

## TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES UNDER PURCHASE ORDER

### PART A – GENERAL CONDITIONS

#### 1. DEFINITIONS

Unless the context otherwise requires, the following terms have the meanings given when used in the Contract:

**Background IP** means all intellectual property rights owned, licensed, created or developed by, or on behalf of, the Supplier or its related bodies corporate, or PMC or its related bodies corporate (as applicable) that exist prior to the issue of the PO or that are created or developed otherwise than in connection with the Contract.

**Client** means Permacast its related body corporate's client, for whose project the Goods or Services are to be used.

**Contract** means the PO, these Standard Conditions and all other documents attached to the Purchase Order or incorporated by reference and formed in accordance with clause 2.

**Defect** means any failure, deficiency, error, or omission in respect of the Goods and/or Services to meet the requirements of the Contract.

**Delivery Point** is the place specified in the PO to which the Goods are to be delivered by the Supplier.

**Documents** means such correspondence and other documents (including but not limited to specifications and drawings) referred or annexed to the Purchase Order.

**General Conditions** means these conditions.

**Goods** means the goods specified in the PO to be purchased or hired by PMC, including machinery, plant, equipment, materials, and other items of all kinds, and all parts thereof.

**Goods Purchased** means any Goods sold by the Supplier to Permacast.

**Hired-in Goods** means the Goods identified in the PO which are to be leased by the Supplier to PMC for the Hire Period.

**Hire Period** means, in respect of the Hired-in Goods, the term of hire set out in the PO, as may be extended under clause 26.

**Indemnified Party** means Permacast, Permacast related bodies corporate, each member of any joint venture to which PMC or its related bodies corporate is a party, the Client, and its related bodies corporate, and all their respective officers, directors, employees, agents, and representatives.

**Insolvency Event** means any of the following: the Supplier is insolvent or unable to pay its debts when they fall due, ceases to carry on business, a receiver, administrator or liquidator is appointed, or a meeting of creditors is called in relation to the Supplier, or the Supplier enters into an arrangement with its creditors, the Supplier has a winding-up order made against it or passes a resolution for winding-up, or an act is done or event occurs which has an analogous or similar effect to the above.

**Invoice** means a document that complies with the requirements set out in Subdivision 29-C, section 29.70 of the *A New Tax System (Goods and Services Tax) Act 1999*.

**Legal Requirements** includes present and future applicable legislation, ordinances, regulations, by-laws, local laws, orders and proclamations, approvals, authorisations, permits, licences, requirements of government authorities, and principles of law or equity, as amended from time to time, whether or not existing at the date of the PO.

**Mobilisation Date** is the date that the Goods are to be delivered to the Delivery Point and/or the Services are to be performed, as set out in the PO, and as may be amended by written notice by PMC, or if no date is specified, within a reasonable time having regard to normal commercial practice.

**PMC** means Permacast, or its related body corporate as set out in the PO.

**Personnel** means a party's or its related bodies corporate's officers, employees, agents, and subcontractors (and their respective officers, employees, agents, and subcontractors).

**Price** is the amount Permacast has agreed to pay for the Goods and/or the Services as specified in the PO (which may be a lump sum or a schedule of rates and prices where Services are charged on a time basis).

**Project IP** means all intellectual property rights created, developed, or discovered by, or on behalf of, the Supplier or its related bodies corporate in connection with the performance of the Contract (excluding the Supplier's Background IP).

**Purchase Order** means the document headed as Purchase Order (PO) and describing the Goods and/or Services to be supplied to PMC.

**Purchase Price** means the price for the Goods sold by the Supplier to the Purchaser under the Contract.

**Re-delivery Point** is the Delivery Point to where the Hired-in Goods are to be returned at the end of the Hire Period, as set out in the PO, unless otherwise specifically agreed to by PMC and the Supplier.

**Services** means the services described in the PO and the provision of all materials and equipment, necessary to allow or assist the performance of the Services.

**Supplier** means the party to whom the PO is addressed.

**Supply** means the Goods, or the Hired-in Goods, or the Services as specified in the PO.

**Variation** means:

- the inclusion of additional goods or services to be supplied by the Supplier under the PO.
- a change in the character or quality to be Supplied; or
- an increase or decrease in the quantity to be Supplied.

#### 2. CONTRACT

2.1 Part A of these General Conditions applies to all Contracts for:

- Goods Purchased by PMC
- Supply of Hired-in Goods; and/or
- Supply of Services.

