

Jellinbah Group Purchase Order Terms – Supply of Goods and Services

1. Definitions

Agreement means the Purchase Order and the General Conditions.

Bankruptcy Act means the *Bankruptcy Act 1966* (Cth).

Claim means any claim, notice, demand, debt, account, lien, liability, action, proceeding or suit under, arising out of, or in any way in connection with the Contract, the supply of the Goods and/or Services or either party's conduct under the Contract whether before or after it came into force, howsoever arising including at law (including breach of contract and under any indemnity), in equity (including restitution), by statute, in tort (including negligence), or otherwise..

Corporations Act means the *Corporations Act 2001* (Cth).

Defects Liability Period means the period stated in the Purchase Order or, if no period is specified, 12 months from the date of delivery of the Goods or performance of the Services.

Delivery Address means the location stated on the Purchase Order.

General Conditions means this document.

Goods means the goods, if any, described in the Purchase Order.

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

- (a) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the Corporations Act), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the Supplier;
- (b) the Supplier or the Supplier's property or undertaking becomes subject to a personal insolvency arrangement under part X of the Bankruptcy Act or a debt agreement under part IX of the Bankruptcy Act;
- (c) the Supplier is unable to pay its debts when they fall due or is unable to pay its debts within the meaning of the Corporations Act, or is presumed to be insolvent under the Corporations Act; or
- (d) an application or order is made for the liquidation of the Supplier or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the Supplier, otherwise than for the purpose of an amalgamation or reconstruction.

Intellectual Property means all intellectual property rights existing anywhere in the world, including any patent, design right, copyright, trade mark, protected circuit layout, trade secret, Confidential Information, or other right whether existing under statute, at common law, in equity or otherwise.

Losses means losses, damages, costs, charges, expenses, penalties, interest and fines, including those arising as a result of Claims, demands, actions, proceedings or suits by any person.

Modern Slavery has the meaning given to it in the *Modern Slavery Act 2018* (Cth).

PPSA means the *Personal Property Securities Act 2009* (Cth).

Price means the price of all Goods and Services as detailed in the Purchase Order.

Purchaser means the Jellinbah Group entity listed on the Purchase Order.

Purchase Order means the written and numbered order issued by the Purchaser to the Supplier for the supply of goods or services or both.

Services means the services, if any, described in the Purchase Order.

Supplier means the person to whom the Purchase Order is issued.

Taxes includes any tax, levy, duty, charge, impost, fee, deduction or withholding however it is described, that is assessed, levied, collected or imposed by law or by a government agency, together with any related interest penalty, fine or other charge, or other amount imposed in respect of any of the above.

2. Agreement

2.1. The Supplier is deemed to have accepted the terms of this Agreement (and the Agreement shall be binding) when the Supplier has received a Purchase Order from the Company, and the Supplier irrevocably accepts that the Purchase Order and these Purchase Order Terms shall form the Agreement.

3. Supply of the Goods and Services

3.1. The Supplier must supply the Goods and Services to the Purchaser in accordance with the Agreement.

3.2. This Agreement is not exclusive and does not prevent the Purchaser from entering into agreements with third parties for the purchase of equivalent or similar goods or services.

4. Quantity

4.1. The quantity of Goods and Services supplied must be the amount specified

in the Purchase Order unless directed in writing by the Purchaser.

- 4.2. Where excess Goods or Services are supplied, the Purchaser may:
- (a) return excess Goods to the Supplier at the Supplier's cost; and
 - (b) refuse to pay for the excess Services.

5. Variation

5.1. The Purchaser may direct the Supplier at any time to vary, amend, increase, decrease, omit (including for the purpose of carrying out the supply of Goods or Services itself or engaging a third party to do so), change the timing of (including to accelerate), or change the quality, character or extent of the Goods or Services (**Variation**). No Variation will invalidate the Contract and the Supplier must comply with the Variation.

5.2. The Purchaser will determine the Price of each Variation by applying:

- (a) rate or prices agreed between the parties;
- (b) rates or prices (if applicable) in the Agreement; or
- (c) reasonable rates or prices.

