

## **1 Definitions**

In these Conditions:

‘Consequential Loss’ includes loss of contract, business opportunity, profit, anticipated profit, production, use, revenue or interest payable (or any loss of a similar nature) howsoever caused, arising out of or in connection with the Contract and whether or not foreseeable or in the ordinary contemplation of the Purchaser and/or the Supplier at the date of award of the Contract, irrespective of whether such loss is caused by the negligence or breach of duty (statutory or otherwise) of the Purchaser and/or the Supplier.

‘These Conditions’ shall mean the terms and conditions contained herein.

‘The Contract’ shall mean these Conditions, the Purchase Order and the documents listed therein.

‘The Delivery Date’ shall mean the date for delivery of the Goods specified in the Purchase Order.

‘The Delivery Point’ shall mean the place for delivery of the Goods specified in the Purchase Order.

‘the Goods’ shall mean the goods described in the Purchase Order (including any replaced goods and spare parts) and the term ‘the Goods’ shall whenever the context permits include any work or services performed under the Contract by the Supplier or any of its sub-contractors in connection with or incidental to the Goods or the Works.

‘The Owner’ shall mean the person or persons or firm or company for whom the Purchaser has undertaken to execute the Works or any part thereof.

‘The Purchase Order’ shall mean a document headed ‘Purchase Order’, together with any amendment thereto signed by or on behalf of the Purchaser and issued to the Supplier.

‘The Purchaser’ shall mean Clough Wood Pty Ltd (ABN 26 116 355 572).

‘The Supplier’ shall mean the person or persons or firm or company to whom the Purchase Order is issued.

‘The Works’ shall mean the works for and in connection with which the Goods are required.

‘Statutory Requirements’ shall include without limitation

- (i) the laws of the Commonwealth of Australia;
- (ii) acts and ordinances of any country, state or territory in which the Works are to be carried out; and
- (iii) all other laws, regulations, conventions, orders and directions given by or on behalf of any governmental or semi-governmental authority which may apply to the Owner, the Purchaser or the Supplier including, without limitation, anti-corruption laws, employment laws, export and re-export laws and regulations, health, safety and environment laws and competition laws.

## **2 Pricing and Payment**

- a) The price of the Goods shall be as stated in the Purchase Order and except as otherwise agreed in writing between the parties shall be the total compensation payable to the Supplier under the Contract.
- b) Unless otherwise agreed in writing by the Purchaser, the price shall include all transportation, freight, packaging, handling and storage of the Goods until delivery at the Delivery Point.
- c) Unless otherwise stated, the price stated in the Purchase Order is in Australian currency excluding GST, fixed and firm, not subject to escalation for the duration of the Purchase Order. The price of the Goods and the amount of GST shall be stated separately.
- d) Unless the Purchase Order otherwise provides, payment of amounts correctly invoiced by the Supplier shall, subject to sub-clause (e) of this Clause, be made by the end of the month following the month in which the invoice is received which shall be the due date for payment.
- e) No payment made by the Purchaser shall in any way be construed as acceptance of any of the Goods supplied or work or services performed by the Supplier or any of its subcontractors and no payment shall in any way impair or restrict any rights or remedies the Purchaser may have under the Contract or otherwise for and in connection with the supply of the Goods and/or the performance of work or services under the Contract by the Supplier or any of its subcontractors.

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## 3 Delivery

- a) The Goods shall be securely and properly packed by the Supplier and, if applicable, in accordance with any instructions given by the Purchaser and delivered to the address specified on the Purchase Order (hereinafter called 'the Delivery Point'). The Supplier shall give reasonable notice to the Purchaser of the time of delivery.
- b) It is a condition of the Contract that the Supplier shall deliver the Goods at the date and/or within the time or period stated in the Purchase Order.
- c) Subject to Sub-clause (b) above, the Supplier shall give the Purchaser immediate notice of any potential delay in delivery.

## 4 Termination of Default

If the Supplier fails to make delivery; fails to perform within the time specified in the Purchase Order; delivers non-conforming Goods; or fails to make progress in a manner to endanger performance of the Purchase Order; then in any case the Purchaser may cancel the Purchase Order or part thereof and the Supplier shall be liable for all costs incurred by the Purchaser in purchasing similar Goods elsewhere.