2.2 A PO issued by PMC to the Supplier constitutes an offer by PMC to engage the Supplier to supply the Goods, or the Hired-in Goods, or to perform the Services, on the terms set out in the PO (including any special conditions in the PO) and these General Conditions. A contract (the "Contract") is formed between PMC and the Supplier for the Supply when the Supplier communicates in writing or verbally with PMC in a way that confirms or implies acceptance of the PO or commences work to deliver the Supply

2.3 No Supply of Goods or Services are to be performed without a current PO.



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- 2.4 All other terms and conditions (including any provided or referenced by the Supplier, whether or not received or acknowledged by the Purchaser) will be void and unenforceable and will not form part of the Contract.
- 2.5 The Contract shall be effective from the date of order stated on the PO and will continue until the Supplier has completed all its obligations under the Contract, or until the Contract is terminated in accordance with its terms (whichever is earlier).

### 3. CHANGES

- 3.1 PMC may, at any time, require the Supplier to Vary or change the specifications of the Goods and/or Services, provided that the Variation is in writing and within the general scope of the PO. The cost of any change must be agreed between PMC and the Supplier and will be added to or deducted from the Price (as the case may be). PMC has the right to audit the Supplier's estimated cost of any change to the Price, and the Supplier must provide PMC with access to all relevant books and records for this purpose.
- 3.2 No changes to the Contract may be made by the Supplier without the written agreement of PMC.
- 3.3 Any Variations or revised PO relating to the Contract will be on the same terms and conditions as contained in the Contract.
- 3.4 In cases of any conflict or ambiguity, the PO shall have precedence over these General Conditions.

### 4. TIME

- 4.1 The Supplier must:
- (a) perform its obligations diligently, with due expedition and without delay; and
  - (b) supply the Goods and Services by the date (or dates) specified in the Purchase Order document (Date for Completion) at the location(s) required by the Buyer (Delivery Point).
- 4.2 If the Supplier considers that the Date for Completion has been, or is likely to be, delayed, the Supplier must promptly upon becoming aware of the delay or likely delay give the Buyer notice of the delay, including to the extent possible details of the nature, cause and the likely extent of the delay (Delay Notice).
- 4.3 The Buyer may grant a reasonable extension of time to a Date for Completion where the Supplier has given a Delay Notice and the sole cause of the Delay Notice is a breach by the Buyer, act of prevention by the Buyer or change instructed by the Buyer under clause 3.
- 4.4 The Supplier must take all reasonable steps to mitigate delay and the effects of delay.
- 4.5 If no date is specified in respect of an obligation of a Supplier, time is of the essence in respect of the obligations.

### 5. PACKAGE AND TAGGING

- 5.1 The Supplier must ensure that all Goods are clearly marked and identified and suitably packed or otherwise prepared for shipment to avoid damage or loss to the Goods while they are in transit to PMC, including in accordance with all Legal Requirements and PMC's reasonable requirements. If the Goods are lost or damaged in transit before delivery to PMC, then the Supplier will replace them at its own cost.
- 5.2 An advice notes and packing list must be provided with the Goods and must quote the relevant PO number and

state whether all or only parts of the Goods are delivered.

- 5.3 The Supplier must, having regard to the nature of the Goods and the Services, comply with all Legal Requirements necessary to manufacture, assemble, use, store, transport, supply, lease and/or sell the Goods, and/or perform the Services, in accordance with the Contract, and hold all applicable approvals, authorisations, permits and licences to carry out its obligations under the Contract.

- 5.4 The supply of any hazardous substances, the Supplier must strictly comply with Legal Requirements relating to the supply of hazardous Goods and supply a Safety Data Sheet with the good delivery.

### 6. PRICE

- 6.1 In consideration of the Supplier's performance under the Contract, PMC shall pay the Supplier the Price.
- 6.2 The Price as set out in the PO is fixed and firm unless specifically agreed to by PMC and stated on the PO.
- 6.3 The Price shall be in Australian Dollars (AUD).
- 6.4 All applicable GST and any other taxes and duties shall be separately stated and itemised on the Supplier's invoice.
- 6.5 Unless otherwise stated in the PO, the Price includes all costs of wrapping, packing, cartons, crating and the cost of freight to the Delivery Point but excluding unloading, and all other costs and charges in connection with the supply of the Goods or performance of the Services.