6. Price and Payment

6.1. The Purchaser agrees to pay the Supplier the Price for the Goods and Services provided in accordance with this Contract.

6.2. Unless the Purchase Order provides otherwise, the Price is inclusive of all costs incurred by the Supplier in respect of:

- (a) supplying the Goods and performing the Services (including packaging, packing, insurance and delivery of the Goods) in accordance with the Agreement; and
- (b) GST and all other Taxes.

6.3. The Price may not be increased unless the Purchaser gives its prior written consent.

6.4. All claims for payment must be in the form of a tax invoice and include all information or documentation reasonably requested by the Purchaser, including a valid Purchase Order number.

6.5. All invoices for Services must be accompanied by:

- (a) for Services provided on a lump sum basis, a payment certificate of work completed that has been certified by the Purchaser's authorised representative; and
- (b) for Services provided on a schedule of rates basis, daily claim sheets verifying hours worked and equipment used that has been certified by the Purchaser's authorised representative.

6.6. Payments by the Purchaser are on account only and are neither evidence of the Purchaser's acceptance that the supply of Goods and Services have been performed in accordance with the Agreement nor an admission of liability.

6.7. Without limiting any other right that the Purchaser may have under the Agreement or otherwise at law, the Purchaser may set off against and deduct from any monies due to the Supplier, any debt, costs, damages, loss or expense due or claimed by the Purchaser from the Supplier (whether liquidated or otherwise) arising out of or in connection with the Agreement or the supply of Goods and Services. This does not limit the Purchaser's right to recover these amounts in other ways.

7. GST

7.1. Unless otherwise defined in this Agreement, capitalised terms in this clause have the meanings given to them in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**).

7.2. Unless stated otherwise, the consideration for a Supply made under or in connection with the Agreement does not include GST. If a Supply made under or in connection with this document is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable the Recipient must pay the Supplier an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under this document for that Supply and the Supplier must give the Recipient a Tax Invoice for the Supply.

8. Delivery and Performance

8.1. The Supplier must:

- (a) supply all labour, tools, equipment and materials necessary to complete the supply of the Goods and/or Services;
- (b) not impede or interfere with other work in progress at the Purchaser's site; and
- (c) at its own expense, obtain and comply with all requisite licences and permits required to supply the Goods and Services;

8.2. The Supplier must comply with this Agreement and the Purchase Order terms

concerning:

- (a) packaging of, and times, method and place of delivery of, the Goods; and
- (b) times and place for performance of the Services.

8.3. The Purchaser shall be entitled to return Goods to the Supplier at the Supplier's cost and withhold payment for Services if delivery is not made within the time specified in the Purchase Order or such other time as has been agreed in writing with the Purchaser; or

8.4. In respect of all Goods supplied, the Supplier must provide a delivery docket detailing:

- (a) a full description of the Goods;
- (b) the quantity of Goods;
- (c) any Goods on backorder; and
- (d) the Purchase Order number.

9. Safety and Environment

9.1. The Supplier must comply with:

- (a) all laws relating to health, safety and the environment in supplying the Goods and Services;
- (b) all policies and procedures notified in writing to the Supplier, of the Purchaser relating to health, safety and the environment; and
- (c) all reasonable directions and orders of the Purchaser relating to health, safety and the environment.

10. Supplier's Warranties

10.1. The Supplier warrants that the Goods are free and clear of all liens and encumbrances.

10.2. The Supplier warrants that the Goods and Services:

- (a) match the description in the Purchase Order and are manufactured or performed in accordance with the specifications provided by the Purchaser;
- (b) in the case of Goods, are of merchantable quality, being free from defects in materials, workmanship and design (if design is provided by the Supplier) and unless otherwise stated in the Purchase Order, new;
- (c) in the case of Services, are in accordance with standards, practices and methods generally followed by and that degree of skill and diligence that would ordinarily be expected of a skilled and experienced supplier;
- (d) are fit for the purpose for which Goods and Services of the same kind are commonly supplied and any other purposes described in the Purchase Order or which the Purchaser otherwise makes known to the Supplier;
- (e) are of an equal or better standard to any sample or demonstration provided by the Supplier;
- (f) do not, and the Purchaser's use will not, infringe any patent, copyright, moral right, design or trademark; and
- (g) comply with all applicable laws, regulations, licenses, permits and approvals and any relevant Australian Standard.

