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## UNIQUIP ENGINEERING PTY LTD TERMS & CONDITIONS OF SUPPLY

### 1. DEFINITIONS

In these Conditions:

**Authority** means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**Business Day** means a day on which trading banks are open for business in Sydney, Australia, excluding:

- i. a Saturday, Sunday or public holiday; and
- ii. 27, 28, 29, 30 and 31 December.

**Buyer** means the company or person to the UNIQUIP has submitted the Quotation.

**Claim** means any claim, notice, demand, debt, account, action, expense, cost, lien, liability proceeding, litigation (including reasonable legal costs), investigation or judgment of any nature, whether known or unknown.

**Conditions** means these terms and conditions for the provision of the Supply by UNIQUIP.

**Contract** means the binding agreement referred to in clause 2.

**Contract Documents** means these Conditions, the Order Confirmation, the Quotation, the Special Conditions, and any documents referred to in the Order Confirmation.

**Defect** or **Defective** means any fault in mechanical design, materials, fabrication or workmanship for which UNIQUIP is responsible, not including:

- i. corrosion, erosion, or chemical reactions with process fluids;
- ii. climatic or chemical damage or degradation;
- iii. fair wear and tear or improper storage;
- iv. faults resulting from designs or materials supplied by or on behalf of the Buyer;
- v. failure to install or operate the Goods within their design parameters or in accordance with UNIQUIP's instructions, including without limitation those relating to testing, routine and scheduled maintenance, or the use of accessories;
- vi. transportation or lifting damage;
- vii. failure to operate or maintain the Goods in accordance with good engineering practice and
- viii. faults or damage caused by parties other than UNIQUIP.

**Delivery Date** means:

- i. in respect of Goods, the date for delivery of the Goods to the Buyer set out in the Order Confirmation;
- ii. in respect of Services, the date for completion of those Services set out in the Order Confirmation.

**Deposit** means 20% of the Total Amount Payable of such other percentage of the Total Amount Payable as is specified in the Order Confirmation.

**Dispute** means a dispute arising out of or relating to the Contract Documents including a dispute as to breach or termination of the Conditions or as to any claim in tort, in equity or under any statute.

**Goods** means all goods referred to in the Quotation, described in any invoice issued by the UNIQUIP to the Buyer and supplied, or to be supplied, by the UNIQUIP to the Buyer.

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

**Incoterm** means the specified international commercial term published by the International Chamber of Commerce (if no edition is specified, the 2020 edition is deemed to apply).

**Intellectual Property** includes all rights in the nature of ownership created or able to be created under or by copyright, design registration, patent registration, trademark registration, know-how, obligations of confidentiality and all other rights in intangible property, including rights in present and future intangible property, and rights and information granted by law or equity from time to time under the law of any jurisdiction throughout the world, but does not include goodwill.

**Laws** includes any requirement of any statute, regulation, proclamation, ordinance, by-law or common law, present or future and whether State, Federal or otherwise.

**Order Confirmation** means the confirmation of the Buyer's order for the Supply attached to these Conditions.

**Quotation** means the quotation given by the UNIQUIP to the Buyer for the supply of Goods and/or Services.

**Services** means all services referred to in the Quotation, described in any invoice issued by the UNIQUIP to the Buyer and supplied, or to be supplied, by the UNIQUIP to the Buyer.

**Special Conditions** means the special conditions set out in the Order Confirmation, if any.

**Supply** means the sale of the Goods and/or the provision of the Services, as applicable, in accordance with the Quotation.

**Total Amount Payable** means the total price payable by the Buyer for the Goods including:

- i. GST and other taxes or charges payable to any Authority in Australia;
- ii. Packing and delivery costs; and
- iii. Any costs associated with delay in delivery or variation of the Goods.

**UNIQUIP** means Uniquip Engineering Pty Limited ABN 93 099 153 536.

**Warranty Period** means:

- i. in relation to Services, 3 months from completion of the Services; or
- ii. in relation to Goods, the first to expire of 18 months from the Delivery Date or 12 months from the date of placing the Goods into service,

unless otherwise specified in the Order Confirmation.

