

## SUPPLY CONTRACT CONDITIONS

### 1 GENERAL

- 1.1 These are the terms and conditions referred to in the *purchase order* attached or sent separately to the *Supplier*.

### 2 CONTRACT

- 2.1 The *supply contract* comprises the following documents:
- 2.1.1 these terms and conditions (the "*Supply Contract Conditions*");
  - 2.1.2 the *purchase order* ;
  - 2.1.3 the *enquiry document*;
  - 2.1.4 the *Supplier's response*; and
  - 2.1.5 any other document that is incorporated by reference in the *purchase order*.
- 2.2 The above order of precedence applies so that, if there is any ambiguity, conflict, discrepancy or inconsistency between the documents comprising the *supply contract*, the document which appears higher in the order of precedence above is to be given priority over those below.
- 2.3 The above documents embody the entire *supply contract* between the *parties* and supersede any previous negotiations, representations, warranties or statements not contained in the *supply contract*. Any terms and conditions attaching to the *Supplier's response* or quote (or any equivalent document) or delivery note do not form part of the *supply contract* or create a separate contract.
- 2.4 Words defined in these *Supply Contract Conditions* (being in italic letters) and the rules of interpretation that apply are set out and explained in clauses 32 and 33.

### 3 ACCEPTANCE

- 3.1 You are taken to have accepted these terms and conditions by:
- 3.1.1 entering into a *framework agreement*;
  - 3.1.2 acknowledging receipt of the *purchase order*; or
  - 3.1.3 conduct that is consistent with the existence of the *supply contract*. For example, where you start to perform your obligations under the *supply contract*, such as delivering *goods* and/or performing the *services*, even though you have not expressly advised us of your acceptance.

### 4 AMENDMENTS IN WRITING

- 4.1 No amendment or variation of the *supply contract* is valid or binding on a *party* unless made in writing and signed by the *parties*.

### 5 SCOPE OF SUPPLY AND TERM

- 5.1 You must supply the *goods* and/or *services*:
- 5.1.1 to the *our* reasonable satisfaction;
  - 5.1.2 in accordance with the relevant standards of the Standards Association of Australia, the *specifications* and the law; and
  - 5.1.3 at the times (if any) set out in the *purchase order*.
- 5.2 If you discover any inconsistency, ambiguity or discrepancy in or between the *purchase order* and the *specifications*, you must immediately seek *our* direction as to the interpretation to be followed.
- 5.3 Subject to clause 10, you must supply everything necessary to supply the *goods* and/or *services* at your own cost, including the costs of packing, packaging, insurance and delivery of *goods*.
- 5.4 You may employ or engage *sub-contractors* to supply the *goods* and/or *services*. Use of *sub-contractors* does not relieve you from liability under the *supply contract*.
- 5.5 You agree and acknowledge that:
- 5.5.1 except as specified in the *purchase order*, nothing in the *supply contract* or otherwise requires us to purchase a particular quantity or minimum quantity of any *goods* or *services* during the term of the *supply contract*;
  - 5.5.2 any estimate or forecast as to consumption of or requirements for any *goods* or *services* does not bind us; and
  - 5.5.3 this is not an exclusive supply arrangement and we may purchase *goods* or *services* from other suppliers, whether for trial purposes or otherwise.

- 5.6 The *supply contract* will commence on the earlier of:
- 5.6.1 the date you acknowledge receipt of the *purchase order*; or
  - 5.6.2 the date you commence performance of the *supply*,
- and will remain in force, unless terminated earlier in accordance with these terms and conditions, until you have completed all of your obligations under the *supply contract*.

