

## 1. AGREEMENT

- (a) This Agreement shall be deemed to be accepted by the Supplier for the Supplies from the Supplier's commencement of the Supplies after receipt of the Purchase Order.
- (b) Where the Supplier has provided its own written contract terms, their contract terms shall have no effect and the terms of this Purchase Order shall apply and shall constitute the entire agreement between the parties.

## 2. PERFORMANCE

- (a) The Supplier shall, as an independent contractor, provide:
  - (i) all:
    - (A) goods referred to in the description of the Supplies in the Purchase Order ("**Goods**");
    - (B) services referred to in the description of the Supplies in the Purchase Order ("**Services**"); and/or
    - (C) works referred to in the description of the Supplies in the Purchase Order ("**Works**"); and
  - (ii) at the Supplier's own cost, all labour, materials, services, goods, plant, equipment, or other things necessary to provide the Goods, Services or Works (whether not expressly described in this Agreement) or comply with its obligations under this Agreement,  
(which for the purpose of this Agreement are collectively called the "**Supplies**"). The Supplier shall carry out the Supplies in accordance with this Agreement.
- (b) Spaceframe shall pay the Supplier the Price in accordance with this Agreement.
- (c) The Price is:
  - (i) firm and final;
  - (ii) not subject to rise and fall; and
  - (iii) with the exception of GST, inclusive of all taxes, duties and charges imposed or levied in Australia or overseas.

## 3. SUPPLIER'S OBLIGATIONS

- (a) The Supplier shall carry out and complete the Supplies:
  - (i) exercising a high standard of skill, care and diligence;
  - (ii) in accordance with this Agreement and Spaceframe's directions;
  - (iii) in accordance with all legislative requirements and any relevant Australian Standards (or other standards) or codes applicable to the Supplies for the duration of this Agreement;
  - (iv) in a manner that is suitable, appropriate and adequate for the purposes stated in, or reasonably inferred from, the Purchase Order;
  - (v) in consultation with Spaceframe;
  - (vi) with due expedition and without delay;
  - (vii) to the extent the Supplies relates to Goods, deliver the Goods to the Delivery Place on the Delivery Date. Unless otherwise specified, the Supplier must unload the Goods as directed by Spaceframe; and
  - (viii) to the extent the Supplies relates to Services and/or Works, perform the Services and/or Works at the Delivery Place by the Delivery Date.
- (b) Without limiting the Supplier's obligations under any legislative requirement in respect to the Supplies, the Supplier warrants that the Supplies:
  - (i) in the case of Goods:
    - (A) are new (unless otherwise specified), are of good material and workmanship and free from defects or faults of any kind;
    - (B) are free of encumbrances and that the Supplier has good title to them;
    - (C) will be accompanied by relevant manufacturer quality certificates;
    - (D) are of merchantable quality and fit for the purpose for which Spaceframe requires them; and
    - (E) will match the description (including performance criteria) and any specifications referred to in the Agreement and any sample or demonstration of the Goods (including as to the nature, quality or performance of the Goods) provided by the Supplier.
  - (ii) in the case of Services and/or Works:
    - (A) are executed in an efficient manner to standards of skill and care normally exercised by qualified and experienced professional or trade persons in the performance of similar services; and
    - (B) will match any demonstration of the Services and/or Works (including as to the nature, quality or performance of the Services and/or Works) provided by the Supplier.
- (c) The Supplier must give Spaceframe full access to inspect or witness tests on the Services and/or Works or their results at any time during the performance of the Services and/or Works.
- (d) The Supplier must pay all entitlements owing to its employees relating to the performance of the Supplies under this Agreement as and when they fall due including, without limitation, all payments due in relation to wages and salaries, allowances, casual loadings, termination payments, entitlements under an award or agreement and leave entitlements.
- (e) In relation to its employees, the Supplier warrants that:
  - (i) all employees who perform the Supplies have the required trade or professional qualifications which are required by legislative requirements or are necessary to allow the effective performance of the Supplies;
  - (ii) it will ensure that the trade and professional qualifications of employees will be kept current and in accordance with any legislative requirements or professional requirements;
  - (iii) all employees who perform Supplies under this Agreement are medically fit to perform the Supplies and meet minimum standards associated with their employment category; and
  - (iv) it has performed thorough reference checks on all employees who perform Supplies under this Agreement.