## 2. FORMATION AND SCOPE OF CONTRACT

- 2.1 The Quotation is submitted at the request of the Buyer and is subject to change until the Contract is formed in accordance with clause 2.2.

- 2.2 A binding agreement for the Supply will be formed upon the acceptance by UNIQUIP of an order from the Buyer for the Supply, and for which UNIQUIP will issue the Order Confirmation to the Buyer.
- 2.3 The Contract will consist of the Contract Documents and constitutes the entire agreement between the Buyer and the UNIQUIP for the Supply. Any terms and conditions of the Buyer are expressly excluded.
- 2.4 The Buyer acknowledges that it has not entered into the Contract in reliance upon any representations made by UNIQUIP regarding the Supply or any matter that is, or might be, relevant to the Buyer in procuring the Supply other than the representations expressed in this Contract
- 2.5 UNIQUIP will supply the Goods in material conformity with the description set out in the Contract Documents.
- 2.6 The Contract Documents are to be read as mutually-explanatory of one another. If there is any inconsistency between the Contract Documents the order of precedence in respect of the Contract Documents will be:
  - a) the Special Conditions;
  - b) these Conditions of Supply;
  - c) the Quotation;
  - d) any other specifications included in the Contract Documents.
- 2.7 The Buyer may not cancel all or any part of an order except in accordance with clause 18.

### 3. VARIATION

- 3.1 The Buyer may request UNIQUIP in writing to vary the Contract, including by carrying out additional work or altering the sequence of work ("**Variation**").
- 3.2 UNIQUIP will notify the Buyer in writing whether UNIQUIP, in its sole discretion, is willing to carry out the Variation and, if so, the price for which UNIQUIP is willing to carry out the Variation ("**Variation Notice**").
- 3.3 If UNIQUIP agrees to a Variation in a Variation Notice:
  - a) UNIQUIP will carry out the Variation;
  - b) The Delivery Date will be extended by agreement between the parties, failing which by an amount of time determined by UNIQUIP, acting reasonably, to allow for the extra design, manufacture or revised delivery time required by UNIQUIP to carry out the Variation; and
  - c) The Buyer will pay UNIQUIP the price set out in the Variation Notice, or the price otherwise agreed to by UNIQUIP in writing, in accordance with the Contract.

### 4. GST

Unless the Quotation specifically states otherwise, the price for the Supply is exclusive of GST. If a party makes a taxable supply under or in connection with these Conditions, then the recipient of the supply must pay to the Supplier (in addition to the GST-exclusive consideration), an amount equal to the GST payable on the supply, upon receiving a tax invoice for the Supplier.

### 5. PRICE

- 5.1 Unless otherwise stated, all prices for the Supply quoted by UNIQUIP are:
  - a) valid for the validity period specified in the Quotation;

- b) net, and exclusive of all local and foreign taxes, freight, insurance, packing, delivery, storage, off-loading and shipping costs (“**additional costs**”); and
  - c) valid for the period as stated in our Quotation, failing which for 30 days.
- 5.2 Any increase to UNIQUIP in ‘additional costs’ at any time prior to delivery, will be for the Buyer’s account. UNIQUIP will notify the Buyer of any such increase as soon as reasonably practicable.

## 6. PAYMENT

- 6.1 UNIQUIP will invoice the Buyer monthly for work undertaken by it in providing the Supply over the previous month (“**Invoiced Work**”) within 10 Business Days of the end of each month in accordance with UNIQUIP’s agreed payment milestones established prior to commencing the works, failing which for the amount of work completed over the previous month.
- 6.2 If the Buyer has a trading account with the UNIQUIP, then the Buyer must pay the price for the Supply within 30 days of the end of the month in which the Supply was invoiced without deduction or set-off. If the Buyer does not have a current trading account with the UNIQUIP, all invoices must be paid in full in cash on receipt of UNIQUIP’s invoice.
- 6.3 If UNIQUIP has agreed to payment for the Supply in instalments, the Buyer must pay UNIQUIP:
- a) the Deposit immediately on receipt of UNIQUIP’s invoice; and
  - b) for the Invoiced Work within 30 days of receipt of UNIQUIP’s invoice.
- 6.4 The Buyer’s failure to comply with its obligations under this clause 6 will be a material breach and, without prejudice to any other of UNIQUIP’s rights or entitlements, UNIQUIP may suspend performance of the Contract until the breach is cured.