### 6 SUPPLY OF GOODS

- 6.1 All *goods* supplied must be new and of acceptable quality, fit for the purpose for which *goods* of the same kind are commonly supplied, and for any other purpose which we make known to you, and are complete.
- 6.2 The *goods* must be delivered in accordance with the *supply contract*, including any *specifications*.
- 6.3 We may inspect the *goods* at any time.
- 6.4 If there is a defect in the *goods* or the *goods* are not delivered in accordance with the *supply contract*, we may by notice require you to remedy the defect, or complete the *goods*, at no additional cost to us.
- 6.5 If the *goods* do not meet their purpose or are not in accordance with the *supply contract*, we may by notice require you to replace the *goods* at no additional cost to us.
- 6.6 Where you fail to:
- 6.6.1 remedy a defect in the *goods*,
  - 6.6.2 complete the *goods*, or
  - 6.6.3 replace the *goods*,
- within 10 days after notification by us under subclauses 6.3 and 6.4, we may perform the necessary work or have it performed by others, the cost of which will be offset against any fees payable to you under the *supply contract*, but where the costs exceed any remaining payments under the *supply contract*, we may recover the cost from you.

### 7 SUPPLY OF SERVICES

- 7.1 You must perform any *services* specified in the *purchase order* to a high standard in accordance with relevant best practice.
- 7.2 You must perform the *services* in accordance with the *supply contract*, including any *specifications*.
- 7.3 The *services* must be free from defects in performance and be complete according to the *supply contract*.
- 7.4 If the *services* are not provided according to the *supply contract*, we may, by notice, require you to remedy any default in the performance of the *services*, redo the *services* or complete the *services*, at no additional cost to us.
- 7.5 Where you fail to remedy your default in performance, complete the *services*, or redo the *services* within 10 days after notification by us under subclause 7.4, we may perform the necessary work or have it performed by others, the cost of which will be offset against any fees payable to you under the *supply contract*, but where the costs exceed any remaining payments under the *supply contract*, we may recover the cost from you.

### 8 WARRANTIES

- 8.1 You warrant that:
- 8.1.1 the *goods* will be free from defects in design, performance, workmanship and makeup, and will conform with the *supply contract* (including clause 6); and
  - 8.1.2 the *services* and the results of the *services* will be in conformity with the *supply contract* (including clause 7), of high quality and workmanship and otherwise satisfactory,
- for the *warranty period*.
- 8.2 In addition to the above you also warrant that:
- 8.2.1 you hold all licences required to supply the *goods* and or *services*;
  - 8.2.2 you have complete ownership of any *goods* free of any liens, charges and encumbrances and we will be entitled to clear, complete and quiet possession of the *goods*; and
  - 8.2.3 you are entitled to use and deal with any *intellectual property rights* which may be used by you in connection with the supply of the *goods* and/or provision of the *services*.

- 8.3 You must, at *your* own cost, remedy any defect or omission in the *goods* and/or *services* before the end of the *warranty period*.
- 8.4 We may direct you to repair, replace, or modify, as appropriate, any *defective goods* and to remedy or redo any *defective services* before or during the *warranty period*.
- 8.5 If *you* fail to comply with such a direction, *we* may perform, or have performed by others, the necessary remedial work at *your* risk and cost and any costs and expenses incurred by *us* will be recoverable from *you* as a debt due and payable.

## 9 INSURANCE

- 9.1 You must obtain and maintain during the *term*:
- 9.1.1 comprehensive public and product liability insurance to an amount of not less than \$20,000,000 for each occurrence;
- 9.1.2 all insurance coverage required to be maintained by *you* by law (for example, motor vehicle insurance and workers' compensation insurance);
- 9.1.3 insurance covering *your* own property, equipment, materials owned, hired, leased or used by *you* for the delivery of the *goods* and/or provision of the *services*; and
- 9.1.4 personal accident and disability insurance where *you* are a sole trader or in a partnership and will personally carry out any part of the supply on *our site*.
- 9.2 Any policy obtained by *you* pursuant to this clause must not contain any exemption or exclusions of insurance coverage.
- 9.3 Upon request, *you* must provide *us* with evidence of the currency of any insurance *you* are required to obtain.

## 10 PRICE

- 10.1 We will pay *you* the *price* specified in the *purchase order*.
- 10.2 Unless the *supply contract* provides otherwise, the *price* is inclusive of:
- 10.2.1 all charges for packing, packaging, insurance and delivery of the *goods* in accordance with the *supply contract*;
- 10.2.2 the cost of the *services* including any item/material used or supplied in conjunction with the *services*; and
- 10.2.3 all taxes including GST.
- 10.3 The *price* may not be increased without *our* prior written consent.

