

### STANDARD TERMS AND CONDITIONS OF PURCHASE

#### 1 DEFINITIONS

**Agreement** means this agreement, comprising:

- (a) the Purchase Order;
- (b) these Standard Terms and Conditions of Purchase; and
- (c) any attachments or annexure specifically referred to in the Purchase Order.

**Business Day** means any day which is not a Saturday, Sunday or public holiday in Western Australia.

**Company** means Scope Engineering (WA) Pty Ltd ACN 089 555 377 and includes any subsidiary of the Company by which the Goods are hired and successors in title and permitted assigns or any person acting on behalf of the Company.

**Consequential Loss** means:

- (a) loss of profits and revenue; and
- (b) loss of production.

**Contractor** means the party identified as such in the Purchase Order.

**Defective** means Goods and/or Services (or any aspect of them) which are not in accordance with the Agreement or which are damaged, deficient, faulty, inadequate or incomplete.

**Delivery Address** means the place for delivery specified in the Purchase Order.

**Date for Completion** means the date specified in the Purchase Order by which the Goods are to be delivered to the Delivery Address or the Services are to be completed.

**Force Majeure** means any event or circumstance (or combination of events and circumstances) which:

- (a) is beyond the control of the party affected by that event or circumstance or both which could not reasonably have been foreseen at the time of entering into this Agreement and which could not reasonably have been provided against or prevented by the party affected including but not limited to an act of God, war declared or undeclared, blockage, revolution, riot, insurrection, civil commotion, sabotage, lightning, fire, earthquake, storm or flood on the Site, plague and explosion, governmental or governmental agency restraint, expropriation, prohibition, intervention or embargo;
- (b) causes delay in, or prevention of, the performance by the affected party of any of its obligations under the Agreement; and
- (c) cannot be prevented, overcome or remedied by the exercise by the affected party of a standard of care and diligence consistent with that of a prudent and competent company,

including a strike or industrial dispute which:

- (d) has national or state-wide application and is not confined to the Contractor's workforce;
- (e) affects the execution of the Services at the Site; and
- (f) lasts for more than seven (7) consecutive days,

but does not include:

- (g) other industrial-related disputes including strikes, lockouts, industrial difficulties, labour difficulties, work bans, blockades or picketing;
- (h) wet or otherwise inclement weather not connected to a named cyclone;
- (i) lack of or inability to use funds for any reason;
- (j) any occurrence which results from the wrongful act or wrongful omission of the affected party or the failure by the affected party to act in a prudent and proper manner and in accordance with good and accepted industry practices;
- (k) any failure by the affected party to reach agreement with any third party necessary to enable the affected party to perform its obligations under this Agreement;
- (l) an event or circumstance, where the event or circumstance or its effects on the affected party or the resulting inability of the affected party to perform its obligations could have been prevented, overcome or remedied by the exercise by the affected party of the standard of care and diligence consistent with that of a reasonable

and prudent operator; or

- (m) breakdown of any plant or equipment.

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

**GST** has the meaning given to that term under the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**HSEC** means health, safety, environment and community.

**Law** means:

- (a) Commonwealth, State and local government legislation including regulations, by-laws, orders, awards and proclamations;
- (b) common law and equity;
- (c) authority requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals); and
- (d) guidelines of authorities with which the Contractor is legally required to comply.

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

**Purchase Order** means the purchase order for Goods and/or Services issued by the Company to the Contractor.

**Price** means the price set out in the Purchase Order which is exclusive of GST, but is inclusive of all other costs and charges.

**Security Interest** has the meaning given to it in the PPSA.

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

**Site Standards and Procedures** means all guidelines, rules, requirements or site specific conditions of the Company.

**Warranty Period** means the period of 12 months commencing on the date of delivery of the Goods and/or 12 months from the date on which the Service is performed.

#### 2 SUPPLY OF GOODS AND/OR SERVICES

2.1 In consideration of payment of the Price by the Company, the Contractor must supply to the Company the Goods and/or perform the Services in accordance with the Agreement.

2.2 To the extent the Contractor's terms and conditions are supplied with the Goods or Services (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect and will not constitute part of the Agreement (even if any representative of the Company signs those terms and conditions or annexes the terms and conditions to the Purchase Order).