## 7. DELIVERY

- 7.1 Delivery of Goods will take place in accordance with the Contract Documents. The risk of loss or damage to the Goods passes to the Buyer on Delivery or as specified in any nominated Incoterm.
- 7.3 The Buyer must accept and pay for the Supply if and when tendered, regardless of any failure or delay to provide the Supply by the date specified in the Quotation. UNIQUIP reserves the right to charge for storage if the Buyer does not take delivery of the Goods for any reason.
- 7.4 The Buyer waives any Claim for shortage of any Goods delivered if that Claim is not lodged with UNIQUIP within 30 days of the date of receipt of the Goods by the Buyer.
- 7.5 UNIQUIP is not under any obligation to accept Goods returned by the Buyer and will do so only on such terms notified to the Buyer in writing, if any.

## 8. EXTENSION OF TIME

- 8.1 Regardless of any other term of the Contract, the Buyer acknowledges and agrees that the Delivery Date is an estimate only, and UNIQUIP will not be liable for any loss, damage or delay occasioned to the Buyer or its customers arising directly or indirectly from UNIQUIP’s failure to complete the Supply by the Delivery Date.
- 8.2 Without limiting clause 8.1, UNIQUIP will use reasonable endeavours to complete the Supply by the Delivery Date and in accordance with any program agreed in writing with the Buyer.

- 8.3 If UNIQUIP considers it will be unable to comply with clause 8.2, it will notify the Buyer in writing of the revised Delivery Date required to complete the Supply.
- 8.4 If UNIQUIP considers itself unable to comply with clause 8.2. because of:
- a) the acts or omissions of the Buyer, the additional costs incurred by UNIQUIP, directly or indirectly, because of an extension of the Delivery Date, are at the Buyer's expense; or
  - b) an event or events beyond the reasonable control of either party, the parties will negotiate in good faith to determine how the additional costs, if any, incurred directly or indirectly because of the extension of the Delivery Date are to be apportioned between them.

## **9. RIGHTS IN RELATION TO GOODS**

- 9.1 Until UNIQUIP receives the Total Amount Payable for any Goods, UNIQUIP remains the owner of such Goods.
- 9.2 In addition to the rights set out in clause 9.1, UNIQUIP is entitled to maintain an action against the Buyer for all amounts owed to UNIQUIP by the Buyer.

## **10. WARRANTIES**

- 10.1 UNIQUIP warrants that the Goods and Services will be free of Defects during the Warranty Period.
- 10.2 The Buyer acknowledges and agrees that:
- a) certain costs and expenses in connection with the rectification of Defects are disproportionate and excessive in relation to the value of the Supply, including without limitation the cost of labour and materials for opening-up, diagnosis or transportation of Goods, removal and reinstallation of Goods, and investigation of root causes; and
  - b) consequently, the Total Amount Payable does not include any consideration for the Vendor to bear such costs or expenses, and any such costs are to be borne by the Buyer.
- 10.3 Where any Goods are Defective, UNIQUIP may, at its option, either repair (at its premises or in situ), replace or resupply the Goods or Services (as applicable).
- 10.4 Any Goods that are to be repaired at UNIQUIP's premises or replaced must promptly be returned to UNIQUIP at the Buyer's cost.
- 10.5 Subject to clause 11, and except as provided in this clause 10, to the extent permitted by law, UNIQUIP excludes all warranties, whether express, implied, statutory or otherwise applicable to the Goods.
- 10.6 Regardless, if the Goods have not been manufactured by UNIQUIP, UNIQUIP provides the manufacturer's warranty in lieu of and to the exclusion of any warranty by UNIQUIP.
- 10.7 Any reference to Goods in this clause 10 will include a reference to any part or parts of such Goods.
- 10.8 Any claim by the Buyer against UNIQUIP in connection with any Defects must be made within the Warranty Period, failing which any such claim will be forfeited.

