



PURCHASE ORDER TERMS AND CONDITIONS – PROFESSIONAL SERVICES OFF-SITE

1. DEFINITIONS

In this Contract, unless the context otherwise requires:

Background IP means the Intellectual Property Rights of a party that are in existence at the date of this Contract, or come into existence after the date of this Contract otherwise than in connection with this Contract;

Confidential Information means all information of a confidential nature, including commercial and technical information, in any form, whether written or oral, held or communicated by the Principal and obtained by the Contractor in relation to the provision of the Services;

Contract IP means all Intellectual Property Rights (present or future) created, discovered or coming into existence in connection with the provision of the Services (including all Intellectual Property Rights in both anything developed by the Contractor in providing the Services and in the documentation provided by the Principal to the Contractor);

Group means the related bodies corporate of the Principal;

Intellectual Property Rights means all industrial and intellectual property rights (including moral rights) whether protectable by statute, at common law or in equity, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers;

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 clause 3.2(a) at any time upon reasonable notice.

4. COMPLIANCE WITH LAWS

4.1 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.

4.2 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 4.1;
- (b) all laws applicable to the Services or to the Principal in respect of its operations; and
- (c) any Australian Standards applicable to the Services.

5. 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.

6. 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.

7. INVOICING AND PAYMENT

7.1 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.

7.2 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.

7.3 Payment

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

7.4 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.

7.5 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.

7.6 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.

8. INSURANCE

8.1 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) Professional indemnity insurance for not less than \$5,000,000; and
- (c) Worker's compensation insurance.

8.2 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.

9. INDEMNITIES

9.1 Indemnity

Subject to clause 9.2, 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.

9.2 Exclusions

The Contractor will not be liable under clause 9.1 to the extent that the Liability was directly caused by the Principal's negligence or wilful default.

10. 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.

11. CONSEQUENCES OF TERMINATION

11.1 Accrued rights

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

11.2 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.

11.3 Continuing clauses

Clauses 1, 9, 12, 13, 14, 15, 16, 17, 18, 20 and this clause 11 will continue to apply after termination of this Contract for any reason.

12. KNOWLEDGE TRANSFER

If requested by the Principal, the Contractor must provide the following assistance to the Principal on the termination or expiry of this Contract:

- (a) transferring or providing access to all information stored by whatever means held by the Contractor or under the control of the Contractor in connection with this Contract; and
- (b) making Contractor personnel available for discussion with the Principal as may be required. The time, length and subject of these discussions will be at the sole discretion of the Principal, provided that any matter discussed is not considered to reveal any 'commercial in confidence' information of the Contractor. Usual Contractor fees will apply.

13. 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.

14. INTELLECTUAL PROPERTY RIGHTS IN SERVICES

14.1 Background IP

- (a) The parties acknowledge that each party remains the owner of its Background IP and that nothing in this Contract prevents, limits or restricts a party's subsequent use or exploitation of its Background IP.
- (b) The Contractor grants to the Principal a non-exclusive, transferable, royalty free, irrevocable and perpetual licence to use its Background IP in connection with the business of the Group to the extent such use is necessary to use the Services. The Principal may sub-licence the Principal's rights to use the Contractor's Background IP to any member of the Group provided such use is in connection with the business of the Group.
- (c) The Principal grants to the Contractor, or where the Principal's Background IP is owned by a member of the Group other than the Principal, the Principal will procure the grant to the Contractor of, a non-exclusive, non-transferable, revocable licence to use the Principal's Background IP and the Contract IP for the sole purpose of providing the Services.
- (d) The Contractor must not use, register or attempt to register any interest in or otherwise deal with the Principal's Background IP or the Contract IP, or allow any other person to do the same, for any purpose other than to provide the Services.

14.2 Contract IP

The Contractor agrees that all Contract IP will be vested in the Principal and will be the Principal's property as and when created and the Contractor assigns and must ensure that all of its personnel assign all of their respective rights, title and interest in and to the Contract IP (whether created before, on or after the date of signing this Contract) to the Principal.

14.3 Contractor warranty

The Contractor warrants that it has the right to grant to the Principal the licence under clause 14.1(b); and that it has the right to assign all Contract IP to the Principal in accordance with clause 14.2.

