

## **PURCHASE ORDER TERMS AND CONDITIONS**

### **1. NATURE AND INTERPRETATION OF CONTRACT**

- 1.1. The Contract consists of the Purchase Order (including any appendices and schedules) and these terms and conditions.
- 1.2. This Contract constitutes the entire agreement between the parties to the exclusion of all other terms and conditions. No other terms and conditions submitted by either party, including, without limitations, the Supplier's terms and conditions and any terms and conditions provided by the Supplier with any quotation, invoice, Purchase Order acknowledgement, confirmation, acceptance, bill of lading or other instrument or with Goods or Services upon delivery or performance, shall be binding upon either party.
- 1.3. The Supplier acts as an independent contractor and neither the Supplier nor its Personnel are deemed to be either expressly or impliedly employees of the Company.

### **2. FORMATION OF CONTRACT**

- 2.1. This Contract constitutes a written offer, which is accepted by conduct when the Supplier provides the Goods and/or Services to the Company, even if this Contract is not signed by the Supplier. To the extent permitted by law, it is a condition of the quotation, sale, provision and delivery of the Goods and/or Services (as applicable) by the Supplier that the Supplier accepts the terms and conditions of this Contract despite the provision of any other terms and conditions by the Supplier.
- 2.2. Any amendment to this Contract has no effect unless expressly agreed in writing by the Company.

### **3. SUPPLY OF GOODS AND/OR SERVICES**

- 3.1. In consideration of payment of the Price by the Company, the Supplier must supply the Goods and/or provide the Services to the Company in accordance with this Contract.
- 3.2. The Supplier must, in supplying the Goods and/or performing the Services (as applicable):
  - (a) comply with, and ensure that the Supplier's Personnel are aware of and comply with:
    - (i) all applicable Laws;
    - (ii) all Site Standards and Procedures, to the extent applicable to the supply of the Goods and/or the performance of the Services (as applicable); and
    - (iii) all lawful directions and orders given by the Company's representative or any person authorised by Law or the Site Standards and Procedures to give directions to the Supplier;
  - (b) ensure that the Supplier's Personnel entering the Site perform the Services and/or deliver the Goods in a safe manner and in a way that does not prejudice safe working practices, safety and care of property and continuity of work at the Site; and
  - (c) provide all information and assistance to the Company as the Company reasonably requires in connection with any statutory or internal health and safety, environment or community investigation in connection with this Contract.

### **4. DELIVERY OF GOODS**

- 4.1. In the case of supply of Goods, the Supplier must:
  - (a) deliver Goods to the Delivery Location by the applicable Delivery Date; and
  - (b) ensure that the Goods are suitably packed to avoid damage in transit or in storage and in such a way to comply with any applicable Laws.

The Supplier must not deliver the Goods prior to the Delivery Date, except with the prior written approval of the Company.

- 4.2. Packaging must be marked with the Purchase Order number, item number, Delivery Location, contents, quantity, date and method of dispatch and weight of each package.
- 4.3. Goods must be unloaded at the Delivery Location by the Supplier and the Price includes all costs of delivery and unloading.

#### **5. TIME FOR PERFORMANCE OF THE SERVICES**

- 5.1. In the case of provision of Services, the Supplier must:
- (a) commence performance of Services by the date specified in the Purchase Order, if any; and
  - (b) complete Services by the applicable Completion Date.
- 5.2. If the Supplier is unable to meet a Delivery Date and/or Completion Date (as applicable), the Supplier must notify the Company at the earliest possible opportunity.

#### **6. TITLE AND RISK IN GOODS**

- 6.1. Title in Goods shall pass to the Company on delivery of the Goods to the Delivery Location or when the Company pays for those Goods (whichever is earliest).
- 6.2. Goods remain at the risk of the Supplier until the Supplier has delivered those Goods in accordance with this Contract.

#### **7. PRICE**

- 7.1. The Price will be as specified in the Company's Purchase Order and, unless otherwise stated, will be:
- (a) inclusive of all expenses incurred by the Supplier in connection with the provision of the Goods and/or Services and the proper performance of the Supplier's other obligations under this Contract, including, without limitation, travel expenses, subsistence expenses and any taxes, duties or levies (other than GST), including any interest, surcharge, penalty or fine in relation to them, and the Supplier must provide all plant, labour, equipment and materials and other things necessary to perform the Supplier's obligations under this Contract; and
  - (b) payable in Australian dollars.