## **11. STATUTORY RIGHTS**

Regardless of any other term of this Contract, nothing in this Contract excludes or purports to exclude any statutory right or warranty that may not be excluded by law. If any part of the Supply is goods or services to which a guarantee under the *Competition and Consumer Act 2010* (Cth) applies, then clause 10 will not apply and UNIQUIP's liability is limited, at UNIQUIP's option, to:

- a) repair, replacement, or resupply of the relevant part of the Supply; or

- b) payment of the cost of repair, replacement, or resupply of the relevant part of the Supply.

## **12. SPECIFICATIONS, DRAWINGS AND PERFORMANCE**

- 12.1 All specifications, drawings and other particulars submitted to UNIQUIP by the Buyer are deemed to be approximate only, and minor deviations from those specifications, drawings or other particulars will not breach this Contract.
- 12.2 If there is any error in the specifications, drawings or other particulars supplied by the Buyer and the Contract price is based on estimates of the quantities required to provide the Supply, and adjustments to the quantities estimated by UNIQUIP are required as a result of such error, at its sole discretion, UNIQUIP may adjust the Total Amount Payable.
- 12.3 Any performance figures given by UNIQUIP in respect of the Goods are estimates only. UNIQUIP will not be liable if the Goods do not achieve such performance figures unless UNIQUIP specifically guarantees such performance in writing. Any such written guarantee is subject to the recognised tolerances applicable to such figures.
- 12.4 The descriptions, illustrations and performance details contained in any catalogues, price lists and advertising material issued by UNIQUIP do not form part of the Contract.

## **13. INTELLECTUAL PROPERTY**

- 13.1 The Buyer acknowledges and agrees that UNIQUIP is and remains the owner or licensee of all Intellectual Property rights relating to, created or used in connection with the Supply.
- 13.2 The Buyer must not do anything or permit anything to be done which would infringe, harm, challenge, deny, question or contest UNIQUIP's Intellectual Property rights, and will inform UNIQUIP immediately it learns of any actual or threatened infringement.
- 13.3 The Buyer will indemnify UNIQUIP against all Claims arising out of the infringement of any third party's Intellectual Property rights as a result of the use by UNIQUIP of any specifications or drawings supplied to UNIQUIP by the Buyer.

## **14. RISK, INSURANCE AND INDEMNITY**

- 14.1 Until the Total Amount Payable for any Goods is paid to UNIQUIP, the Buyer will insure all Goods for which it bears the risk against loss, damage or destruction by theft, fire or other casualty for the full replacement value of the Goods. The Buyer will name UNIQUIP as a co-insured, and provide UNIQUIP with certificates of currency for this insurance.
- 14.2 The Buyer must bear any excess or deductible due in respect of any insurance claim, unless UNIQUIP has caused the claim. The Buyer must diligently pursue any insurance Claim in respect of the Goods to the extent to which it is legally entitled. The proceeds of any such insurance Claim received by the Buyer will firstly be used to compensate UNIQUIP for any loss it has sustained in connection with the claim or the Contract. Any excess insurance proceeds will be the property of the Buyer.
- 14.3 The Buyer will indemnify UNIQUIP in respect of any Claim, however caused, which it may suffer or incur, or which may arise directly or indirectly in connection with:
- a) personal injury or death of any person caused or contributed to by the Buyer or any party for whom it is responsible;
  - b) the wilful misconduct, the wilful default, or fraud of the Buyer or any party for whom it is responsible; or

- c) a breach by the Buyer of its obligations under the Contract.

## 15. COMPLIANCE WITH LAWS

15.1 The Buyer is responsible for:

- a) compliance with all Laws relevant to its purchase, use and re-supply (if relevant) of the Supply;
- b) payment of all charges levied by any Authority in connection with the purchase, use or re-supply of the Supply.

15.2 If the Goods are to be delivered, used or re-supplied in any country other than Australia, the Buyer must notify UNIQUIP of all relevant Laws of that country. UNIQUIP is not liable for any loss or damage arising directly or indirectly as a result of a failure of the Goods to comply with such Laws where the Buyer does not comply with this clause.