## 5 Risk and Title

In no circumstances shall the risk of damage to or loss or destruction of the Goods pass to the Purchaser prior to delivery of the Goods to the Delivery Point. The Supplier indemnifies the Purchaser against any loss or damage to the goods prior to their delivery to the Delivery Point.

## 6 Quality and Defects

- a)
  - (i) All Goods shall be fit for the purpose for which the Purchaser requires them and where applicable be in accordance with the Purchaser's specifications, and of first class materials, workmanship and design, free of defects and comply with all relevant Statutory Requirements,
  - (ii) All Goods shall comply in all respects with the terms of the Contract and all warranties or representations given or made on behalf of the Supplier or implied at law. For the avoidance of doubt any express warranty or guarantee given by the Supplier shall commence for a period of 18 months from the date when the Goods are brought into service which shall in any event, be no later than 6 months from the date of delivery of the Goods to the Delivery Point and shall extend to parts and labour.
- b) If test certificates for the Goods are required by the Purchase Order they shall be forwarded to the Purchaser upon completion of testing.
- c) If, on inspection or test, (whether at any time prior to or after delivery) in manufacture or use, any Goods are found to be faulty in quality, damaged, defective, or not to comply with these Conditions (including Goods damaged in transit), the Purchaser may, at its option,
  - (i) reject the whole or any part of the Goods in which event any payment previously made shall be refunded to the Purchaser or
  - (ii) require the Supplier at its own cost either to replace the Goods or to promptly rectify any defect or
  - (iii) undertake or procure at the risk and expense of the Supplier the replacement of the Goods or the rectification of any defect. Warranties and guarantees (paragraph (ii) of this clause 6(a)) shall in respect of goods replaced and rectified as aforesaid be renewed from the dates it replaced or rectified goods are put into use by the owner.
- d) Where the Purchaser requires the Supplier to rectify a defect:
  - (i) the cost of collecting the Goods from and returning them to the Purchaser shall be borne by the Supplier; and
  - (ii) the cost of any additional inspection or testing of the replaced or repaired Goods and the cost of any further inspection or testing of other Goods as may be reasonably required by the Purchaser having due regard to the nature of the defect found in the Goods being replaced or repaired shall be borne by the Supplier.

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## 7 Labelling and Instructions

- a) The Supplier warrants that the design, construction, quality, packaging and labelling of the Goods shall comply in all respects with any requirements of any statute, order or other instrument having the force of law, which may be in force at the times when the Goods are supplied.
- b) All marking and labelling of the Goods
  - (i) necessary to ensure safe and proper handling, processing, storage and transport and
  - (ii) as particularly required by the Purchaser shall be carried out by the Supplier.
- c) Hazardous goods must have prominent warnings in English and any other language as may be specified in the Purchase Order on all packing and documents.

## 8 Indemnity

The Supplier shall indemnify and hold the Purchaser harmless against all claims, liens, costs (including legal costs) and expenses whatsoever resulting from or caused by any act, omission or negligence of the Supplier and its sub-suppliers in connection with the obligations of the Contract.

## 9 Insurance

The Supplier shall at its own expense effect and maintain throughout the performance of the Contract

- (i) such insurances as the Supplier may be required to effect and maintain by law;
- (ii) 'all risks' transit insurance for the full replacement value of the Goods and other items while they remain at the Supplier's risk;
- (iii) insurance in respect of liability for death of or injury to third parties or loss of or damage to third party property for an amount of not less than USD1,000,000, any one occurrence, unlimited in the aggregate; and
- (iv) adequate insurance for such other of the Supplier's insurable obligations under the Contract (including in particular Construction Plant & Equipment insurance where the Purchase Order specifies equipment to be hired to the Purchaser or where erection work will be undertaken by the Supplier) as a prudent and competent person entering into the Contract would effect and maintain.

## 10 No Waivers

No failure on the part of the Purchaser at any time or from time to time to enforce or to require the strict adherence and performance of any of the terms, Conditions and provisions of the Contract shall constitute a waiver of such terms, Conditions or provisions and/or affect or impair such terms, Conditions or provisions in any way or the right of the Purchaser at any time to avail itself of such remedies as it may have for each and every breach of such terms, Conditions or provisions.