## 4. TIME AND LATE DELIVERY

- (a) Time is of the essence in respect to the Supplier's obligations under this Agreement.
- (b) If the Supplier becomes aware of any circumstances which may cause delay to the carrying out of the Supplies, the Supplier must immediately notify Spaceframe of the cause of the delay and its expected duration.
- (c) Spaceframe may, in its absolute discretion, adjust the Delivery Date by notice in writing to the Supplier.
- (d) If the Supplier fails to deliver the Goods to the Delivery Place on the Delivery Date and/or perform the Services and/or Works at the Delivery Place by the Delivery Date, the Supplier must pay Spaceframe liquidated damages at the Liquidated Damages Rate for every day from the Delivery Date until the date of completion of the delivery of the Goods and/or performance of the Services and/or Works, as applicable.

## PURCHASE ORDER CONDITIONS

- (e) Liquidated damages may be deducted from any moneys which may be or thereafter become payable to the Supplier by Spaceframe.

### 5. SITE

- (a) Where applicable, the Supplier shall only access and use the Site:
  - (i) in accordance with Spaceframe's reasonable directions;
  - (ii) subject to Spaceframe's right to require the prompt removal of any person from the Site; and
  - (iii) at the locations directed by Spaceframe.
- (b) The Supplier shall in providing the Supplies:
  - (i) protect all people from death or injury (including by the provision and maintenance of barricades, guards, fences, signs, lighting and traffic flagging);
  - (ii) protect the Supplies (including any unfixed plant, materials and goods) and all other property (including property or works of Spaceframe or others) from loss or damage; and
  - (iii) promptly make good, at its own cost, any damage caused by the Supplier to the Supplies or any property of Spaceframe or third parties.

### 6. GOODS

- (a) Without limiting clause 3, the Supplier shall:
  - (i) properly package and protect the Goods to prevent damage during transit and on delivery; and
  - (ii) give Spaceframe full access to the Supplier's premises for Spaceframe to inspect the Goods prior to delivery.

### 7. HEAVY VEHICLES

To the extent heavy vehicles (as defined in COR Laws) are used in carrying out the Supplies, the Supplier:

- (a) Acknowledges that it is a primary duty holder under the COR Laws with responsibility for developing COR Systems;
- (b) Must ensure that any heavy vehicles are appropriately maintained with loads that do not exceed vehicle mass or dimension limits, are appropriately secured, and operators carrying freight containers have a complying Container Weight Declaration (as defined in the COR Laws) and drivers do not exceed speed limits or regulated driving hours, do not drive while impaired by fatigue and observe minimum rest requirements;
- (c) Must proactively provide reasonable assistance to Spaceframe to enable Spaceframe to satisfy its duties and responsibilities under COR Laws;
- (d) Must obtain and maintain, and ensure that each of its personnel and suppliers obtains and maintains all approvals required to enable the applicable activity, function or task to be undertaken lawfully;
- (e) Must undertake any audits or monitoring as requested by Spaceframe to demonstrate compliance with this clause; and
- (f) Warrants that it is familiar with and has the capability and resources to comply with COR Laws and ensure that its personnel and Suppliers comply with all COR Laws.

### 8. OWNERSHIP AND RISK

- (a) Ownership of, and unencumbered title in, the Supplies shall pass to Spaceframe on the earlier of:
  - (i) delivery; or
  - (ii) the date of payment for the Supplies.
- (b) The Supplier shall be responsible for the care of the Supplies until the date that risk passes in accordance with clause 8(d).
- (c) If loss or damage occurs to the Supplies while the Supplier is responsible for their care, the Supplier shall, at its cost, promptly rectify such loss or damage.
- (d) Risk in the Supplies shall pass to Spaceframe on delivery.
- (e) The Supplier grants to Spaceframe an irrevocable licence to enter the Supplier's premises to remove all Goods for which ownership has passed to Spaceframe. To the extent permitted by law, the Supplier indemnifies Spaceframe against all claims arising out of or in connection with Spaceframe's exercise of the licence granted under this clause.