#### **8. INVOICING AND PAYMENT**

- 8.1. The Supplier must submit to the Company a claim for payment by the first day of each month (or as otherwise agreed by the Company) by providing to the Company:
- (a) Supplier Reference Documents; and
  - (b) a Tax Invoice, which must include the information set out in clause 8.3.
- 8.2. The Supplier must provide the Supplier Reference Documents and Tax Invoice:
- (a) electronically to the email address of the Company's contact set out in the Purchase Order (if provided); or
  - (b) by post to the Company's address set out in the Purchase Order.
- 8.3. Each Tax Invoice must include the following details:
- (a) a reference to the Purchase Order, including the purchase order number and applicable line item number/s on the Purchase Order;
  - (b) a detailed description of the delivered Goods and/or Services performed, including the date of delivery and/or period of Services and the relevant quantity of Goods and/or Services;
  - (c) an individual reference number for the Company to quote with remittance of payment;
  - (d) the date of issue of the Tax Invoice;

- (e) the Supplier's ABN and nominated bank account details; and
  - (f) the part of the Price claimed, broken down to reflect the applicable Price components from the Purchase Order including the amount of any applicable GST; ,
  - (g) and must be addressed to the Company's legal entity name quoting the Site and the Company's contact name
- 8.4. If the Company requests, the Supplier must provide the Company with all relevant records to calculate and verify the correctness of the amount claimed by the Supplier in any Tax Invoice.
- 8.5. Subject to clause 8.6 and to the Supplier complying with all of its obligations under this Contract, the Company shall pay the amount stated in a Tax Invoice issued under clause 8.1 by electronic funds transfer to the Supplier's nominated bank account within 45 days (or by such other method or within such other period as the parties agree) after the date the Company receives the Tax Invoice, except where the Company:
- (a) is required by Law to pay within a shorter timeframe, in which case the Company must pay within that timeframe;
  - (b) (without in any way limiting clause 8.6) disputes the Tax Invoice, in which case:
    - (i) to the extent permitted by Law, the Company may withhold payment of the disputed part of the Tax Invoice pending resolution of the dispute; and
    - (ii) if the resolution of the dispute determines that the Company must pay an amount to the Supplier, the Company must pay that amount upon resolution of that dispute; or
  - (c) is required by Law to withhold any portion of payment.
- 8.6. The Company may withhold, retain or set off from any payment due to the Supplier under this Contract:
- (a) any amounts due from the Supplier to the Company under this Contract or any other contracts between the Supplier and the Company; and
  - (b) any Losses which the Company claims in good faith that it has incurred or might in the future incur:
    - (i) in connection with any act or omission of the Supplier which the Company asserts constitutes a breach of the Contract; or
    - (ii) in connection with any act related to bankruptcy, reorganisation, receivership or insolvency occurring in relation to the Supplier.
- 8.7. The Company's rights under clause 8.6 do not limit the Company's right to recover those amounts in any other way. All payments to the Supplier are made on account only.
- 9. GOODS AND SERVICES TAX (GST)**
- 9.1. If any supply made under this Contract is, or becomes, subject to GST, the party to whom the supply is made ("**Recipient**") must pay to the party making the supply ("**Supplier**"), subject to issuing a Tax Invoice, an additional amount on account of GST.
- 9.2. Any amount in respect of GST payable under the above paragraph must be paid to the Supplier at the same time as the relevant charge applicable to the relevant supply becomes payable under this Contract.
- 9.3. If any party is required to reimburse or indemnify the other party for a cost or expense ("**Cost**") incurred by the other party, the amount of that Cost for the purpose of this Contract is the amount of the Cost incurred, less the amount of any input tax credit or refund of GST, which the party incurring the Cost is entitled to claim in respect of the Cost.
- 9.4. Unless otherwise provided in this Contract, all amounts payable by one party to the other party in relation to a supply under this Contract have been calculated exclusive of any GST.