### 7. INVOICES AND PAYMENT

- 7.1 Unless otherwise stated in the PO, the Supplier shall Invoice PMC upon delivery of the Goods Purchased, completion of the Hire Period and/or completion of the Services (as applicable), or where performance of the Services or the Hire Period may exceed thirty (30) days in duration, at the end of each calendar month in which the Contract is performed.
- 7.2 A rendered Invoice must be submitted in PDF format to:
- (a) [accounts@permacast.com.au](mailto:accounts@permacast.com.au);
  - (b) or mailed to:  
Accounts Payable Department  
Po Box 232, Mundijong WA 6123
- 7.3 The Invoice must specify:
- (a) the PO number, the description, the PMC job number, the identification code (if any) and the quantity supplied against each Supply component in the same sequence as shown in the PO.
  - (b) the correct Permacast entity.
  - (c) a description of the Goods supplied, or Services performed in respect of the period covered by the invoice; and
  - (d) any further or supporting information requested by PMC.
  - (e) Failure to do so may result in PMC returning the invoice to the Supplier as it is invalid.
- 7.4 Invoices shall be paid (30) days from End of Month.
- 7.5 If there is any disputed item on the invoice submitted PMC will:
- (a) As soon as possible inform the Supplier of the disputed amount; and



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(b) Pay the amount invoiced, less the disputed amount, pursuant to the Contract.

7.6 PMC may set off or deduct amounts owing to the Supplier, provided it gives the Supplier prior notice of seven (7) days of its intention to deduct or set off any sums and shall furnish the Supplier with its reasons for the deduction or set off.

7.7 Payment by PMC of an invoice will be payment on account only and will not constitute acceptance by PMC that the Goods and/or Services have been supplied or performed in accordance with the Contract.

7.8 Supplier must submit their final invoice to PMC for payment within three (3) months of the last date of delivery of the Goods Purchased, completion of the Hire Period and/or completion of the Services (as applicable). Any claim of the Supplier in connection with the Contract (including any payment claim) that has not been made by this date will be forever barred, and the Supplier releases PMC from all such claims.

### 8. TAXES

8.1 Supplier will comply with all Legal Requirements relating to taxation.

8.2 If PMC is required by Legal Requirements to make withholdings or deductions from payments otherwise due to the Supplier, then PMC may do so, and the amount so withheld will be deemed to be paid by the Supplier.

8.3 If any supply made pursuant to the Contract is a taxable supply (as defined in the *A New Tax System (Goods & Services Tax) Act 1999*), PMC will pay to the Supplier the GST in respect of that taxable supply.

### 9. INTELLECTUAL PROPERTY

9.1 All right, title and interest to each party's Background IP remains with that party. All right, title and interest in the Project IP vests in PMC, and to the extent any such rights, title and interests vest in the Supplier, the Supplier must assign the same to PMC and do all further things necessary to affect such assignment.

9.2 The Supplier grants to PMC and each of its related bodies corporate a non-exclusive, perpetual, royalty free, irrevocable, transferable, worldwide licence (including the right to sub-licence) to use, reproduce and modify the Supplier's Background IP for any purpose in connection with the Contract or using the benefits of the Contract.

9.3 The Supplier warrants that use of the Supplier's Background IP and Project IP in accordance with the Contract, and use of the Goods Purchased, Hired-In Goods or the Services, will not infringe the intellectual property rights of any third party or breach any Legal Requirements.

9.4 The Supplier indemnifies PMC and its related bodies corporate for any breach of the warranty in clause 9.3 and for any loss suffered or incurred by any of them in respect of a breach of such warranty.

### 10. INDEMNITIES

10.1 The Supplier, to the extent permitted by Legal Requirements, indemnifies, and holds harmless, the Indemnified Parties against:

- (a) loss of, or damage to, any real or personal property owned, leased, licensed, or controlled by the Indemnified Parties, or any real or personal property of any third party; and
- (b) personal injury (which includes illness) or death of any person,

10.2 arising out of or in connection with the Supplier performing or purporting to perform the Contract, except to the extent that the wilful misconduct or gross negligence of an Indemnified Party contributed to the loss, damage, death, or injury.

10.3 This indemnity will survive expiry or termination of the Contract. PMC holds the benefit of the indemnities in the Contract for itself and on trust for each other Indemnified Party.

### 11. EXCLUSION OF CONSEQUENTIAL LOSS

11.1 No party shall be liable to the other party for any indirect, special, punitive, or consequential loss or damage, including loss of profit, loss of use, loss of revenue, loss of business or production or loss of opportunity (whether direct or indirect). This exclusion of liability will not apply to the Supplier's liability in respect of:

- (a) loss of or damage to property of any person, or personal injury or death of any person.
- (b) any breach of Legal Requirements.
- (c) it's or its Personnel's fraud or wilful misconduct.
- (d) the indemnity given by the Supplier under clause 9.4; and
- (e) any acts or omissions that are indemnified under a policy of insurance held by the Supplier, or that would have been indemnified had the Supplier complied with its obligations under clause 12.