14.4 General Contractor obligations

The Contractor agrees to:

- (a) disclose to the Principal all Contract IP as and when it is created;

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- (b) ensure that any subcontract the Contractor enters into in relation to this Contract contains an assignment by the Subcontractor to the Principal of all Intellectual Property Rights in any Contract IP created by the Subcontractor for the purposes of this Contract;
- (c) notify the Principal as soon as the Contractor becomes aware of any suspected, threatened or actual infringement or unauthorised use of any Intellectual Property Rights in the Contract IP and to provide all reasonable assistance in relation to that infringement; and
- (d) provide all reasonable assistance the Principal may request to protect, perfect enforce, defend or assert its interests in and right to use and exploit the Contract.

15. THIRD PARTY INTELLECTUAL PROPERTY RIGHTS

15.1 Third party Intellectual Property Rights

The Contractor warrants that to the extent that it uses or proposes to use the Intellectual Property Rights of any third party in the provision of the Services, or to the extent the Principal will use or might propose to use the Intellectual Property Rights of any third party in the use and enjoyment of the Services, it has obtained, or will obtain at no further cost to the Principal, from the relevant third party all necessary licences and consents to use, or assignments of, such Intellectual Property Rights.

15.2 Procurement of Intellectual Property Rights

If the Principal is prevented from operating or using the Services or any part of the Services as a result of any claim in relation to an infringement of Intellectual Property Rights, the Contractor must (at its cost) take all reasonable steps to procure for the Principal the right to utilise the Services for the purpose for which it was intended.

16. CONFIDENTIALITY

16.1 Confidentiality undertaking

The Contractor undertakes, except where required by legislation, that it shall treat all Confidential Information as private and confidential. The Contractor undertakes that it shall not use Confidential Information for any purpose save the performance of the Services.

16.2 Exceptions

Clause 16.1 does not apply to:

- (a) information after it becomes generally available to the public (other than as a result of the breach of this clause 16 or any other obligations of confidence imposed on the Contractor); or
- (b) the disclosure of information in order to comply with any applicable Law or legally binding order of any court, government instrumentality or recognised stock exchange, provided that prior to such disclosure the Contractor gives notice to the Principal with full particulars of the proposed disclosure.

16.3 Security of confidential information

- (a) The Contractor shall establish and maintain adequate security measures to protect the Confidential Information from unauthorised use or disclosure and keep the Confidential

Information under effective control at all times.

- (b) The Contractor shall ensure that its personnel who are to perform the Services strictly comply with the obligations under this clause 16 in relation to the Confidential Information. Further, the Contractor shall ensure that none of its personnel do anything which, if done by the Contractor, would be inconsistent with the Contractor's obligations in relation to the Confidential Information.
- (c) The Contractor shall immediately notify the Principal if it becomes aware of any loss of Confidential Information or any unauthorised disclosure or use of Confidential Information.
- (d) Unless otherwise stated, any advice or report and its contents prepared by the Contractor is confidential and may not be publicly disclosed or published in any manner (except as required by law) unless the Contractor has given its prior written consent to the form and context of the public disclosure or publication and to the identity of the person(s) to whom it is to be disclosed or published.

16.4 Acknowledgement and indemnity

- (a) The Contractor acknowledges that:
 - (i) the Confidential Information will include information that is secret and highly confidential to the Principal, its related bodies corporate and its personnel (**Indemnified Parties**);
 - (ii) disclosure of the Confidential Information in breach of the Contractor's obligations in relation to the Confidential Information could cause considerable commercial and financial detriment to the Indemnified Parties; and
 - (iii) damages may be inadequate compensation for breach of this Contract and, subject to a court's discretion, the Indemnified Parties may restrain by injunction or similar remedy any conduct or threatened conduct which is or will be a breach of the Contractor's obligations in relation to the Confidential Information.
- (b) The Contractor shall be liable for and indemnify the Indemnified Parties in relation to any claim that the Indemnified Parties is liable for in respect of any breach of this clause 16.

16.5 Duration of restrictions

The restrictions contained herein shall continue to apply for a period of five years after the date of termination or expiry of this Contract.

17. PRIVACY AND DATA PROTECTION

- (a) Each party agrees to comply with their obligations under the *Privacy Act 1988* (Cth) in respect of personal information obtained by or disclosed to them under this Contract.
- (b) To protect the Principal's data, the Contractor shall limit access to the Principal's information systems by Contractor personnel.

18. 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.

19. 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.

20. GENERAL

20.1 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.

20.2 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.

20.3 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.

20.4 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.

20.5 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.

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