## 16. DISPUTE RESOLUTION

16.1 A party may not commence any court or arbitration proceeding relating to a Dispute unless it complies with this clause 16, other than to seek urgent interlocutory relief.

16.2 A party claiming that a Dispute has arisen under or in relation to the Contract must give written notice to the other party to this Contract specifying the nature of the Dispute ("**Notice of Dispute**").

16.3 Within 5 Business Days of service of a Notice of Dispute, a senior representative of each of the parties must meet and undertake negotiations with a view to resolving the Dispute, and must endeavour in good faith to resolve the Dispute expeditiously, including by agreeing to use informal dispute resolution techniques such as mediation, expert evaluation or determination or other techniques agreed by them.

16.4 If the parties do not agree within 10 Business Days of receipt of the Notice of Dispute (or any further period agreed in writing by them) as to:

- a) the dispute resolution technique and procedures to be adopted;
- b) the timetable for all steps in those procedures; and
- c) the selection and compensation of the independent person required for such technique,

then any party which has complied with the provisions of this clause 16 may in writing terminate the dispute resolution process provided for in clause 16 and may then refer the dispute to arbitration or commence court proceedings relating to the Dispute.

## 17. FORCE MAJEURE

17.1 Neither the Buyer nor UNIQUIP will be liable for any failure to observe its obligations under these Conditions (other than an obligation to make payment) where the failure is wholly or substantially due to any cause beyond its reasonable control, including but not limited to strikes, industrial action, breakdown of plant, machinery or delivery vehicles, war, blockades or governmental interference, epidemic or pandemic, or any act of God ("**Force Majeure**"), provided that in any of these circumstances the party seeking to rely on the benefit of this provision must use its best endeavours to put itself in a position where it is able to meet its obligations under these Conditions as quickly as possible.

17.2 If UNIQUIP is delayed or prevented from carrying out the Supply due to Force Majeure for an aggregate period of 180 days, UNIQUIP may at any time thereafter and while the delay or prevention



due to Force Majeure continues, terminate the Contract by written notice to the Buyer and the Contract will then be deemed to have been frustrated at law.

## 18. TERMINATION FOR CONVENIENCE

18.1 To the extent that the Contract is not for engineering services, the Buyer may terminate the Contract at any time on 5 Business Days' written notice to UNIQUIP and by paying the Termination Fee, receipt of which will be a precondition for termination under this clause 18.1. For purposes of this clause 18, the Termination Fee is an amount equal to the greater of:

- a) that portion of the Total Amount Payable paid to the date of termination; or
- b) the amount of the Termination Fee determined according to the following formula:

$$\text{Termination Fee} = (\text{Total Amount Payable} \div Y \times Z) + 20\% \text{ of the Total Amount Payable}$$

Where:

Y = the number of days from the date of the Order Confirmation to the Delivery Date

Z = the number of days from the date of the Order Confirmation to the date of receipt of the Buyer's termination under this clause 18.1.

18.2 To the extent that the Contract is for engineering services, the Buyer may terminate the Contract at any time on written notice to UNIQUIP as follows:

- a) for Services charged other than on a lump sum basis:
  - i) at no cost to the Buyer (other than for Services rendered during the notice period) provided that 2 months' notice is given; or
  - ii) immediately upon payment for all Services rendered to the date of termination plus an amount equal to 25% of the average of the totals of the previous 2 months' invoices;
- b) for Services charged on a lump sum basis, the total of all amounts payable for Services performed up to the date of termination calculated in accordance with clause 18.1,

receipt of which payments will be a precondition for termination under this clause 18.2.

18.3 UNIQUIP cannot guarantee engineering services will remain available beyond, and will have no liability in connection with the unavailability of engineering services after, 12 months from the date of the Contract. UNIQUIP will provide a minimum of 2 months' notice of cessation of any Services that include engineering services.