## 11 INVOICING AND PAYMENT

- 11.1 Unless otherwise agreed, *you* must provide an invoice upon delivery of the *goods* and/or upon completion of the *services*.
- 11.2 All invoices must include all relevant records to enable *us* to confirm the amount of the invoice, together with the *purchase order* number.
- 11.3 We will pay all invoices rendered to *us* 30 days after the end of the month in which the invoice was submitted except where:
- 11.3.1 *we* retain part of the *price* as provided in the *supply contract*; or
- 11.3.2 *we* dispute the invoice, in which case the undisputed part of the relevant invoice (if any) will be paid and the remainder will be paid upon resolution of the dispute.
- 11.4 We may reduce any payment due to *you* under the *supply contract* by any amount for which *you* are liable to *us*, including costs, charges, damages and expenses. This does not limit *our* right to recover those amounts in other ways.
- 11.5 You agree to provide *us* with an *Adjustment Note* where *we*:
- 11.5.1 retain or reduce part of the *price*; or
- 11.5.2 dispute an invoice.
- 11.6 If required, *you* must give *us*, as a precondition to payment, a signed statutory declaration that *your personnel* have been paid all amounts then due for work under the *supply contract*.
- 11.7 We may withhold payment until *you* give *us* an appropriate statutory declaration regarding payment of all workers compensation premiums and payroll tax in connection with the *supply contract*.

## 12 GST

- 12.1 Terms used in this clause have the same meanings given to them in the *GST Act*.

- 12.2 Unless otherwise expressly stated, all *prices* or other sums payable under or in accordance with this *contract* are exclusive of GST.
- 12.3 If GST is imposed on any *supply* made under or in accordance with the *supply contract*, the recipient of the taxable supply must pay to the other party an additional amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice in respect of the *supply* at or before the time of payment.
- 12.4 Payment of the additional amount will be paid at the same time as payment for the taxable supply is required to be paid.

## 13 TITLE, RISK AND DELIVERY

- 13.1 You must deliver the goods to the *delivery point*.
- 13.2 If no date for the delivery of the *goods* is specified in the *purchase order*, they are to be delivered on the next business day after the date of delivery of the *purchase order* to *you*.
- 13.3 You are responsible for ensuring that any *goods* are properly marked, packed and delivered, by the delivery date(s) and to the *delivery point*, in compliance with government regulations.
- 13.4 Title to the *goods* will pass to *us* upon the earlier of:
- 13.4.1 *our* making payment in full to *you* for *goods*; or
- 13.4.2 *you* delivering the *goods* to the *delivery point*.
- 13.5 Risk in the *goods* will remain with *you* until the *goods* are delivered and *we* have acknowledged receipt in writing.
- 13.6 We may return any *goods* delivered greater than that specified in any *purchase order* to *you* at *your* sole risk and expense. *You* must collect any excess quantities of the *goods* from *us* as soon as possible after receiving written notification.

## 14 PERFORMANCE ON SITE

- 14.1 You must, in supplying the *goods* and/or *services*:
- 14.1.1 use your best efforts not to interfere with any of our activities or of any other person on any *site*;
- 14.1.2 be aware of, comply with, and ensure that all *your personnel* comply with:
- 14.1.2.1 all appropriate laws, including all applicable safety, health, and environment laws and regulations;
- 14.1.2.2 all safety, health, and environment guidelines, rules and procedures applicable to the *site*; and
- 14.1.2.3 all directions and orders given by *our personnel*.

## 15 WORK, HEALTH AND SAFETY

- 15.1 You must, whenever carrying out the supply of *goods* or performing the *services*, ensure that:
- 15.1.1 no person (whether employed or not) is exposed to any risk to their health and safety; and
- 15.1.2 all relevant health, safety and environmental legislation and laws in force from time to time are complied with.

## 16 DAMAGE AND SITE CLEANING

- 16.1 You must keep the *site* and property (of any person) on the *site* in good order and condition.
- 16.2 You are responsible for:
- 16.2.1 any damage caused by *you* or *your personnel*;
- 16.2.2 keeping *your* areas clean at all times; and
- 16.2.3 the removal of *your* tools, plant and equipment, and if required the removal of debris and refuse, arising out of the supply of *goods* and/or *services*.
- 16.3 If *you* fail to comply with clause 16.1 *we* may rectify the breach and the cost and expense will be a debt due and payable by *you* to *us*.