2.3 The Contractor must, in supplying the Goods or performing the Services:

- (a) not unduly interfere with the Company's activities or the activities of any other person at the Delivery Address;
- (b) be aware of and comply with and ensure that the Contractor's employees, agents and contractors are aware of and comply with:
  - i. all applicable Laws;
  - ii. all Site Standards and Procedures, to the extent that they are applicable to the supply of the Goods or the performance of the Services by the Contractor; and
  - iii. all lawful directions and orders given by the Company's representative or any person authorised by Law to give directions to the Contractor;
- (c) ensure that the Contractor's employees, agents and contractors entering the Company's premises perform in a safe manner and are properly qualified for, and skilled in, the performance of their tasks and are of such character as not to prejudice:
  - i. safe working practices;
  - ii. safety and care of property; and
  - iii. continuity of work;
- (d) provide all such information and assistance as the Company reasonably requires in connection with any statutory or HSEC

investigation in connection with the supply of the Goods or the performance of the Services;

- (e) on request by the Company, provide to the Company and its employees, agents and consultants any information and assistance required to identify, evaluate, implement and report on any matter required by Law, including:

- i. producing written reports;
- ii. recommending efficiency opportunities;
- iii. collecting data; and
- iv. monitoring or metering,

in respect of anything used, produced or created in connection with the performance of the Contractor's obligations under this Agreement.

### **3 DELIVERY**

- 3.1 The Contractor must deliver the Goods to the Delivery Address.
- 3.2 The Contractor must ensure that the Goods are suitably packed to avoid damage in transit or in storage.
- 3.3 Packages must be accompanied by a delivery note specifying the Purchase Order number, item number, destination, contents, quantity and date.

### **4 TIME FOR PERFORMANCE**

- 4.1 The Contractor must complete the delivery of the Goods to the Delivery Address, or complete the performance of the Services, by the Date for Completion.
- 4.2 Unless otherwise expressly agreed in writing by the Company, time shall be strictly of the essence in relation to performance of the supply of the Goods and/or the performance of the Services.

### **5 TITLE AND RISK**

5.1 Title in Goods passes to the Company on the earlier of:

- (a) delivery of the Goods to the Company (or its agent); or
  - (b) payment of the Price by the Company.
- 5.2 Risk in the Goods passes to the Company when the Goods are delivered to the Delivery Address and accepted by the Company.
- 5.3 Effective upon part payment prior to the delivery of the Goods to the Delivery Address, right title and interest in the Goods passes to the Company pro rata as tenants in common.
- 5.4 Notwithstanding title in the Goods has or has not passed to the Company, the Company and the Contractor agree:
- (a) a part payment of the Goods gives rise to a Security Interest (as defined in the PPSA) in the Goods; and
  - (b) the Company may register a Security Interest under the PPSA in respect of the Goods to be supplied and the Contractor agrees to do all things reasonably required to assist the Company in effecting such registration.
- 5.5 Effective upon delivery of the Goods to the Delivery Address, and notwithstanding title in the Goods has or has not passed to the Company, the Company and the Contractor agree:
- (a) the supply of the Goods may give rise to a Security Interest in the Goods; and
  - (b) at the Contractor's cost the Contractor may register a Security Interest under the PPSA solely in respect of the Goods supplied, and the Company agrees to do all things reasonably required by the Contractor to assist the Contractor effect such registration.
- 5.6 Neither party may disclose information of the kind referred to in section 275(1) of the PPSA and this clause constitutes a confidentiality agreement within the meaning of s. 275(6) the PPSA. Each party waives any right it may have, or but for this clause may have had, under section 275(7) (c) of the PPSA to authorise the disclosure of information of the kind referred to in section 275(1) of the PPSA.

### **6 PRICE**

- 6.1 The Company must pay the Contractor the Price for the

Goods and/or Services.

- 6.2 The Price is inclusive of all costs incurred by the Contractor in the supply of the Goods and/or performance of the Services, including all charges for packing, insurance and delivery of the Goods and the cost of any items used or supplied in the performance of the Services.

- 6.3 The Price may not be varied unless expressly agreed by the parties in writing.

- 6.4 The Price is inclusive of all taxes and duties, except GST.

### **7 GST**

- 7.1 If GST is imposed on any supply made by the Contractor under or in connection with the Agreement, the Contractor may recover from the Company, in addition to the Price, an amount equal to the GST payable in respect of that supply.

- 7.2 The Contractor must first provide the Company with a valid tax invoice before the Company will pay the GST amount to the Contractor.