## 10. CONDITIONS AS TO QUALITY OF THE GOODS AND THE SERVICES

- 10.1. Without in any way limiting the Supplier's other obligations under this Contract, the Supplier must ensure that:
- (a) if the Supplier gave the Company any samples of goods before the Company issued the Purchase Order which were, or are, approved by the Company, Goods supplied under this Contract correspond with the approved samples;
  - (b) if the Supplier provided the Company with a demonstration of any services before the Company issued the Purchase Order which were, or are, approved by the Company, Services provided under this Contract correspond in nature and quality with the approved demonstrated services;
  - (c) if the Supplier showed the Company a result achieved by any services before the Company issued the Purchase Order which were, or are, approved by the Company, the Services provided under this Contract correspond in nature and quality with the services that achieved that result; and
  - (d) unless otherwise agreed in writing by the Company, it obtains from all suppliers, manufacturers and subcontractors warranties normally provided by suppliers, manufacturers and subcontractors for goods and/or services similar to the Goods and/or Services (as applicable). The Supplier must ensure that the Company has the full benefit of all such warranties (and the Supplier must pursue any such warranty on the Company's behalf if the Company so requests).
- 10.2. The Supplier warrants:
- (a) in the case of the provision of Services, that the Supplier and its Personnel are suitably experienced, skilled, qualified, knowledgeable and competent for the provision of the Services and that the Services will be performed with the professional skill, care and diligence expected of a skilled and experienced professional supplier;
  - (b) the Goods and/or Services (as applicable) are fit for their intended purposes as set out in, or which an experienced professional supplier would reasonably infer from, this Contract;
  - (c) the Goods will be new, of merchantable quality and of good and sound design, materials and workmanship, and will be free from defects and from any encumbrances or defects in title;
  - (d) to the extent that the Services include design services::
    - (i) the design will be prepared by people with appropriate professional qualifications and in accordance with best industry practices;
    - (ii) the design (including any materials and methods of using, fixing or working required or contemplated by the design) will fulfil the requirements of this Contract and is and will be fit for the purposes set out in, or reasonably inferred from, this Contract; and
    - (iii) the works or things carried out and completed by or on behalf of the Company in accordance with the Supplier's design, will be fit for their intended purpose as described in this Contract; and
  - (e) any items which the Supplier uses or supplies in conjunction with the Services will be of merchantable quality and of good and sound design, materials and workmanship, and will be fit for the purpose for which they are intended.

## 11. VARYING AND ENDING THIS CONTRACT

- 11.1. The Company may vary the Goods and/or Services by issuing a revised Purchase Order, including by:
- (a) increasing or decreasing the quantity, character, quality, kind or execution of the Goods/Services; and

- (b) changing the Delivery Location or delivery date, as applicable.
- 11.2. The Company may complete the part or parts of Goods/Services omitted or may engage others to perform the part or parts so omitted.
- 11.3. Variations will be valued by agreement or, failing agreement, by the Company using the schedule of rates agreed between the parties (if any) or reasonable rates and the adjusted Price will be set out in the Company's revised Purchase Order.
- 11.4. The Company may (in its absolute discretion) terminate this Contract for its convenience by written notice to the Supplier. Following such termination the Supplier will be entitled to payment:
- (a) for Goods delivered and Services performed (as applicable) in accordance with the Contract prior to termination; and
  - (b) (except to the extent already provided for in sub clause (a)) for the cost of goods, materials, plant and equipment ordered in respect of this Contract to the extent the Supplier cannot cancel such orders, provided that:
    - (i) on payment by the Company, the unencumbered title to the goods, materials, plant and equipment passes to the Company; and
    - (ii) the goods, materials, plant and equipment have not been prematurely ordered.
- 11.5. In addition to its other rights or remedies, the Company may terminate this Contract by immediate written notice for:
- (a) the Supplier's actual or anticipated breach of any Contract provision; or
  - (b) if the Company has given the Supplier an opportunity to correct an actual or anticipated breach in writing, the Supplier's failure to correct such actual or anticipated breach within the time period notified by the Company; or
  - (c) any act related to bankruptcy, reorganisation, receivership or insolvency occurring in relation to the Supplier,
- and the Supplier will indemnify the Company against all Losses incurred by the Company in obtaining the Goods/Services elsewhere and/or arranging for a third party to supply or complete the Goods/Services.

## 12. INDEMNITY

- 12.1. The Supplier indemnifies, defends and holds harmless the Company from and against all Losses of the Company in respect, or in connection with, loss or damage to any property, personal injury (including death or illness of any person), claims that use of the Goods and/or Services (including any goods provided as part of the Services) breaches the Intellectual Property Rights of any third party or any breach of confidence, arising out of or in connection with the performance of the Supplier's obligations under this Contract.

## 13. INSURANCE

- 13.1. The Supplier must effect and maintain throughout the continuance of this Contract:
- (a) broadform public and products liability insurance issued on an occurrence basis with a limit of liability of not less than \$20 million for each and every occurrence, unlimited in the annual aggregate;
  - (b) if the performance of this Contract requires the Supplier to use or provide for use of plant and equipment that will be used at the Site in connection with this Contract, insurance covering all loss and damage to the Supplier's plant and equipment for its replacement value;
  - (c) if the performance of this Contract requires the Supplier or its Personnel to use or provide for use of motor vehicles, third party liability insurance covering all liabilities in respect of any injury to, or death of, any person or any loss damage or destruction to any property arising from the use of such motor vehicles with a

limit of liability of not less than \$20 million for each occurrence and unlimited in the aggregate (or procure the owners of such motor vehicles to effect and maintain such insurance);

- (d) if the performance of this Contract requires the Supplier to perform design or other professional services, unless otherwise agreed by the Company in writing, professional indemnity insurance with a limit of liability of not less than \$2 million for any one claim (which must be maintained until 6 years after the discontinuation of this Contract);
- (e) other insurance to the full extent required by law; and
- (f) other insurance as may be reasonably required by the Company.