11.2 To avoid doubt, the cost of and incidental to the rectification of any Defects or direct loss or direct damage caused by any Defects is not indirect, special, punitive, or consequential loss or damage, and the parties agree that such costs, loss, or damage are recoverable by PMC from the Supplier.

### 12. INSURANCE

12.1 The Supplier must affect and maintain all insurance that a reasonable and prudent supplier of the Goods and/or Services would hold in accordance with good industry practice, including the following, to be maintained with a major, reputable Australian resident insurance company approved by PMC (except to the extent Legal Requirements require a particular insurer):

- (a) insurance to cover physical loss or damage to the Goods, including adequate Transit Insurance, for an amount not less than its full replacement value.
- (b) third party product and Public Liability insurance covering liability for loss of, damage to and loss of use of property, and death or bodily injury (including illness), of an amount not less than AUD 10 million for any one occurrence, unlimited in the aggregate for public liability but limited in the aggregate to AUD 10 million for product liability.
- (c) statutory motor vehicle insurance which is compulsory under applicable Legal Requirements governing the use of registered motor vehicles.
- (d) comprehensive motor insurance covering all mechanically propelled vehicles owned, operated, or controlled by the Supplier, for an amount of not less than AUD 20 million per occurrence and unlimited as to the number of occurrences.
- (e) any registration and insurance required by Legal Requirements in respect of its employees,



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including compulsory Worker's Compensation insurance and employer's liability insurance.

- (f) any additional insurance required by Legal Requirements or set out in the PO.

12.2 The Supplier must ensure that its subcontractor's effect and maintain the relevant insurances required under this clause. The Supplier must not commit, and must ensure that its subcontractors do not commit, any act or omission which is in contravention of an insurance policy maintained by it or which may result in that insurance policy becoming void or voidable or which may result in the insurer refusing liability under the policy.

12.3 The Supplier must provide certificates of insurance to PMC upon request, as evidence of the insurances held under this clause 12. If the Supplier fails to effect or maintain any of the insurances required under this clause 12, or procure its subcontractors to do so, then PMC or the Client may affect and maintain that insurance at the Supplier's cost.

### 13. SUSPENSION

13.1 The Buyer may by notice to the Supplier order the Supplier to suspend performance of all or any of its obligations under this Contract. The notice must specify the obligation to be suspended, the effective date of the suspension and the reasons for the suspension. The Supplier must then immediately suspend performance of the obligation (except those obligations which are necessary for the care or preservation of the Services and/or Materials) until instructed to resume performance of that obligation by the Buyer.

13.1 If, by virtue of a suspension order given by the Buyer, otherwise than by reason of any act, omission, default or breach of this Contract by the Supplier, the Supplier's performance of any of its obligations is suspended for an aggregate period of more than 3 months, the Supplier may give a notice to the Buyer requiring the Purchaser to order the resumption of the performance of the obligations.

13.2 If the Supplier's performance of its obligations is suspended or the rate of progress reduced in accordance with this clause, then the Delivery Dates may be extended as reasonably determined by the Buyer, and the Buyer must pay to the Supplier in addition to the Contract Price, any extra costs necessarily incurred, (which does not include indirect overheads, profit or loss of profit) as a direct result of that suspension or reduction, except in the case of suspension or reduction in the rate of progress by reason of any act, omission, default or breach of the Supplier.

### 14. TERMINATION

14.1 PMC may terminate this Contract at its convenience by providing written notice to Supplier without incurring any liability to the Supplier for any compensation or payment of moneys except for what is properly due for that part of the Contract properly performed up to the date of termination.

14.2 If the Supplier defaults, breaches any of its obligations under the Contract, or suffers an Insolvency Event, PMC may by written notice and without prejudice to any other rights, do either or both:

- (a) Reject any Defective Goods or Services; and/or
- (b) Terminate all or part of the Contract without liability for any compensation or payment of

moneys except for what is properly due for that part of the Contract properly performed up to the date of termination.

14.3 Termination will not affect any accrued rights or remedies under the Contract.

14.4 PMC may suspend any part of the Services at any time and for any reason with immediate effect, by notice to the Supplier. On receiving such notice, the Supplier must immediately suspend performance of its relevant obligations until PMC notifies it that performance may continue.

### 15. NOTICE

15.1 A notice or other communication under the Contract is only effective if it is in writing, signed (except in the case of an email) and either left at the addressee's address or sent to the addressee by mail, fax or email as set out in the PO or otherwise notified by a party to the other party.

15.2 If notice or other communication under the Contract is sent by:

- (a) Mail, it is taken to have been received 5 business days after it is posted within Australia.
- (b) Email, it is taken to have been received when the addressee receives it in full and in legible form and acknowledge its receipt.