### **8 INVOICING**

- 8.1 Upon delivery of the Goods and/or completion of the Services, the Contractor must provide to the Company a valid tax invoice which must include the information set out in clause 8.2. Any invoices provided by any other means than the email address set out in the Purchase Order will not be deemed received by the Company.

- 8.2 The Contractor's tax invoice must include the following details:

- (a) a reference to the Purchase Order including the line item numbers on the Purchase Order;
- (b) a detailed description of the delivered Goods or performed Services, including the date of delivery and/or period of Services in respect of which the invoice relates and the relevant quantity;
- (c) an individual reference number for the Company to quote with remittance of payment;
- (d) the Price relating to the Goods and/or Services, broken down to reflect the same Price components on the Purchase Order;
- (e) the amount of any applicable GST; and
- (f) Company contact name.

- 8.3 Where the Price is calculated on a 'cost plus', 'schedule of rates' or 'per day' basis, the Company may audit the Contractor's records to determine if the Price has been correctly calculated. This right of the Company to audit continues for twelve (12) months after the date of the relevant invoice.

- 8.4 The Company will pay all tax invoices that comply with clause 8.2 within thirty (30) days from the end of month in which the Contractor's invoice is received, except where the Company disputes the invoice in which case:

- (a) the Company may withhold payment of the disputed amount pending resolution of the dispute; and
- (b) if the resolution of the dispute determines that the Company must pay an amount to the Contractor, the Company must pay that amount upon resolution of that dispute.

- 8.5 The Company may reduce any payment due to the Contractor under Agreement by any amount which the Contractor must pay the Company, including costs, charges, damages and expenses and any debts owed by the Contractor to the Company on any account whatsoever. This does not limit the Company's right to recover those amounts in other ways.

### **9 QUALITY**

- 9.1 The Goods and/or Services must match the description referred to in the Purchase Order.

- 9.2 If the Contractor gave the Company a sample of the Goods or a demonstration of the Services, the Goods and/or Services must be of the same nature and quality as the sample or demonstration given.

- 9.3 The Goods and/or Services must be fit for the purpose for which goods and/or services of the same kind are commonly

supplied or bought and for any other purpose the Company expressly specifies in the Purchase Order.

- 9.4 The Goods must be of acceptable quality, safe and free from defects, acceptable in appearance and finish, do all things that the Goods are ordinarily used for, and unless otherwise specified in the Purchase Order, must be new.

## **10 WARRANTY PERIOD**

10.1 If, during the Warranty Period, any of the Goods or Services are found to be Defective, the Company may:

- (a) return the Defective Goods to the Contractor;
- (b) reject the Defective Services;
- (c) repair or make good the Defective Goods; or
- (d) re-perform or make good the Defective Services.

10.2 The Contractor must:

- (a) repair or replace the Defective Goods;
- (b) re-perform or make good the Defective Services; or
- (c) reimburse the Company for any direct expenses incurred in repairing, re-performing or making good (as the case may be) any Defective Goods or Services should the Contractor decline or fail in its obligations to do so,

at the Contractor's cost, if requested to do so by the Company.

10.3 The provisions relating to any warranty or Defective Goods and/or Services specified under this Agreement shall be in addition to and without limiting any conditions or warranty expressed or implied by statute or common law or otherwise howsoever and in particular, without limiting the generality of the forgoing, the Contractor's liability under this Agreement shall be in addition to any condition or warranty in the Company's favour implied by statute or common law as to the quality or the fitness for any particular purpose of the works and each part thereof.

## **11 CONFIDENTIALITY**

11.1 Each party must not, and must ensure that its subcontractors do not, divulge to third parties any information relating to the Goods and/or Services (including Intellectual Property), the other party or the supply to the Company by the Contractor, unless and until such information is within the public domain (other than by a breach of this clause 11.1) or express written consent has been given by the relevant party.

11.2 Each party shall indemnify the other and keep the other party indemnified from and against all liabilities, losses, damages, actions, suits, proceedings, claims, costs (including legal costs) and expenses arising from any breach of this clause 11 by the indemnifying party.

## **12 INTELLECTUAL PROPERTY**

12.1 The specifications, drawings, technical instructions or any other documentation whatsoever issued to the Contractor by the Company during tendering and at the time of establishing the Agreement will remain the exclusive property of the Company and are to be kept strictly confidential.