13.2. The Supplier must ensure all insurance policies required under this clause do not contain terms, conditions or exclusions detrimental to the performance of this Contract and contain provisions normally included in insurances for the performance of similar contracts. The Supplier must ensure that the public and products liability insurance notes the interest of the Company as a principal with respect to this Contract. The Supplier will bear any and all excesses or deductibles in relation to any claim on a policy.

#### **14. DEFECTS**

14.1. Without in any way limiting the Company's rights at law, the Company may at any time up to the expiration of the applicable Defects Correction Period:

- (a) reject any Goods that do not comply with the Contract and such Goods must be replaced or repaired (in which case they shall be deemed not to have been delivered in accordance with the Contract); and
- (b) notify the Supplier of any Services that do not comply with the Contract and such Services must be re-performed, repaired, replaced or otherwise made good, by the Supplier at its cost.

14.2. If the Supplier fails to rectify any defect within the time agreed or specified by the Company (acting reasonably), the Company may do so or engage another party to do so at the Supplier's risk and expense. Any cost incurred by the Company under this clause will be a debt due from the Supplier to the Company.

14.3. Instead of a direction to rectify a defect the Company may direct the Supplier that the Company elects to accept the subject Goods/Services, whereupon there shall be a deemed variation and clauses 11.1 to 11.3 shall apply. The acceptance of any Goods and/or Services (as applicable) with a defect by the Company will not bind the Company to accept any other Goods or Services with a defect and does not affect any of the Company's other rights under this Contract or at Law.

14.4. Where the Supplier has rectified a defect under clause 14.1, there shall be a separate Defects Correction Period in respect of the subject Goods/Services rectified which shall commence on the date the rectification is completed and shall be governed by this clause 14.

#### **15. INTELLECTUAL PROPERTY**

15.1. The Supplier warrants that the performance of its obligations under this Contract will not infringe the Intellectual Property Rights of any third party.

15.2. Unless otherwise agreed in writing by the Company, the Supplier acknowledges and agrees that, as between the Supplier and the Company, all Intellectual Property Rights discovered or coming into existence as a result of, for the purpose of or in connection with the performance of any Services will vest in and be owned by the Company upon discovery or creation (as the case may be).

15.3. The Supplier grants the Company (or the Supplier must procure the granting to the Company of) a perpetual, irrevocable and royalty-free licence to reproduce, use, modify, adapt and sub-license the Supplier's Background IP for any purpose in connection with the Goods and/or Services (as applicable) or the Site (including for the installation, use,

support, repair, maintenance or alteration of the Goods and/or Services by or on behalf of the Company).

- 15.4. The Supplier must obtain, and will provide evidence to the Company upon request that it has obtained, all Moral Rights consents and waivers (including express agreement of all authors (including employees and subcontractors) that they will not enforce any Moral Rights that they may have) required to lawfully permit the Company to exercise its rights under this clause 15 to the full extent.

## **16. PPSA**

- 16.1. If the Company determines that this Contract (or a transaction in connection with it) is or contains a Security Interest for the purposes of the PPSA, the Supplier agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information), at the Supplier's cost, which the Company asks and considers necessary for the purposes of:

- (a) ensuring that the Security Interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective; or
- (b) enabling the Company to apply for any registration, or give any notification, in connection with the security interest so that the Security Interest has the priority required by the Company; or
- (c) enabling the Company to exercise rights in connection with the Security Interest.

- 16.2. The Supplier agrees:

- (a) not to create any security interest or lien over any of the Company's Personal Property;
- (b) not to sell, lease or dispose of its interest in the Company's Personal Property; and
- (c) not to give possession of the Company's Personal Property to another person except where the Company expressly authorises it to do so.