### 16. DISPUTE & GOVERNING LAW

16.1 If a dispute arises under the Contract, which cannot be resolved by negotiation, either party may commence legal proceedings in relation to that dispute. This does not prevent a party from seeking urgent injunctive or declaratory relief. The Supplier must continue to perform the Contract despite the existence of a dispute. The Contract shall be governed by the laws of Western Australia.

### 17. PERSONAL PROPERTY SECURITIES ACT

17.1 The Supplier or any of its related bodies corporate must not register any security interest in relation to the Contract against PMC or any of its related bodies corporate on any register maintained under the Personal Property Securities Act 2009 (Cth) (PPSA).

17.2 The Supplier will immediately do anything, at its own cost, which PMC reasonably requires to ensure that any security interest PMC has arising out of or in connection with the Contract is enforceable,

17.3 effective, registered and perfected under the PPSA and has the priority required by PMC, and to enable PMC to exercise its rights in relation to such security interest.

17.4 To the extent permitted by Legal Requirements:

- (a) the Supplier is not entitled to receive any notices from PMC under the PPSA (including a financing statement, financing change statement or verification statement), unless the requirement cannot be excluded.
- (b) for the purposes of sections 115(1) and 115(7) of the PPSA, PMC need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4), and sections 142 and 143 are excluded.
- (c) for the purposes of section 115(7) of the PPSA, PMC need not comply with sections 132 and 137(3); and
- (d) the Supplier and PMC agree that they must not disclose any information of the kind referred to in section 275 of the PPSA.



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### 18. ENTIRE AGREEMENT AND EXCLUSION OF SALE OF GOODS

- 18.1 The Contract constitutes the entire agreement between the parties and supersedes all previous negotiations and communications about its subject matter.
- 18.2 The 1986 United Nations Convention on Contracts for the International Sale of Goods, and any other Legal Requirement which gives effect to this convention will be excluded and will not apply to the Contract.

## PART B – GOODS PURCHASED

### 19. APPLICATION OF THIS PART

To the extent that the Contract is for the supply of Goods to be purchased by PMC, the conditions of this Part B apply in addition to any other terms and conditions of the Contract.

### 20. DELIVERY

Supplier at its own expense shall deliver the Goods Purchased to PMC to the Delivery Point on the Mobilisation Date. Delivery will be taken to occur upon completion of offloading of the Goods at the Delivery Point by the Supplier.

- 20.1 Delivery times Permacast – deliveries are accepted between 7:00am and 2:00pm Monday to Friday, or as otherwise agreed with the Buyer's Representative.
- 20.2 The quality and quantity of Goods delivered shall not differ from that specified in the Purchase Order unless agreed to in writing by the Purchaser.
- 20.3 All Goods shall be packed, marked and transported as specified in the Purchase Order, but if not specified then in a proper and suitable manner and in all cases in accordance with the proper requirements of the carriers. The Supplier shall be liable for any difference in freight charges arising from its failure to follow any transport instruction in the Purchase Order or describe the Goods transported.
- 20.4 Delivery dockets must be provided with All deliveries of Goods and must be signed by the Buyer's Representative (as delegated) and a copy of that signed delivery docket must be remain with the Buyer Representative.
- 20.5 Delivery Address which all Goods and Services must be delivered at/to is:  
Lot 21 Norman Road, Cardup, Western Australia 6122.  
(Unless stipulated otherwise in the relevant Purchase Order).

### 21. RISK, TITLE, AND PROPERTY

- 21.1 Title to and property in the Goods immediately passes to PMC upon payment or delivery, whichever occurs first, and the Goods must be clearly marked and identified as the property of PMC.
- 21.2 Risks in the Goods remain with the Supplier until delivery to PMC in accordance with the Contract (or as otherwise set out in the PO, including by reference to any Incoterms).

### 22. INSPECTION AND TESTING

- 22.1 PMC shall have the right to inspect and test the Goods Purchased at any time during the manufacture and/or prior to shipment or upon delivery, and to perform final inspection within a reasonable time after the delivery of the Goods Purchased, or when the Goods are used or installed by PMC.
- 22.2 If, as a result of any inspection or testing, the Goods Purchased are Defective or otherwise non-conforming, PMC may reject such Goods and shall notify the Supplier immediately and either:
- return the Goods to the Supplier, at the Supplier's cost, in which case, the Supplier must reimburse

PMC for the Price paid for the Goods and any costs incurred in returning the Goods, and title to the Goods will revert to the Supplier upon reimbursement of the Price; or

- require the Supplier, at its own cost, to promptly repair, replace or make good the non-conformity to ensure that any rejected Goods comply with the Contract. If the Supplier fails to do so within the time required by PMC, then PMC may itself or by a third party make good the Defect or non-conformity and recover the costs of doing so from the Supplier. Risk in the Goods will not pass to PMC until the Goods have been repaired, replaced, or made good in accordance with this clause. Such Goods shall not be accepted until after such time that PMC confirms in writing that the Goods are accepted. The Supplier must carry out any repair work under this clause as if it were a Service under the Contract, at the Supplier's sole risk and cost.