### 9. PAYMENT

- (a) The Supplier shall be entitled to claim payment in accordance with the Purchase Order. Each claim must state the Purchase Order number.
- (b) Subject to clauses 9(d), 9(e) and 9(f), provided that the payment claim complies with this clause 9, Spaceframe shall:
  - (i) issue a certificate assessing the amount owing to the Supplier (or by the Supplier to Spaceframe) within 15 Business Days of receipt of the payment claim; and
  - (ii) pay the amount assessed as payable to the Supplier within 25 Business Days of receipt of the payment claim.
- (c) Any amount assessed as owing by the Supplier to Spaceframe shall be paid by the Supplier to Spaceframe within 10 Business Days of the issue of the certificate under clause 9(b).
- (d) Payment by Spaceframe of any claim shall be a payment on account only and shall not constitute evidence that the Supplies have been carried out satisfactorily.
- (e) Spaceframe may deduct from any payment otherwise due to the Supplier:
  - (i) any debt or other amount due from the Supplier to Spaceframe under this Agreement, under another agreement, or at law; or
  - (ii) any claim to payment which Spaceframe may have against the Supplier whether for damages or otherwise, under this Agreement, under another agreement, or at law.
- (f) Despite any other provision of this Agreement, the Supplier shall not be entitled to make a claim for any payment until the Supplier has provided to Spaceframe:
  - (i) evidence of the Supplier having effected all insurances required to be effected by it under this Agreement; and
  - (ii) documentary evidence (satisfactory to Spaceframe) that all the Supplier's employees, sub-suppliers and sub-Supplier's employees have been paid for all work, services, plant, goods and materials provided by them in connection with the carrying out of the Supplies at the relevant award or rate specified in any applicable industrial agreement.

### 10. DEFECTS

- (a) Without limiting Spaceframe's rights under this Agreement or otherwise, if at any time Spaceframe discovers that the Supplies or any part thereof are not in accordance with this Agreement, Spaceframe may:
  - (i) direct the Supplier to, at its cost, perform any necessary redesign, repair or replacement of the defective parts of the Goods, re-perform the Services or Works, or take any other steps necessary to ensure that the Supplies comply with the requirements of this Agreement, within the time specified; or
  - (ii) reject the Supplies or part thereof, by giving written notice to the Supplier.
- (b) The Supplier will bear all costs associated with the return, replacement and/or rectification of the Goods, Services and/or Works.

## PURCHASE ORDER CONDITIONS

- (c) If the Supplier fails to comply with a direction under clause 10(a)(i) within the required timeframe, Spaceframe may take the necessary steps to ensure that the Supplies comply with the requirements of this Agreement (including engaging third parties to undertake the necessary steps) and its costs incurred will be a debt due and owing by the Supplier.

### 11. INDEMNITY

- (a) The Supplier indemnifies Spaceframe against:

- (i) loss or damage to property, including existing property on or around the Site including property belonging to third parties;
- (ii) claims against Spaceframe in respect of personal injury, death, or loss or damage to any property; and
- (iii) claims against Spaceframe in respect of any infringement of any intellectual property or moral rights, arising out of or in connection with carrying out the Supplies.

- (b) The indemnity provided in clause 11(a) does not extend to claims that may be made against Spaceframe which arise from:

- (i) an injury which is the direct result of Spaceframe committing and being found guilty of an offence under the relevant workplace health and safety law;
- (ii) an injury which was caused directly by the failure of plant or equipment owned by Spaceframe;
- (iii) an injury which is the result of deliberate and wrongful act or omission of a Spaceframe employee.

- (c) Spaceframe may recover any amount indemnified under this clause as a debt.

This clause 11 survives the termination of this agreement.

### 12. INSURANCE

- (a) The Supplier shall effect and maintain the following insurance policies, with a reputable insurance company:

- (i) public and products liability insurance in the amount of \$10 million for any one loss or occurrence, for the duration of this Agreement;
- (ii) insurance to cover physical loss or damage to the Supplies, including loss or damage during transit or unloading. The policy or policies shall be maintained until risk in the Supplies passes to Spaceframe or the Supplier otherwise ceases to be responsible for the care of the Supplies;
- (iii) workers compensation or personal accident and illness insurance as required by law; and
- (iv) any other insurance reasonably required by Spaceframe.

- (b) The insurances in clause 12(a) shall be on such terms (including deductible levels) as would otherwise be procured and maintained by a prudent supplier acting in accordance with best industry.

- (c) The Supplier shall, within 3 Business Days of Spaceframe's request, give evidence of insurance required to be effected and maintained.

- (d) If the Supplier fails to obtain the insurances in accordance with clause 12, then without prejudice to any other rights or remedies Spaceframe may have, Spaceframe may insure and the cost thereof shall be a debt due and payable by the Supplier to Spaceframe.

### 13. DEFAULT

If the Supplier commits a breach of this Agreement, Spaceframe may issue a notice to the Supplier requiring the Supplier to show cause why Spaceframe should not terminate this Agreement.

If the Supplier fails to show reasonable cause within the period stipulated in Spaceframe's notice to show cause, Spaceframe may, by further notice, terminate this Agreement.