11. Inspection, Acceptance and Defects

11.1. The Purchaser or its nominated representative may at any time during manufacture, or delivery of the Goods and performance of the Services, inspect the Goods and Services.

11.2. Inspection of the Goods and Services shall not relieve the Supplier of its obligations under this Agreement or prejudice the Purchaser's rights or remedies.

11.3. Payment for the Goods and Services or the signing of delivery receipts before inspection does not constitute acceptance of the Goods or Services.

11.4. If Goods or Services do not comply with the Agreement in any way (including any warranty) or are otherwise defective (**Defect**) the Purchaser may at any time prior to expiry of the Defects Liability Period either (in its absolute discretion):

- (a) require the Supplier to remove the Goods and refund the Purchaser any amount paid in relation to the Goods or Services;
- (b) direct the Supplier to replace or rectify the Goods or re-perform the Services;
- (c) notify the Supplier that the Purchaser elects to accept the Goods or Services and claim damages for the Supplier's failure to comply with the Agreement

11.5. If the Defect is not rectified or replaced, or the Services re-performed, within 10 Business Days of a direction by the Purchaser under clause 11.4(b), the Purchaser may itself or by others rectify the Defect or replace the Goods or re-perform the Services and the costs incurred in doing so will be a debt due and payable to the Purchaser by the Supplier.

12. Title and Risk in Goods

12.1. Title to and property in the partly completed or completed Goods and

any materials and parts to be used in their manufacture passes to the Purchaser upon payment or delivery (whichever occurs first), provided that the Supplier bears the risk of loss or damage to the Goods until they are delivered to the Delivery Address.

12.2. If the Supplier is not the manufacturer of the Goods, the Supplier must, at its own cost, obtain and provide the Purchaser with any warranties available for the relevant Goods from the relevant manufacturer (**Manufacturer Warranties**). The Supplier must ensure that the Manufacturer Warranties are in favour of the Purchaser and fully assignable and are provided to the Purchaser no later than upon the delivery of the Goods.

13. Termination

13.1. The Purchaser may terminate the Agreement immediately, on written notice to the Supplier, if:

- (a) an Insolvency Event occurs in respect of the Supplier; or
- (b) the Supplier breaches any term of this Agreement including any of the warranties, and fails to rectify the breach within the time notified by the Purchaser in writing.

13.2. The Purchaser may, at its complete discretion, cancel the Purchase Order or terminate the Agreement, or any part thereof, at any time prior to the Goods being supplied or the Services being performed, without liability, for any undelivered Goods or unperformed Services.

13.3. The Supplier shall upon receipt of a termination or cancellation notice under this clause;

- (a) Immediately cease work on the date and to the extent specified in the notice;
- (b) Take such action as necessary or as directed for the transfer, protection and preservation of Goods and Services in the Contractor's possession and in which the Purchaser has or may acquire an interest; and
- (c) minimise the cost of termination to both parties; and
- (d) take such other action as directed by the Purchaser.

13.4. If the Purchaser terminates the Agreement in accordance with clause 13.1 or cancels the Purchase Order in accordance with clause

13.2, the Supplier's sole entitlement is to payment for amounts due and payable in respect of the Goods delivered and Services performed prior to the date of termination provided the Purchaser receives title to any materials or Goods or the product of any Services, and the Supplier shall have no other Claim arising out of or in connection with the termination, including for loss of profit.

14. Test Certificates or Other Certificates

14.1. If requested, the Supplier must provide certification of testing of the Goods from an accredited certification body or other such certification as determined by the Purchaser.