## 17 LIABILITY AND INDEMNITY

- 17.1 You are liable for and must indemnify *us* and *our personnel* ("those indemnified") from and against any liability, loss, claim, proceeding, cost, expense or damage of any kind, including financial loss and legal costs and expenses ("*liabilities*"), which may be suffered or incurred by any of those indemnified by reason of or in connection with the performance of the *supply* and *your* other obligations under the *supply contract*, including any *liabilities* in respect of:

- 17.1.1 any injury, illness or death to any person or loss or damage to any property or any other loss or damage of any kind whatsoever caused or contributed to by:
  - 17.1.1.1 the supply, possession or use of the *goods* or the performance of the *services* or the results of the *services*; and/or
  - 17.1.1.2 the entry onto, and the activities undertaken on and in a *site* by *you* or *your* personnel;
- 17.1.2 any negligence or wilful act or omission by *you* and/or any of *your* personnel in connection with the performance of the *supply*;
- 17.1.3 any claim made against us by or on behalf of any of *your* personnel, or by any government or regulatory authorities, in respect of relevant legislation concerning income tax, workers' compensation, annual leave, long service leave, superannuation or any applicable award determination or agreement of a competent industrial tribunal;
- 17.1.4 any penalty imposed for breach of an applicable law in connection with the performance of the *supply*; and
- 17.1.5 any claim that the *goods*, anything you do in supplying us with the *goods* or providing us with any *services*, or our use of the *goods* or the results of the *services* infringes or allegedly infringes the *intellectual property rights* or *moral rights* of any person;

except to the extent that any *liabilities* are caused by the wilful misconduct or negligent act of those *indemnified*.

- 17.2 You acknowledge that, to the extent permitted by law, *you* and *your* personnel enter any *site* at *your* own risk. To the maximum extent permitted by law, and except as otherwise provided in the *supply contract*, we are not liable to *you* for any direct, indirect or consequential loss or damage, including any loss of actual or anticipated savings, opportunity, revenue, profit or good will, or other economic loss and for any claim, action or proceeding by a third party against *you* (or any loss, damages or liability, incurred or suffered by *you* as a result of any such claim, action or proceeding).
- 17.3 It is not necessary for those *indemnified* to incur expense or make payment before enforcing a right of indemnity conferred by the *supply contract*.

## 18 CANCELLATION

- 18.1 We may cancel the *supply* at any time for any reason by giving *you* a written notice.
- 18.2 Upon receipt of our notice you must immediately cease performance of the *supply* and take appropriate action to mitigate any loss or prevent further costs being incurred with respect to the *supply*.
- 18.3 *You* may recover from *us* the price for any unpaid *supply* provided by *you* up until the date of *our* notice under this clause 18.
- 18.4 The amount outlined in clause 18.3 is the only amount recoverable by *you* following *our* cancellation of the *supply*, in accordance with this clause 18, and *you* will not be entitled to any amount for anticipated profit, unperformed supply or consequential loss or damage.

## 19 TERMINATION FOR DEFAULT

- 19.1 We may by notice terminate the *supply contract* with immediate effect if:
  - 19.1.1 *you* do not comply with or are in breach of any of *your* obligations under the *supply contract* and such non-compliance or breach is not remedied within 14 days after we request *you* to remedy it;
  - 19.1.2 if any representation, warranty or statement made by or repeated by *you* in or in connection with the *supply contract* is untrue or misleading (whether by omission or otherwise) in any material respect when so made or repeated; or
  - 19.1.3 *you* become insolvent, bankrupt or subject to any form of external administration.
- 19.2 On termination we may:
  - 19.2.1 cease all payments under the *supply contract*;
  - 19.2.2 recover from *you* all sums paid for unperformed *services*, undelivered *goods*, defective *goods* and/or defective *services*; and

- 19.2.3 purchase similar *goods* or *services* from other suppliers and claim by way of indemnity from *you* any cost or expense we may occur in doing so.