### 14. TERMINATION FOR CONVENIENCE

- (a) Without prejudice to any of Spaceframe's other rights under this Agreement, Spaceframe may:

- (i) at any time and for any reason, by written notice to the Supplier, terminate this Agreement; and
- (ii) either itself or by a third party complete the uncompleted part of the work under this Agreement,

and the Supplier is entitled to claim for the cost of Goods delivered and/or Services and/or Works performed up to that date but is not entitled to any payment for loss of profit on the Supplies that have not been delivered and/or performed at the time of termination of this Agreement.

- (b) On payment under clause 14(a), title in property, material, parts and/or incomplete Goods and/or Services and/or Works will pass to Spaceframe and the Supplier must, upon demand and at your cost, deliver to Spaceframe any such property, material, parts and/or incomplete Goods and/or Services and/or Works.

### 15. INSOLVENCY

If the Supplier:

- (a) is insolvent or financially unable to proceed with this Agreement;
- (b) being a person, commits an act of bankruptcy, is made bankrupt, has a bankruptcy petition presented against it, or makes an assignment of its estate for the benefit of its creditors; or
- (c) being a company, becomes insolvent, has a liquidator, provisional liquidator, administrator or receiver appointed, has a change in ownership or control, takes or has taken or instituted against it any action which may result in the liquidation of the company, or if it enters into any agreement with its creditors,

Spaceframe may, without issuing a notice to show cause, terminate this Agreement by written notice.

### 16. WORK HEALTH AND SAFETY

The Supplier shall:

- (a) ensure compliance with all laws and legal requirements relating to workplace health and safety; and
- (b) comply with all reasonable directions of Spaceframe with respect to workplace health and safety and ensure nothing done by the Supplier places Spaceframe in breach of its obligations under all laws and legal requirements.

### 17. LICENCE

The Supplier shall not carry out any Supplies which require a licence unless it holds the proper licence permitting the Supplier to lawfully carry out those Supplies.

If the Supplier is unable to carry out Supplies which requires a licence because it has failed, refused, or been unable to obtain a proper licence or has had its licence suspended or cancelled, or has had conditions imposed on its licence, then the Supplier shall be in substantial breach of this Agreement.

### 18. VARIATION

- (a) Spaceframe may direct the Supplier to vary the Supplies. The price of the variation shall be agreed by the parties or, if not agreed, as determined by Spaceframe.

### 19. GENERAL

- (a) The Supplier shall not assign this Agreement or any right, benefit or interest under this Agreement or subcontract any part of the Supplies without Spaceframe's written approval.

## PURCHASE ORDER CONDITIONS

- (b) Notwithstanding any other provision of this Agreement, Spaceframe shall not be liable upon any claim (other than a claim for payment of the Price under clause 9) unless a written notice of claim is given to Spaceframe within 5 Business Days after the date the Supplier ought reasonably have become aware of the facts or circumstances upon which the claim is based.
- (c) The laws of Queensland shall apply to this Agreement.
- (d) The Supplier shall continue to carry out the Supplies despite any dispute.

### 20. DEFINITIONS AND INTERPRETATION

In these Conditions, except to the extent that the context otherwise requires:

“**Agreement**” means the agreement between Spaceframe and the Supplier set out in the Purchase Order and these Conditions;

“**Business Day**” means any day which is not a weekend day or public holiday at the Site but for clause 9(b)(i) only, does not include 22 to 24 December, 27 to 31 December and 2 to 10 January;

“**COR Laws**” means laws relating to fatigue management, speed and mass, dimension and load compliance requirements generally referred to as “Chain of Responsibility” laws or “Heavy Vehicle” laws;

“**COR Systems**” means policies, procedures, standards, training and systems designed to ensure, so far as is reasonably practicable, compliance in COR Laws;

“**Delivery Date**” has the meaning in the Purchase Order, as adjusted in accordance with the Agreement;

“**Delivery Place**” has the meaning in the Purchase Order;

“**Goods**” has the meaning in clause 2;

“**Liquidated Damages Rate**” has the meaning in the Purchase Order.

“**Price**” means the total amount payable to the Supplier by Spaceframe as set out in the Purchase Order, or as adjusted under the terms of this Agreement;

“**Purchase Order**” means the formal “Purchase Order” issued by Spaceframe to the Supplier for the Supplies which Spaceframe requires;

“**Services**” has the meaning in clause 2;

“**Site**” means the site specified in the Purchase Order;

“**Spaceframe**” means the Purchaser identified in the Purchase Order;

“**Supplier**” means the relevant party providing the Supplies as identified in the Purchase Order; and

“**Supplies**” has the meaning in clause 2.