- 22.3 Acceptance of the Goods by PMC, or any inspection or testing of the Goods by PMC, does not relieve the Supplier of any of its obligations or liability, and does not limit PMC's rights, under the Contract or Legal Requirements.

### 23. WARRANTIES

- 23.1 The Supplier warrants that the Goods Purchased:
- comply with the specifications in the PO.
  - are new (unless otherwise specified in the PO).
  - are of merchantable quality and fit for the purpose set out or inferred from the PO.
  - are free from Defects.
  - are free from any encumbrances, liens, security, charges, or third-party interests, from delivery to PMC; and
  - are safe and not endanger people or property (when used correctly).
- 23.2 Without limiting PMC's rights under Legal Requirements and the Contract, the Supplier warrants that the Goods Purchased will be free for Defects for a minimum of 12 months from the date of delivery.
- 23.3 Supplier warrants that the Goods sold herein to PMC have been produced, sold, delivered, and furnished in strict compliance with all Legal Requirements and legally binding standards to which the Goods are subject.
- 23.4 Any manufacture instructions, manuals, drawings, spare parts, warranty details and other documentation required under the PO or by Legal Requirements shall be provided to PMC upon delivery and shall be accurate and complete. The Supplier must ensure that all applicable warranties for the Goods are transferred to PMC upon delivery.
- 23.5 Supplier shall execute and deliver such documents as required to effect or to evidence any legal or warranty compliance.

## PART C – HIRED-IN GOODS

### 24. APPLICATION OF THIS PART

To the extent that the Contract is for the supply of Hired-in Goods to PMC, the conditions of this Part C apply in addition to any other terms and conditions of the Contract.

### 25. HIRED-IN GOODS

- 25.1 Supplier at its own expense shall deliver the Hired-in Goods to PMC to the Delivery Point on the Mobilisation



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Date. Delivery will be taken to occur upon completion of offloading of the Hired-in Goods at the Delivery Point by the Supplier.

- 25.2 The Supplier must furnish all operating manuals and instructions, and other documents required under the PO or by Legal Requirements for the Hired-in Goods, and such documents must be accurate and complete.

### 26. TERM

- 26.1 The Supplier will lease the Hired-in Goods to PMC for the Hire Period.
- 26.2 If PMC continues to retain possession of the Hired-in Goods, with the Supplier's consent, beyond the Hire Period specified in the PO, then the Hire Period will be taken to be automatically extended on the same terms and conditions as the Contract, until PMC returns the Hired-in Goods under clause 32.

### 27. OWNERSHIP & RISK

- 27.1 The Supplier retains full title and ownership in the Hired-in Goods notwithstanding that the Goods are hired to and in the possession of PMC. The Supplier must allow PMC to possess and enjoy the Hired-in Goods during the Hire Period without interruption or disturbance.
- 27.2 Risk in the Hired-in Goods shall only pass to PMC when PMC takes delivery of the Goods. Such risk shall remain with PMC until the Goods are returned to the Supplier.

### 28. INSPECTION & TESTING

- 28.1 PMC shall have the right, but not the obligation, at all times to inspect and test the Hired-in Goods provided.
- 28.2 Prior to delivery of the Hired-in Goods, PMC may request the Supplier, at its own cost, to carry out an inspection and/or testing.
- 28.3 If the Hired-in Goods are Defective or otherwise non-conforming, PMC may reject such Hired-in Goods and either:
- (a) return the Hired-in Goods to the Supplier, at the Supplier's cost, in which case, the Supplier must reimburse PMC for the Price paid for the Hired-in Goods and any costs incurred in returning the Hired-in Goods and in hiring alternative goods to replace the Hired-in Goods; or
  - (b) require the Supplier, at its own cost, to promptly repair or make good the non-conformity,
  - (c) or replace the Hired-in Goods.
- 28.4 Acceptance of the Hired-in Goods by PMC, or any inspection or testing of the Hired-in Goods by PMC, does not relieve the Supplier of any of its obligations or liability, and does not limit PMC's rights, under the Contract or Legal Requirements.

### 29. DEFECTS

During the Hire Period, PMC shall notify the Supplier of any Defect in the Hired-in Goods as soon as practicable after becoming aware of such Defect and may exercise its rights under clause 28.3 above.