## 20 VARIATION

- 20.1 We may vary the *goods* and/or *services* (including any *specifications*) at any time upon 7 days' written notice to *you*.
- 20.2 When *you* receive a notice of variation from *us* *you* must vary the *goods* and/or *services* in accordance with *our* notice.
- 20.3 Any variation will be valued using the following order of precedence:
  - 20.3.1 by applying the *prices* or rates specified in the *supply contract* (to the extent the *prices* or rates are applicable);
  - 20.3.2 by agreement with *you* (to the extent the *prices* or rates specified in the *supply contract* are not applicable);
  - 20.3.3 by using reasonable rates or prices, having regard to market rates or prices for the supply of identical or similar *goods* or *services*.
- 20.4 A dispute over the valuation of a variation shall:
  - 20.4.1 be valued by *us* in accordance with subclause 20.3.3; and
  - 20.4.2 not affect *your* obligation to comply with *our* direction to vary the *supply*.

## 21 DISPUTE RESOLUTION

- 21.1 If a difference or dispute ('*dispute*') arises in relation to the *supply contract* either party may give notice to the other that a *dispute* exists, which specifies details of the *dispute*, and the parties agree that they will endeavour to resolve the dispute by negotiations, or if the *dispute* has not been resolved within 28 days of the issue of the notice, undertake mediation with an independent mediator, the cost to be shared by the parties unless otherwise agreed.
- 21.2 Nothing in this clause 21 will prejudice the rights of either party to institute proceedings to enforce the *supply contract* or to seek injunctive or urgent declaratory relief in respect of any *dispute*.

## 22 INTELLECTUAL PROPERTY

- 22.1 The *supply contract* does not assign the *intellectual property rights* of either party existing at the date of the *purchase order*.
- 22.2 *Intellectual property rights* in *material* brought into existence as part of, or for the purpose of, supplying the *goods* and/or *services* vest in *us*.
- 22.3 *You* must grant *us*, or must obtain for *us*, a perpetual, non-exclusive, royalty free licence to use, reproduce, adapt, modify, communicate to the public, broadcast, and copy any other material provided to *us* under the *supply contract*.

## 23 MORAL RIGHTS

- 23.1 To the extent permitted by law and for *our* benefit, *you* must consent, and must use *your* best endeavours to ensure that each author of *material* consents in writing to *us* using and exercising *our* rights in the *material* in a manner that, but for the consent, would otherwise infringe the *moral rights* of those individuals.

## 24 CONFIDENTIAL INFORMATION

- 24.1 Subject to clause 24.2, and except to the extent necessary to supply the *goods* and/or *services*, *you* must not, and must ensure that *your* personnel do not, without *our* prior written approval, at any time (including after the termination of expiry of the *supply contract*):
  - 24.1.1 disclose or give to any person any *confidential information*; or
  - 24.1.2 use or reproduce, or permit or allow any other person to use or reproduce, the *confidential information*.
- 24.2 Clause 24.1 does not apply to the extent that the *confidential information* is:
  - 24.2.1 in the public domain at the time that the *confidential information* is disclosed or given; or
  - 24.2.2 required by law to be disclosed or given.
- 24.3 Within ten (10) days of the termination or expiry of the *supply contract*, *you* must return to *us* all *confidential information* which you have in *your* possession together with all copies of the *confidential information* in *your* possession or in the possession of any third parties to whom the

*confidential information* was disclosed for the purposes of the *supply contract*.

- 24.4 You warrant that you will destroy any *confidential information* that cannot be conveniently returned to *us* (whether embodied in tangible or electronic form).

## 25 ASSIGNMENT

- 25.1 You *must* not assign or novate the *supply contract* without first obtaining *our* prior written consent, which may be withheld at *our* absolute discretion.

## 26 SUBCONTRACTING

- 26.1 You may employ or engage *sub-contractors* to supply the *goods* and/or *services*.
- 26.2 You will:
- 26.2.1 remain responsible for the performance of the *supply contract*, notwithstanding any subcontract; and
- 26.2.2 be liable for the acts and omissions of any *sub-contractor* as if those were *your* acts and omissions.