15. Indemnity in relation to Goods and Services

15.1. The Supplier must indemnify the Purchaser, the Purchaser's related body corporate or joint ventures and their employees, agents and contractors (**Indemnified Parties**) against all Losses arising in connection with:

- (a) any:
 - (i) damage to the Delivery Address, Goods or any property whether located at the Delivery Address or otherwise; and
 - (ii) death or injury to any person whether located at the Delivery Address or otherwise,

if the Losses arise in connection with any act, error or omission of the Supplier or Supplier's employees, agents and subcontractors, and employees, agents and contractors of the subcontractors;

- (b) a breach by the Supplier or Supplier's employees, agents and subcontractors, and employees, agents and contractors of the subcontractors of any policy of the Purchaser notified to the Supplier in writing or any approval or law or in connection with the performance of its obligations under the Agreement; and
- (c) the breach by the Supplier of an obligation under the Contract or a warranty contained in clauses 10.2(f) or 19.

15.2. The Purchaser may recover from the Supplier an amount due to another Indemnified Party under the indemnity in clause 15.1 on behalf of that Indemnified Party.

16. Consequential Loss

16.1. Neither party shall be liable to the other (to the fullest extent permitted at law) for any loss of profits, loss of use, loss of revenue, loss by reason of shutdown or non-operation or loss of anticipated savings or for any consequential or indirect loss or damage whatsoever.

17. Insurance

17.1. When the Purchase Order relates to the manufacture or supply of Goods, the Supplier shall insure the Goods against loss or damage for their replacement value. If the Supplier is responsible for delivery or unloading of the

Goods, it shall ensure that this insurance extends to cover these activities.

- 17.2. The Supplier must effect and maintain the following insurances:
- (a) workers' compensation insurance as required by law; and
 - (b) a comprehensive public and products liability policy, with a limit of liability for each and every event of not less than \$20 million or other amount agreed to in writing by the Purchaser; and
 - (c) where the Services include professional services, a comprehensive professional indemnity insurance policy with a limit of liability for each and every event of not less than \$5 million or other amount agreed to in writing by the Purchaser; and
 - (d) if the supply of the Goods and/or Services require the Supplier to use or provide the use of motor vehicles (including hire vehicles), comprehensive motor vehicle third party liability insurance for any vehicle owned or used by the Supplier; and (e) any other insurances set out in any Purchase Order.
- 17.3. The Supplier must:
- (a) maintain the insurances required by this clause from the commencement of any works relating to the supply of Goods or performance of Services until the end of the later period described in clause supply of all Goods and provision of all Services under the Agreement; and
 - (b) when requested by the Purchaser, provide evidence to the satisfaction of the Purchaser that the Supplier has complied with its obligations under this clause.

18. Intellectual Property

- 18.1. The Supplier warrants in providing the Goods and/or Services neither the Purchaser nor the Supplier will infringe the Intellectual Property of any third party.
- 18.2. The Supplier grants to the Purchaser a perpetual, irrevocable, royalty free, worldwide licence to use any Intellectual Property which the Purchaser requires in order to lawfully use the Goods and/or Services.
- 18.3. All Intellectual Property created by the Supplier (either by itself or jointly with any third party), in provision of the Goods and/or Services or otherwise pursuant or incidental to this Agreement will be owned by the Purchaser.

19. Confidentiality

- 19.1. For the purposes of this clause 19, **Confidential Information** means any information relating to the Goods or Services, the Purchaser's business or operations, or any other information provided by the Purchaser to the Supplier under or in connection with the Agreement;
- 19.2. Subject to clause 19.3, the Supplier must not, and must ensure that its related bodies corporate, employees, agents and contractors do not, disclose Confidential Information or use Confidential Information of the other party for purposes unrelated to the Agreement.
- 19.3. The Supplier may disclose Confidential Information:
- (a) to the extent required by law or any applicable stock exchange listing rule, or to any taxation authority;
 - (b) to its legal advisers, accountants, auditors, and financial or other advisers under an express or implied obligation to the Disclosing Party to keep the Confidential Information confidential;