### 30. MAINTENANCE AND REPAIR

- 30.1 The Supplier shall provide Hired-in Goods which have been maintained in good and operational condition.
- 30.2 If specified in the PO that the Supplier is responsible for the operation, and/or routine and non-routine maintenance of the Hired-in Goods, then the Supplier must carry out such operation and maintenance as if it were a Service under this Contract, at the Supplier's sole risk and cost. The Supplier must provide all spare parts and consumables that may be required during the Hire Period.
- 30.4 If specified in the PO that the Hired-in Goods are to be operated or maintained by PMC, the Supplier shall

provide sufficient spare parts, consumables, and a written list of maintenance instructions (daily, weekly, and monthly servicing, whichever is applicable).

- 30.5 PMC will use reasonable endeavours to protect the Hired-in Goods from loss, damage, or destruction during the Hire Period, but will not be responsible for any accidental loss, damage or destruction, and the Supplier will indemnify PMC and its related bodies corporate against any claims for such accidental loss, damage, or destruction.

### 31. WARRANTIES & GUARANTEES

- 31.1 The Supplier warrants that the Hired-in Goods shall be of merchantable quality and fit for the purpose set out or inferred from the PO, free from Defects in design, material, workmanship, free from any encumbrances, liens, security, charges or third party interests from delivery to PMC, are safe and will not endanger people or property (when used correctly), and shall conform in all respects to the terms of the PO and any legally binding applicable standard(s) and Legal Requirements.
- 31.2 The Supplier warrants that it has unencumbered title to the Hired-in Goods.
- 31.3 Without limiting PMC's rights under Legal Requirements and the Contract, the Supplier warrants that the Goods Purchased will be free for Defects for a minimum of 12 months from the date of delivery.

### 32. RETURN OF HIRED-IN GOODS

- 32.1 Unless specifically stated in the PO, upon the end of the Hire Period or upon termination of the Contract, the Hired-in Goods shall be (subject to fair wear and tear):
- 32.2 Returned to the Supplier at the Re-Delivery Point.
- 32.3 With the hire Price to be paid up to the Re-Delivery Point.

## PART D - SERVICES

### 33. APPLICATION OF THIS PART

To the extent that the Contract is for the supply of Services, whether in conjunction with Goods Purchased or the supply of Hired-in Goods or otherwise, the conditions of this Part D apply in addition to any other terms and conditions of the Contract.

### 34. SERVICES

- 34.1 The Supplier shall perform the Services in accordance with the PO and best industry standards, in a timely manner without delay, and in compliance with all Legal Requirements and the reasonable directions of PMC, and in such a manner as will always safeguard and protect PMC's interests.
- 34.2 The Supplier shall perform the Services with all proper skill and care, in a safe manner and shall ensure that the work, services and any equipment used to produce or incorporated into the Services shall be fit for their intended purpose and of good quality and workmanship.
- 34.3 The Supplier shall provide Timesheets and job locations for each person on site that matches the invoice issued to PMC.

### 35. TERM

- 35.1 The term of Service shall be for the period specified in the PO.
- 35.2 The Supplier must complete the Services on or before the Mobilisation Date.
- 35.3 Should the term extend beyond the period specified in the PO, a new PO shall be issued in accordance with clause 3.

### 36. HEALTH AND SAFETY

- 36.1 Whilst working on PMC's premises, or on a PMC Client site (Site), the Supplier shall observe all applicable



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health, safety and environment Legal Requirements, as well as any of PMC's or its Client's safety standards, site induction requirements, reasonable instructions from a representative of PMC or its Client, health and safety policies and procedures, and site rules (as notified by PMC). The Supplier and its Personnel enter onto the Site at their own risk.

36.2 The Supplier shall abide by, and ensure that all equipment conforms to, all necessary safety measures. Such safety measures shall comply with all applicable policies, procedures and regulations that may apply to the Services.

36.3 The Supplier must not bring on or cause on the Site any pollution or contamination. The Supplier must immediately make good any loss or damage to property on, under or adjacent to the Site, or any pollution or contamination, caused by it or its Personnel at its own cost.

36.4 The Supplier is responsible for ensuring that the Supplier's Personnel have suitable and appropriate safety clothing and equipment for undertaking the Services.

### 37. SUPPLIER'S PERSONNEL

37.1 Supplier shall provide Personnel that have the experience, qualifications, and capability to perform the Services efficiently and expeditiously, and must ensure that its Personnel exercise due skill, care, and diligence in accordance with good industry practices. This includes a requirement for the Supplier to provide the key Personnel set out in the PO, unless otherwise agreed with PMC.

