

PURCHASE ORDER TERMS AND CONDITIONS - SERVICES

1. DEFINITIONS

In this Contract, unless the context otherwise requires:

Liabilities means damages, claims, losses, liabilities, costs and expenses of any kind; and

Services means the work to be provided by the Contractor under this Contract as described in the Purchase Order.

2. CONTRACT

2.1 Formation

This Contract is formed when a Purchase Order has been issued to the Contractor in acceptance of a written quotation, tender, or offer to supply from the Contractor.

2.2 Contract documents

This Contract consists of the following documents:

- (a) Purchase Order;
- (b) these Purchase Order terms and conditions; and
- (c) any other attachments to the Purchase Order.

2.3 Precedence

If there is any conflict or inconsistency between the documents constituting this Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in clause 2.2.

3. SERVICES

3.1 Standard of Services

The Contractor must:

- (a) perform the Services with the skill, care and diligence reasonably expected from a qualified, competent and experienced provider of services of a similar type and complexity as the Services;
- (b) ensure that its personnel are appropriately trained and experienced; and
- (c) ensure that the Services and any goods supplied are fit for the purpose for which they are required.

3.2 Records

- (a) The Contractor must maintain accurate records of the Services, including any plans, specifications and other details, dates and hours of work, personnel, materials used and any additional work required.
- (b) The Principal may inspect the records maintained under this clause 3.2 at any time upon reasonable notice.

4. COOPERATION AND RESPONSIBILITIES FOR THE SITE

4.1 Cooperation

The Contractor must co-operate with and not unreasonably interfere with work by other contractors and the Principal's personnel.

4.2 Responsibility for the site

Without limiting any other obligation of the Contractor under this Contract, the Contractor shall:

- (a) in respect of any Services and any parts of the site occupied by it for the purposes of this Contract provide and maintain temporary guards, warning signs and fences, and erect appropriate notices and signs to a standard required by law and otherwise as approved by the Principal; and
- (b) in respect of the site generally:
 - (i) use its best endeavours to protect all persons, vehicles and property at or in the vicinity of the site; and
 - (ii) familiarise itself and its personnel with the Principal's risk management system, safety and health management system and other systems and policies applicable to the site and develop a system to ensure full compliance therewith.
- (c) when or where any direct damage or injury is caused to public or private property by or on account of any act, omission or misconduct on the part of the Contractor or its personnel in the execution of the Services, such property shall be restored by the Contractor at its expense.

5. COMPLIANCE WITH LAWS

5.1 Permits and authorisations

At all times during the term, the Contractor and all relevant Contractor personnel must hold such permits, licences, authorisations and accreditations as may be required for the Contractor to perform its obligations under this Contract in compliance with all relevant laws.

5.2 Services to comply

In performing its obligations under this Contract, the Contractor must comply at all times with:

- (a) the conditions of any permits, licences, authorisations and accreditations held by the Contractor in accordance with clause 5.1;
- (b) all laws applicable to the Services or to the Principal in respect of its operations, including modern slavery legislation;
- (c) the Principal's site policies and rules; and
- (d) any Australian Standards applicable to the Services.

6. DIRECTIONS IN RESPECT OF SERVICES

The Principal may give reasonable directions to the Contractor to provide the Services in a particular manner, at a particular time, or to suspend all or part

of the Services. The Contractor must do everything possible to minimise any cost or expense consequent upon any suspension. The Contractor must make all reasonable efforts to comply with any such direction provided that the Contractor will be fairly compensated in the event that it incurs significant additional cost or delay as a consequence.

7. SUBCONTRACTORS

- (a) The Contractor must not engage any subcontractor to perform any part of the Services without the Principal's prior approval (which may be conditional).
- (b) Approval by the Principal of any subcontractor and/or of any subcontract does not release the Contractor from any of its obligations under this Contract.

8. REMOVAL OF PERSONNEL FROM SITE

The Principal's representative may direct the Contractor to remove from the site any person employed in connection with the Services who, in the reasonable opinion of the Principal's representative, is guilty of misconduct, is incompetent or negligent or who works in an unsafe manner.

9. CONTRACTOR'S EQUIPMENT

9.1 Plant and equipment supplied by Contractor

The Contractor must supply all plant and equipment and other incidental items and materials required for the performance of the Services.

9.2 Fit for purpose and compliance with laws

All of the Contractor's equipment must comply with the requirements of this Contract, the requirements of all relevant laws, the policies and requirements of the Principal, applicable codes of practice and standards, and be properly licensed. The Principal will inspect the Contractor's equipment brought to site and may reject any item of the Contractor's equipment which it considers unsuitable for the purpose for which the Contractor proposes to use it.

9.3 Contractor's responsibilities in relation to Contractor's equipment

The Contractor must ensure that the Contractor's equipment is suitable for the Services and maintained to a high standard to ensure safe operation and to avoid unnecessary disruption to the Services.

10. INVOICING AND PAYMENT

10.1 Schedule of rates

The rates specified by the Contractor shall be the sole consideration payable to the Contractor under this Contract, and are deemed to include all risks, liabilities and obligations expressed or implied in this Contract or incurred in the course of performing the Services.

10.2 Invoice

The Contractor will provide the Principal with a monthly tax invoice for the Services performed during the relevant calendar month, setting out particulars of the Services provided and calculations by which the invoice was calculated.