12.2 The Contractor warrants that:

- (a) the Goods supplied and/or Services performed by the Contractor and the license granted by it to the Company do not infringe any intellectual property rights of any third party; and
- (b) the Goods supplied and/or Services performed are not subject to any intellectual property rights of any third party that in any way restrict the rights of the Company or its clients to use or sell the same.

12.3 The Contractor agrees that title in all (present and future) intellectual property created, discovered or coming into existence as a result of, for the purposes of or in connection with the supply of the Goods and/or performance of the Services under the Purchase Order shall vest exclusively in the Company upon its creation.

12.4 The Company acknowledges that the Contractor remains the owner of all intellectual property created, discovered or coming into existence other than as a result of, for the purposes of or in connection with the supply of the Goods and/or performance of the Services under the Purchase Order (**Contractor IP**).

12.5 The Contractor grants the Company a non-exclusive, royalty free licence to use all Contractor IP to the extent necessary to enable the Company to exercise its rights in the Company's intellectual property, and for the purpose of operating, maintaining, repairing, exploiting, selling or otherwise dealing in the Goods and/or Services.

## **13 INDEMNITY**

13.1 The Contractor will indemnify the Company and keep the Company indemnified from and against all liabilities, losses, damages, actions, suits, proceedings, claims, costs and expenses arising from or in connection with:

- (a) injury to (including illness or disability), or death, of any persons; and
- (b) loss or destruction of or damage to or loss of use of any property,

caused or contributed to by the act or omission of the Contractor or its directors, officers, employees, agents or contractors or by any breach of this Agreement by the Contractor (including any breach of a warranty), except to the extent and the proportion that it has been caused or contributed to by the wilful default or unlawful or negligent act or omission of the Company.

13.2 The Contractor shall be solely liable for and indemnify and keep indemnified the Company, its officers, employees and agents against any direct, indirect or consequential losses, costs (including legal costs on a full indemnity basis), expenses, claims, fines, penalties, liabilities, demands or any other actions which may be brought against the Company by any:

- (a) employee of the Contractor;
- (b) subcontractor engaged by the Contractor; or
- (c) employee of a subcontractor engaged by the Contractor,

in relation to their employment with or engagement by the Contractor, or incurred by the Company directly or indirectly in connection with the Agreement.

## **14 FORCE MAJEURE**

14.1 Notice of Force Majeure

- (a) A party will not be liable for any delay or failure to perform any of its obligations under the Agreement (other than an obligation to pay money) if as soon as possible after the beginning of the Force Majeure affecting the ability of the party to perform any of its obligations under the Agreement, it gives a notice to the other party that complies with clause 14.2.
- (b) The supply of Goods or performance of Services as specified in the Purchase Order shall be suspended in the event and for the period of the Force Majeure, provided that each parties' respective obligations contained in this clause 13 are complied with.

14.2 Force Majeure notice

A notice given under clause 14.1 must:

- (a) specify the obligations the party cannot perform;
- (b) fully describe the Force Majeure;
- (c) estimate the time during which the Force Majeure will continue; and
- (d) specify the measures proposed to be adopted to remedy or abate the Force Majeure.

14.3 No compensation

Any amendment to the Date for Completion is the Contractor's sole remedy for any delays resulting from Force Majeure where the Contractor is the affected party and the Contractor is not entitled to any increase in the Price or any damages, costs or expenses in connection with the Force Majeure.

## **15 BREACH AND TERMINATION**

15.1 The Company may terminate the Purchase Order:

- (a) in its absolute discretion by giving the Contractor fourteen (14) days written notice; or
- (b) in the event the Contractor defaults on any of the terms of the Agreement for any reason (including insolvency) by written notice:
  - (i) where the default is not capable of remedy, with immediate effect; or

- (ii) where the default is capable of remedy but the Contractor fails to remedy such default within fourteen (14) days of a written notice from the Company.

15.2 In the event that the Company terminates the Purchase Order then subject to any other rights of the Company under this Agreement the Company must:

- (a) pay for the Goods delivered or Services provided by the Contractor in accordance with the Agreement prior to the date of termination;
- (b) reimburse the Contractor for the cost of materials the Contractor reasonably ordered prior to the date of termination for the purpose of providing the Goods and or performing the Services and which the Contractor is legally liable to accept and cannot otherwise utilise, but only if the materials are delivered to the Delivery Address and become the Company's property upon payment;
- (c) any other costs that the Contractor actually and reasonably incurred prior to the date of termination in the expectation of providing the Goods and or performing the Services, and which costs were not included in any previous payment by the Company,

and the Contractor shall not otherwise be entitled to any compensation whether by way of damages, profit, loss or expense, including without limitation anticipated profits, incurred as a result of a termination of the Purchase Order under this clause 15.