## **17. OTHER MATTERS**

- 17.1. The Supplier must not assign or otherwise transfer the Contract in whole or in part or any legal or equitable interest in it without the prior written consent of the Company.
- 17.2. The Supplier must not subcontract the whole or any part of its obligations under this Contract without the prior written consent of the Company. Subcontracting does not relieve the Supplier from any of its liabilities or obligations under the Contract.
- 17.3. All rights, obligations and liabilities under or in connection with this Contract are to apply unlimited and otherwise unaffected by anything that, but for this clause, may by virtue of the provisions of the Civil Liability Act 2002 (NSW) have limited or otherwise affected those rights, obligations and liabilities.
- 17.4. This Contract is governed by the law in force in New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.
- 17.5. If any part of this Contract is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remainder of this Contract shall not be affected and every part of this Contract shall be severable and separately valid and enforceable.
- 17.6. Any clauses of this Contract capable of surviving expiry or termination of this Contract survive expiry or termination of this Contract and are enforceable at any time in law or in equity.
- 17.7. To the extent permitted by law, the Company may at any time, and in its absolute discretion, amend these terms and conditions with or without notice. Such amendment will be effective immediately but shall only apply on and from the date of the amendment.

## 18. DEFINITIONS

In this Contract (unless the context otherwise requires):

**Company** means the Buildcorp Group entity who issued the Purchase Order.

**Completion Date** means the date specified in the Purchase Order for completion of Services, if any, as adjusted under this Contract.

**Defects Correction Period** means:

- (a) in respect of Goods, the period of 12 months from the date of delivery of Goods; and
- (b) in respect of Services, the period of 12 months from the date of completion of Services.

**Delivery Date** means the date specified in the Purchase Order for delivery of Goods, if any, as adjusted under this Contract.

**Delivery Location** means the location to which the Supplier must deliver the Goods as identified in the Purchase Order or as otherwise specified by the Company.

**Goods** means the goods, if any, specified in the Purchase Order (including any part of the Goods specified).

**GST** means a goods and services tax, as governed by the GST Act.

**GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cwlth).

**Intellectual Property Rights** means any intellectual property rights being all rights conferred under statute, common law and equity including:

- (a) patents, trademarks, service marks, rights in designs, trade names, copyrights and topography rights, in each case whether registered or not, and any applications for registration of any of them;
- (b) rights under licences and consents in relation to any of them; and
- (c) other forms of protection of a similar nature or having equivalent or similar effect to any of them which may subsist anywhere in the world.

**Law** means the requirements of all:

- (a) statutes, rules, regulations, proclamations, awards, ordinances, orders, by-laws and Australian Standards, present and future, whether state, federal or otherwise;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the supply of the Goods and/or performance of the Services;
- (c) requirements of any authority with jurisdiction in respect of the Goods, Services and/or the Site, as applicable; and
- (d) fees and charges payable in connection with the foregoing.

**Losses** means all claims, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis and whether incurred or awarded) of any kind or nature and however arising, including penalties, fines and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.

**Moral Rights** means any of the rights described in Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any law (including the Copyright Act 1968 (Cwlth) or any law outside Australia), that exists now or in the future anywhere in the world.

**Personal Property** means property that is personal property (as defined in the PPSA) and to which the PPSA applies.

**Personnel** means:

- (a) in relation to the Supplier, the Supplier's employees, Subcontractors (including Subcontractors' Personnel), agents and representatives involved either directly or indirectly in the performance of the Contract; and
- (b) in relation to a Subcontractor, the Subcontractor's employees, agents and representatives involved either directly or indirectly in the performance of the Contract.

**PPSA** means the Personal Property Securities Act 2009 (Cth) and any regulations made pursuant to it.

**Price** means the price for Goods/Services specified in or determined in the manner described in the Purchase Order.

**Purchase Order** means the purchase order for Goods and/or Services issued by the Company to the Supplier (and any revised Purchase Order issued by the Company) containing, among other things, a description of the Goods and/or Services to be supplied and/or performed by the Supplier.

**Related Bodies Corporate** has the meaning given in the Corporations Act 2001 (Cth).

**Security Interest** has the same meaning as in the PPSA.

**Services** means the services identified in the Purchase Order to be performed by the Supplier in accordance with the Contract.

**Site** means the premises identified in the Purchase Order where the Delivery Location is located or where the Services are to be performed.

**Site Standards and Procedures** means all the Company's standards, rules, policies and procedures that apply, from time to time, to the Site, including in relation to matters concerning safety, health, the environment, industrial relations and personal conduct.

**Subcontractor** means any person engaged by the Supplier in connection with this Contract.

**Supplier** means the entity to whom the Purchase Order is addressed.

**Supplier Reference Documents** means documentation which evidences the delivery of Goods and/or the performance of Services the subject of a payment claim.

**Supplier's Background IP** means Intellectual Property Rights owned by or licensed to the Supplier (including know how and technical information).

**Tax Invoice** has the meaning it has in the GST Act