10.3 Payment

The Principal will pay the Contractor within thirty days of receipt of invoice.

10.4 Disputed amounts

If the Principal disputes the whole or any portion of the amount claimed in an invoice submitted by the

Contractor, the Principal shall pay that portion of the amount stated in the invoice which is not in dispute and the Principal shall notify the Contractor in writing of the reasons for disputing the invoice.

10.5 Effect of payment

The making of any payment to the Contractor shall not be taken or construed as proof or admission of the Services or any part thereof having been performed to the satisfaction of the Principal but shall be taken to be payment on account.

10.6 Taxes

Except as otherwise provided in this Contract, the Contractor shall pay any and all taxes, duties, excises, assessments and other government charges in connection with the performance of the Services.

11. INSURANCE

11.1 Required insurance

The Contractor must, at its own cost, obtain and maintain the following insurances for the term:

- (a) Public liability insurance for not less than \$20,000,000;
- (b) Worker's compensation insurance;
- (c) Comprehensive motor vehicle insurance covering all mechanically propelled vehicles used at any time in connection with the Services for not less than \$10,000,000; and
- (d) Compulsory third party motor vehicle insurance; and
- (e) If indicated in the Purchase Order, professional indemnity insurance for an amount of \$5,000,000.

11.2 Evidence of insurance

The Contractor shall before commencing the Services lodge with the Principal certificates of currency to evidence the existence of the policies required to be arranged by the Contractor and its subcontractors in respect of such insurance, and shall provide updated certificates of currency during the term.

12. INDEMNITIES

12.1 Indemnity

Subject to clause 12.2, the Contractor will indemnify (and will keep indemnified) the Principal and its personnel (**Indemnified Parties**) from and against all Liabilities that any Indemnified Party suffers, sustains or incurs, arising from any one or more of the following:

- (a) the breach by the Contractor or its personnel of any term or condition of this Contract;
- (b) any negligent act or omission or wilful misconduct by the Contractor or its personnel arising out of the performance of the Contract; or
- (c) any claim made against the Principal by any of the Contractor's personnel in respect of relevant legislation concerning income tax, workers' compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal.

12.2 Exclusions

The Contractor will not be liable under clause 12.1 to the extent that the Liability was directly caused by the Principal's negligence or wilful default.

13. TERMINATION FOR CONVENIENCE

Either party may terminate this Agreement at any time at its sole discretion by providing notice in writing to the other party.

14. CONSEQUENCES OF TERMINATION

14.1 Accrued rights

Termination of this Contract does not affect any accrued rights or remedies of either party.

14.2 Consequences

- (a) The Contractor is not entitled to any compensation or damages on termination of this Contract.
- (b) On termination of this Contract, the Contractor must hand over to the Principal all goods or materials used or produced by the Contractor, and any keys and property of the Principal in the Contractor's possession, custody or control.

14.3 Continuing clauses

Clauses 1, 12, 15, 16, 17, 18, 19 and this clause 14 will continue to apply after termination of this Contract for any reason.

15. EXCLUSION OF CONSEQUENTIAL LOSS

- (a) Notwithstanding anything in this Contract (express or implied), in no circumstances whatsoever (including negligence) is a party entitled to recover from the other party any damages for business interruption or loss of actual or anticipated revenue, income or profits or any indirect, consequential, contingent or penal damages whatsoever arising out of, or in respect of, this Contract, with the exception of damages covered under a policy of insurance held by the other party, for which that party's liability shall be limited to the cover available under such insurance policy.
- (b) Each party releases the other party from, and indemnifies them and shall keep them indemnified from, any such liability.

16. CONFIDENTIALITY

Each party (**Recipient**) must keep confidential and may not use or disclose, except where required by legislation, any confidential information held by the other party and obtained by the Recipient during the performance of or in relation to the Services save in relation to the Services.

17. DISPUTE RESOLUTION

The parties acknowledge their expectation that any dispute, difference or claim arising out of or relating to this Contract will be settled by discussion and negotiation between the parties' representatives or senior management.

18. LOCAL COMMUNITIES

The Contractor acknowledges that the Principal seeks to share economic benefits with indigenous and local communities through business and employment relationships, and in performing this Contract the Contractor will seek to encourage opportunities to benefit indigenous people and local communities.

19. GENERAL

19.1 Time is of the essence

Time is of the essence in this Contract, and the Contractor must comply strictly with the date indicated on the Purchase Order for performance of the Services.

19.2 Entire understanding

This Contract comprises the entire agreement of the parties and supersedes all prior agreements, negotiations and understandings between the parties, whether oral or written.

19.3 Contractor assignment

The Contractor must not assign, charge or encumber this Contract or any part thereof or any benefit, moneys, or interest under this Contract without the Principal's prior written consent.

19.4 Independent Contractor

The relationship between the Principal and the Contractor is a relationship of principal and independent contractor and nothing contained in this Contract shall be construed so as to create a relationship of employment, agency or partnership between the Principal and the Contractor, or between the Principal and any of the Contractor's personnel.

19.5 Governing law

This Contract is governed by and construed in accordance with the laws of the state where the relevant site is located and each party submits unconditionally to the non-exclusive jurisdiction of the courts of that state.

- EVN Services PO T&Cs template dated 28 June 2019 –