20. Modern slavery

- 20.1. The Supplier warrants to the Purchaser that, to the best of its knowledge and following reasonable enquiries, it is not aware of any risks present in its operations and supply chains that may amount to Modern Slavery, or if it is so aware, it has taken appropriate action to mitigate, remediate and reduce those risks.
- 20.2. The Supplier must:
- (a) ensure that in performing its obligations in connection with this Agreement, the Supplier and its officers, employees, agents and contractors comply with any policies or procedures of the Purchaser relating to Modern Slavery;
 - (b) ensure that it does all things required or necessary to mitigate or reduce Modern Slavery risks in its operations and supply chains;
 - (c) promptly and accurately notify the Purchaser if it becomes aware of any possible, potential, suspected or actual Modern Slavery occurring in the Supplier's organisation or supply chain; and
 - (d) cooperate in good faith with the Supplier in investigating any possible, potential, suspected or actual Modern Slavery within the Supplier's organisation or supply chain.

21. PPSA

- 21.1. If the Purchaser determines a 'security interest' as defined in the PPSA (**Security Interest**) arises under this Agreement, then the Supplier must do anything requested by the Purchaser (at the Supplier's cost) including executing documents, to ensure the Security Interest is registered, perfected and enforceable, including that through registration the

Purchaser obtains the highest ranking priority possible for the Security Interest and the Supplier must assist the Purchaser to exercise any right in connection with a Security Interest.

22. Notification of claims

- 22.1. Not more than 20 Business Days after the Supplier could reasonably have been aware of the occurrence of an event giving rise to a Claim or circumstances that may give rise to a Claim either by the Supplier against the Purchaser or by a third party against the Supplier or the Purchaser, the Supplier must give the Purchaser a written notice that includes an outline of the relevant provision of the Claim, or the facts and circumstances that may give rise to the Claim, and the quantum or likely quantum of the Claim.
- 22.2. Clause 22.1 does not apply to any Claim that must be communicated within a particular time under another provision of the Agreement.
- 22.3. If the Supplier fails to comply with the provisions of this clause 22 or to otherwise communicate a Claim or potential Claim in accordance with the relevant provision of the Agreement, the Supplier will be barred from pursuing the Claim and indemnifies the Purchaser for any Claim made by a third party against the Purchaser.

23. Joint Venture

- 23.1. This clause 23 applies to the extent the Purchaser Order provides, or the Purchaser otherwise notifies the Supplier, that it enters into the Agreement on behalf of a joint venture (**Joint Venture**).
- 23.2. The Supplier acknowledges that the Purchaser enters into this Agreement as agent for and on behalf of each participant in the Joint Venture and the obligations of each participant is several only (not joint nor joint and several) in accordance with their participating interest from time to time

24. Dispute resolution

- 24.1. If a dispute between the parties arises from or in connection with the Agreement, neither party may commence court proceedings concerning the dispute unless it has complied with this clause or seeks urgent injunctive or declaratory relief.
- 24.2. A party claiming a dispute must notify the other party of the dispute and specify the claim (**Dispute Notice**).
- 24.3. Within 5 Business Days of service of a Dispute Notice, the parties must confer to attempt to resolve the dispute.
- 24.4. Unless the dispute is resolved under clause 24.3, within 10 Business Days after the service of a Dispute Notice the chief executive officers of the parties (or their nominated delegates who have authority to resolve the dispute) must confer at least once to attempt to resolve the dispute.
- 24.5. If the parties are unable to resolve the dispute within 20 Business Days after service of the Dispute Notice, either party may commence litigation.
- 24.6. Each party must continue to perform its obligations under the Agreement despite the existence of a dispute.

25. General

- 25.1. In performing the Services or supplying the Goods, the Supplier is an independent contractor and not an agent or employee of the Purchaser.
- 25.2. The Supplier must not assign the Agreement or subcontract any part of the supply of the Goods and Services, without the prior written consent of the Purchaser. Such consent may be withheld or granted on conditions that the Purchaser determines.
- 25.3. A waiver of any provision of or right under the Agreement shall not constitute a waiver of any other provision or right. This Agreement supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties. To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion has no effect except to the extent expressly set out or incorporated by reference in this document.
- 25.4. The Agreement is governed by and interpreted in accordance with the laws of Queensland, Australia and both parties submit to the non-exclusive jurisdiction of the courts of Queensland.