO. Acceptance of the final payment shall be deemed to constitute such release and discharge.

24.8 Without prejudice to any other rights, Prime may deduct from any monies which may be, or become, payable to the Supplier any money due from the Supplier to Prime. Nothing in this Clause shall affect the right of Prime to recover from the Supplier the whole of the debt or any balance remaining owing after deduction. If it is subsequently found that Prime was not entitled to deduct any monies, then it must immediately repay those monies to the Supplier.

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