## 27 INDEPENDENT CONTRACTOR

- 27.1 Nothing in this contract constitutes *you* or *your personnel* as *our* employee, partner or agent or creates any employment, partnership or agency for any purpose and you must not represent *yourself*, and must ensure *your personnel* do not represent themselves, as *our* employee, partner or agent.

## 28 RECORDS

- 28.1 You must keep proper accounts and records in accordance with the accounting principles generally applied in commercial practice.
- 28.2 You must, within a reasonable time of *our* request, give *us* access to, and copies of, any materials relevant to the performance of *your* obligations under the *supply contract*, and any financial information that *we* reasonably require.

## 29 NOTICES

- 29.1 Any notice, including any other communication, required to be given or sent to either *party* under the *supply contract* must be in writing.
- 29.2 A notice will be deemed to have been given:
- 29.2.1 if delivered by hand, on delivery;
- 29.2.2 if sent by prepaid mail, on the expiration of two (2) business days after the date on which it was sent;
- 29.2.3 if sent by facsimile, on the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address; or
- 29.2.4 if sent by electronic mail, on the other party's acknowledgement of receipt by any means.

## 30 CONFLICT OF INTEREST

- 30.1 You must exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with *our* best interests.
- 30.2 Your obligations under this clause 30 apply to the activities of *your personnel* (as well as their families) in their relations with *our personnel* and/or any third parties associated with the *supply contract*.
- 30.3 Your obligations under this clause 30 include, but are not limited to, establishing precautions to prevent *your personnel* from making, receiving, providing or offering gifts, payments, loans, substantial entertainment or other considerations for the purpose of influencing individuals to act contrary to *our* best interests.
- 30.4 You must immediately notify *us* in writing of any and all violations of this clause 30 upon becoming aware of those violations.

## 31 OTHER MATTERS

- 31.1 Any of *our* rights under these terms and conditions can only be waived by *us* in writing.
- 31.2 The *supply contract* records the entire agreement between the *parties* in relation to its subject matter.
- 31.3 A variation of the *supply contract* is binding only if agreed in writing and signed by the *parties*.

- 31.4 We may exercise a right, remedy or power in any way *we* consider appropriate.

- 31.5 If *we* do not exercise a right, remedy or power at any time, this does not mean that *we* cannot exercise it later.

- 31.6 Any reading down or severance of a particular provision does not affect the other provisions of the *supply contract*.

- 31.7 The *supply contract* is to be construed in accordance with the laws of New South Wales.

- 31.8 A provision of the *supply contract* shall not be construed to the disadvantage of a *party* solely on the basis that it proposed that provision.

- 31.9 Unless the contrary intention appears, the expiry or earlier termination of the *supply contract* will not affect the continued operation of any provision relating to:
- 31.9.1 licensing of *intellectual property rights*;
- 31.9.2 *confidential information*;
- 31.9.3 an indemnity;
- 31.9.4 a release; or
- 31.9.5 any other provision which expressly or by implication from its nature is intended to continue.

- 31.10 The terms and conditions set out in clause 17 prevail over any inconsistent terms and conditions in the *supply contract* wherever they may be contained.

- 31.11 You must obtain at *your* own expense any necessary licences or permits and comply with applicable laws in supplying the *goods* and/or *services* to *us*.

- 31.12 *Our* rights, remedies and powers under the *supply contract* are in addition to any rights, remedies and powers provided by law.

## 32 DEFINITIONS

In the *supply contract* the following terms have the meanings set out below:

"**Adjustment Note**" means has the meaning given in the GST Act;

"**confidential information**" means the *supply contract*, and any information (in whatever form) or documentation of a confidential nature (or which *you* or *your personnel* ought reasonably to know to be confidential) which relates to *our* business, affairs or activities and which:

(a) is disclosed to *you* or *your personnel* by *us* or *our personnel*;

(b) is generated by *you* or *your personnel* in performing the *supply*; or

(c) otherwise comes to *your* knowledge or that of *your personnel*;

"**delivery point**" means the *site* identified in the *purchase order* for the delivery of *goods*;

"**defective goods**" means *goods* which are not in conformity with the *supply contract* or are defective in design, performance, workmanship or makeup;