37.2 Supplier is an independent contractor with respect to the Services and must exercise independent control, management, and supervision of the Services, with PMC only concerned with the results of the Services being performed. Supplier is not PMC's agent in any way.

### 38. SUPPLIER'S EQUIPMENT

38.1 Supplier shall provide all equipment and tools required or necessary for the satisfactory performance and completion of the Services.

38.2 Supplier will ensure that all its equipment and tools are in good working condition and suitable for use in connection with the Services.

### 39. INSPECTION AND TESTING

To confirm that the requirements of the PO are being met, PMC shall have the right but not the obligation, at all times to inspect and test the Services performed by the Supplier. The Supplier shall at its own costs, carry out such inspection or tests as so required.

### 40. WARRANTIES

40.1 The Supplier shall ensure that the Services shall be free from errors, Defects, and failures for a period of twelve (12) months from the date of completion of the Services.

40.2 The Supplier shall be responsible at its own costs, for the:

- (a) Repair, correction or re-performing of any Defective Services, equipment, or workmanship; and
- (b) Carrying out of all work of uncovering, removal, procurement, and reinstallation as may be necessary.

40.3 If the Services are Defective, PMC may reject such Services by notice to the Supplier. Upon receipt of such notice, the Supplier shall immediately carry out the

repairs or re-performance of the Services. Alternatively, PMC may at its option, or if the Supplier fails to do so within the time required by PMC, undertake (or procure the undertaking of) any of the Supplier's obligations, in which case PMC shall notify the Supplier of its intention and shall be entitled to recover from the Supplier all costs incurred by PMC for carrying out such obligation.

## PART E – ADDITIONAL TERMS OF SUPPLY

### 41. ASSIGNMENT

41.1 The Supplier may not assign the Contract or any part of it without PMC's prior written consent.

41.2 PMC may assign the Contract, or any part of it to any person and must, within a reasonable time, thereafter, give notice of such assignment to the Supplier.

### 42. SUBCONTRACTING

The Supplier must not, without PMC's prior written consent, subcontract any part of the Works and/or deliverables. PMC's approval will not be unreasonably withheld. If the Supplier subcontracts any part of the Contract, the Supplier will remain liable for the acts or omissions of its subcontractors and will not be relieved from any obligation or liability under the Contract.

### 43. ASSOCIATED COSTS

Except as otherwise provided in the Contract, the Supplier will be responsible for all costs, expenses and liabilities incurred by the Supplier in connection with the supply of the Goods, Services, or Hired-in Goods.

### 44. CONFIDENTIALITY AND INFORMATION SECURITY

44.1 The Supplier must keep secure and must not without PMC's prior written notice consent, divulge or communicate to any person, or use (except for the purposes of the Contract) any information in whatever form:

- (a) as to the contents, operation, or performance of the Contract.
- (b) any information which may come to its knowledge while performing the Contract, or that is communicated between the Supplier and PMC or created or generated by the Supplier, in connection with the Contract, or as to the operations, business dealings or financial affairs of PMC; and
- (c) any technical information, knowledge, data, inventions, trade secrets, formulae, graphs, drawings, designs, and other trade related information relating to PMC.

44.2 The obligations imposed by this clause do not apply to the extent the information is in the public domain in the form it was disclosed or made available by or on behalf of PMC (other than because of breach of contract) or is required by disclosed by Legal Requirements (provided the Supplier first gives notice to PMC with full particulars of the proposed disclosure) and survive the expiration or termination of the Contract.

44.3 The Supplier must not, and must ensure that its subcontractors do not, take any photographs or any other recording of any part of information described in paragraph (a), the Goods, Services, the Site or PMC's or the Client's operations, business, and activities, without the prior written consent of PMC.

### 45. BOOKS AND RECORDS



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45.1 The Supplier must, and must procure its subcontractors to:

- (a) maintain adequate internal controls over all transactions in relation to the Contract.
- (b) properly record all transactions in relation to the Contract.
- (c) maintain accurate books and records in relation to each transaction for a period of no less than five years from the date of such transactions.

### 46. INCOTERMS

Where the Contract includes a term included in Incoterms 2020, the rules and definitions governing that term in Incoterms 2020 will apply, except to the extent that they conflict with any provision of the Contract.

### 47. EMPLOYEE AND INDUSTRIAL RELATIONS

The Supplier is responsible for its Personnel and industrial relations with its Personnel and must conduct its employee and industrial relations using the highest standard of skill, care, and diligence. The Supplier must not hinder or adversely affect the employee and industrial relations of PMC, its client, or any other employer on PMC's or its Client's premises.