## 11 Conditions and Acceptance of Order

No servant or agent of the Purchaser has any authority to agree to any variation of or addition to these Conditions, unless such variation or addition is expressed in writing and specifically agreed and signed on behalf of the Purchaser by a director or other person duly authorised by the Purchaser. Subject to the foregoing provisions of this Clause, nothing contained in any document issued by the Supplier (irrespective of whether same is referred to in the Purchase Order) shall in any way modify or vary these Conditions.

Upon receipt of the Purchase Order, the Supplier shall check it for discrepancies. The Supplier shall acknowledge the Purchase Order as soon as practicable after receipt. The Supplier's acceptance by acknowledgment or performance of the Purchase Order shall constitute the entire contract between Supplier and Purchaser and no representative or statements by any employee or agent not expressly stated in the Purchase Order shall be binding upon the Purchaser.

## 12 Disputes

If any dispute arises out of the Contract, either party shall give to the other, written notice adequately identifying the matters that are the subject of the dispute. The parties will attempt to settle the dispute by negotiations to be conducted between authorised delegates of each party within 14 days of the issue

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of the notice of dispute. If the authorised delegates are unable to resolve the dispute they must agree an alternative dispute resolution method within a further 7 days (for example mediation or expert determination) but not including arbitration or the commencement of legal proceedings. If the dispute is not resolved after compliance with the alternative dispute resolution method, the parties may refer the dispute to arbitration or commence legal proceedings.

### **13 Entirety of Agreement**

The express terms of this Contract shall constitute the entire agreement between the Supplier and the Purchaser on the subject matter hereof and shall cancel and supersede all prior written or oral representations or understandings between the Supplier and the Purchaser other than as expressly included in the Contract.

### **14 Consequential Loss**

Neither the Purchaser nor the Supplier shall be liable to the other for any Consequential Loss sustained by the other party.

### **15 Legal Construction**

Unless otherwise agreed in writing this Contract shall in all respects be construed and governed by the laws of Western Australia and the parties agree to submit to the jurisdiction of its Courts. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

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## SCHEDULE 1 TERMS AND CONDITIONS FOR WORK OUTSIDE OF AUSTRALIA

If the Contract is to be performed in or relates to any location outside of Australia, this Schedule 1 shall apply to the Contract.

### 1 REQUIREMENTS FOR PERSONNEL

#### 1.1 Details of Personnel

The Supplier shall comply with and provide all details as required under the Statutory Requirements to the Purchaser at least 15 days prior to the date on which any members of the Supplier's personnel are to be mobilised. This information shall include, but is not limited to, the names, passport particulars, copies of passports, copies of visas and evidence of residency status of all personnel.

#### 1.2 Approval of Personnel

The Supplier's personnel are subject to review and approval for entrance into the overseas location by both Australian and the local authorities. Any person deemed unacceptable by such authorities shall be immediately replaced by the Supplier. No appeal by the Supplier regarding such acceptability shall be allowed. All Supplier's personnel must have in their possession their passports and other valid travel documents when travelling to or from the overseas location. The Purchaser will use reasonable endeavours to assist the Supplier to the extent possible to obtain such approvals in a timely fashion.

### 2 TAXATION

2.1 The Purchaser shall assume that the Supplier has fully acquainted itself with the taxation provisions of the sovereign country in which the Works are to be performed by the Supplier and remit tax accordingly.

2.2 The Supplier indemnifies the Purchaser against any assessment of tax, plus related penalties and interest related to the Purchaser's failure to properly make and remit such tax.

2.3 The Purchaser and its respective advisers make no representation or warranty in relation to the application of taxes to the Supplier for the performance of the Works.

2.4 The Purchaser and its respective advisers do not represent or warrant that any information provided to the Supplier in relation to taxes is correct, complete or relevant to the Supplier or the Goods.

2.5 The Purchaser will not be liable to the Supplier as a result of the Supplier's reliance on information supplied by or on behalf of the Purchaser in relation to the application of taxes.

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