"**defective services**" means *services* or the results of any *services* which are not in conformity with the *supply contract*, are of inferior quality or workmanship or are otherwise unsatisfactory;

"**enquiry document**" means *our* request for quotation or tender document, in any format, in which *we* request quotations for the supply of *goods* and/or the provision of *services*;

"**framework agreement**" means a written agreement between the *parties* whereby these *Supply Contract Conditions* are deemed to be incorporated into each *supply contract* entered into by the *parties* during the term of the agreement;

"**goods**" means the goods, materials, supplies, equipment or other items specified in the *supply contract* (including any part of the *goods* specified);

"**GST Act**" means the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

"**intellectual property rights**" means (in the context of a *party*) all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and similar rights which may subsist or may hereafter subsist in works or any subject

matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registrable), rights in relation to registered or unregistered trademarks and circuit layout designs, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers;

**“Kiama Municipal Council”** or **“Council”** means The Council of the Municipality of Kiama of 11 Manning Street, Kiama;

**“party”** means *Council* or the *Supplier*;

**“parties”** means *Council* and the *Supplier*;

**“personnel”** means

- (a) in relation to *you*, any of *your* employees, *sub-contractors* (including *sub-contractors’ personnel*), agents and representatives involved either directly or indirectly in the performance of the *supply*;
- (b) in relation to *us* any of *our* past or present officers, employees, or agents; and
- (c) in relation to *sub-contractors*, any of its employees, agents or representatives involved either directly or indirectly in the performance of the *supply*;

**“price”** means the monies payable to *you* for the provision of the *supply* as calculated in accordance with the *supply contract*;

**“purchase order”** means the purchase order sent to *you* by *us* for the *supply* and referencing these terms and conditions;

**“material”** means any material brought into existence as a result of, for the purpose of or in connection with the supply of *goods* or provision of *services* and includes documents, equipment, information or data stored by any means;

**“moral rights”** means the same as defined in the *Copyright Act 1968* (Cth);

**“services”** means the services specified in the *supply contract* (including any part of the specified services and the results of the specified services);

**“site”** means a *Council* site identified in the *purchase order* or elsewhere in the *supply contract*;

**“specifications”** means the specifications for the *supply* and any modification of those specifications as directed by *us* in accordance with the *supply contract*;

**“sub-contractor”** means any person engaged by *the you* to perform all or any part of the *supply* on *your* behalf;

**“Supplier”** means the person named in the *supply contract* as the supplier of the *goods* and/or *services*;

**“supply”** means the supply of *goods* and/or *services* in accordance with the *supply contract*;

**“supply contract”** means the supply contract entered into by *Council* by issuing a *purchase order* to the *Supplier* whether as an offer or acceptance of an offer to provide the *goods* and/or *services* specified in the *purchase order* ;

**“Supply Contract Conditions”** means these terms and conditions, which apply to all *supply contracts* that are entered into by *Council*;

**“Supplier’s response”** means any information provided by *you* in response to *our enquiry document* - excluding any terms and conditions proposed by *you* in substitution for or additional to the *Supply Contract Conditions*;

**“term”** means the term of the *supply contract* as determined in clause 5.6 or if the *Supplier* has entered into a *framework agreement* the term specified in that agreement;

**“warranty period”** means the period of:

- (a) 24 months from the date of delivery or 12 months from the date of installation or initial use of the *goods*, whichever is the sooner (in the case of the *goods*); or
- (b) 12 months from the date on which the *service* is performed (in the case of the *services*);

**“you”** or **“your”** means the *Supplier*; and

**“we”, “us”** or **“our”** means *Kiama Municipal Council*.

### 33 INTERPRETATION

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and vice versa.
- (b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) The word “person” includes a corporation, trust, partnership, unincorporated body or other entity.
- (d) A reference to a person includes a reference to that person’s executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns.
- (e) The words “includes” or “including” means includes or including without limitation.
- (f) A reference to a third person, third party or other party is a reference to a person who is not a party to the *contract*.
- (g) If a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
- (h) A reference to a clause is a reference to a clause in these *Supply Contract Conditions*.