15.3 Notwithstanding any other clause of this Agreement, if the Company terminates the Purchase Order pursuant to clause 15.1(b) the provisions of clauses 15.2(b) and 15.2(c) shall not apply.

## 16 INSURANCES

16.1 The Contractor must at all times during the performance of the supply of Goods or provision of Services, effect and maintain the following insurances:

- (a) public liability insurance for at least \$20 million for any one event and unlimited in the aggregate and products liability insurance for at least \$20 million for any one event, which shall contain a principal's indemnity extension in favour of the Company for liability to any third party arising out of the performance of the Agreement by the Contractor;
- (b) where the Purchase Order provides for the provision of professional services, professional indemnity insurance; and
- (c) workers' compensation insurance as required by law which shall contain a principal's indemnity extension for both statutory liability and common law liability in favour of the Company and its respective officers and employees, and shall further contain a waiver of subrogation in favour of the Company and its respective officers and employees.

16.2 When requested, the Contractor shall provide copies of certificates of currency of the above insurances.

## 17 LIMITATION OF LIABILITY

17.1 Despite any other provision of the Agreement but subject to clauses 17.2 and 17.3, and to the maximum extent permitted by Law, a party's overall liability:

- (a) under, or arising out of, or in connection with the Agreement;
- (b) otherwise at law or in equity including:
  - (i) by statute to the extent permitted by law;
  - (ii) in tort for negligence or otherwise;
  - (iii) on any other basis whatsoever,

shall not exceed 100% of the Price.

17.2 Notwithstanding any other clause of this Agreement but subject always to clause 17.3 neither party shall be in any way be liable to the other party, including by way of indemnity, for Consequential Loss.

17.3 The limitation of liability referred to in clauses 17.1 and 17.2 do not apply to liability for:

- (a) loss caused or contributed to by the Contractor, its directors, employees, or subcontractors that is:
  - covered by a policy of insurance under which the Contractor is an insured and which it is required to effect under this Agreement;
  - or

which, but for an act or omission of the Contractor (including in respect of its disclosure obligations to any insurer), would have been covered by a policy of insurance under which the Contractor is an insured which it is required to effect under this Agreement.

- (b) loss arising from the death of or personal injury to any person, or loss or damage to any property, caused or contributed to by the Contractor, its directors, employees or subcontractors;
- (c) loss arising from any criminal acts or fraud by the Contractor, its directors, employees or subcontractors or by any person for whose acts or omissions the Contractor is vicariously liable;
- (d) loss arising from any wilful misconduct by the Contractor, its directors, employees or subcontractors liable or by any person for whose acts or omissions the Contractor is vicariously liable;
- (e) loss arising from conduct of the Contractor which is repudiatory of the Agreement as a whole;
- (f) loss arising from liability which, by law, the Contractor cannot contract out of; or
- (g) loss arising from a breach of confidentiality or intellectual property.

## 18 DISPUTE RESOLUTION

18.1 Procedure for resolving disputes

- (a) The parties agree that all disputes relating to or arising out of this Agreement must be resolved in accordance with this clause 18.
- (b) If a dispute arises then either party may give notice to the other party that must:
  - (i) be in writing;
  - (ii) state that it is a notice under this clause 18; and
  - (iii) include or be accompanied by reasonable particulars of the dispute.
- (c) If a notice is given under subclause 18.1(b), then a representative of each of the parties (who must be capable of binding each party) must meet at least once within five (5) Business Days of receipt of the notice under subclause 18.1(b) (or such other time as the parties may agree) and use reasonable endeavours acting in good faith to resolve the dispute.

18.2 If the dispute is not resolved within the period referred to in subclause 18.1(c), either party may commence proceedings for the resolution of the dispute.

18.3 Continue to perform

Notwithstanding the existence of a dispute, each party must continue to perform its obligations under this Agreement.

### Acknowledgement and Acceptance

The Contractor hereby acknowledges and accepts these Terms and Conditions for the supply of goods or services in precedence over any contractor terms and conditions.