## 19. TERMINATION FOR BREACH

19.1 The Buyer is liable for, and indemnifies UNIQUIP from and against, all loss or damage (including legal costs) incurred or suffered by UNIQUIP however caused in connection with any breach of this Contract by the Buyer or any alleged or actual infringement of a third party's Intellectual Property Rights or other right in connection with the any designs or materials provided by the Buyer.

19.2 Without limiting any of its other rights or remedies under the Contract or at law, the UNIQUIP may, in its sole discretion, suspend or terminate the Contract if:

- a) the Buyer fails to take delivery of any Supply other than in accordance with the Buyer's rights under the Contract;
- b) the Buyer otherwise defaults in or fails to observe an obligation under the Contract and does not rectify that default or failure within 7 Business Days after notice in writing from the UNIQUIP requiring it to do so;



- c) the Buyer becomes insolvent, enters into any composition or arrangement with its creditors, a receiver, receiver and manager or administrator is appointed in respect of the Buyer's assets, or an undertaking or an order is made, or a resolution is passed for the Buyer's winding up;
- 19.3 Termination in accordance with clause 18 and clause 19.2 will not prejudice the rights and liabilities of the parties that existed prior to termination.
- 19.4 Any suspension of performance by UNIQUIP will not prejudice any right of UNIQUIP to terminate the Contract.
- 19.5 If the Contract is suspended, then, as a condition of resuming performance and in its sole discretion, UNIQUIP may demand full payment of all outstanding invoices or the provision of a bank guarantee or other form of security to secure all monies owed and/or payable to it under the Contract.
- 19.6 Any suspension or resumption of performance by UNIQUIP will not prejudice any right of UNIQUIP to terminate the Contract.

## 20. LIMITATION OF LIABILITY

Notwithstanding any other provision of this Contract to the contrary, UNIQUIP's liability to the Buyer under any legal theory, whether based on contract, warranty, tort (including negligence, bailment or otherwise), strict liability, indemnity, professional liability or otherwise, whether arising under or in connection with the Contract or the performance or non-performance thereof or anything incidental to these, is limited as follows:

- a) UNIQUIP will not be liable for loss of profit, loss of revenue, loss of bonuses, loss of data, loss of investment, loss or denial of business opportunity, loss of goodwill, loss of reputation, loss of income, loss of anticipated saving or loss of any contract, increase in financing costs or operating costs, increase in cost of capital, claims of third parties, or for any special, incidental, punitive, indirect or consequential damage whatsoever;
- b) UNIQUIP's aggregate liability in connection with any under-performance of any Goods (including any performance guarantee) is limited to an amount equal to 5% of the Total Amount Payable;
- c) UNIQUIP's aggregate liability in connection with any delay in performance of the Contract is limited to an amount equal to 5% of the Total Amount Payable; and
- d) UNIQUIP's total aggregate liability under or in connection with the Contract will not exceed an amount equal to the Total Amount Payable.

## 21. GENERAL

- 21.1 Without limiting clause 3, any variation or waiver of a provision or any amendment of the Contract is effective only if in writing and signed by both parties.
- 21.2 A failure, delay, relaxation or indulgence on the part of a party in exercising any right conferred on that party by the Contract does not operate as a waiver of that right.
- 21.3 This Contract constitutes the sole and entire agreement between the parties regarding its subject matter. Any previous agreements or understandings between the parties regarding the subject matter are superseded by this Contract.
- 21.4 Any provision, or the application of any provision, which is void, prohibited, illegal or unenforceable in any jurisdiction:
- a) is, in that jurisdiction, to be severed from the Contract to the extent it is void, prohibited, illegal or unenforceable; and

- b) does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.
- 21.5 Any specific reference to or listing of items following the words "including", "for example", "such as" or similar expressions is without limitation and does not exclude application to other terms, whether or not in the same class, category or genus as any specified or listed items.
- 21.6 UNIQUIP may subcontract or assign all or any part of the Supply, or any of its rights under the Contract, without the prior written consent of the Buyer.

## **22. GOVERNING LAW**

The Contract shall be governed by and interpreted in accordance with the laws of the State of New South Wales, and the parties submit to the non-exclusive jurisdiction of its courts.

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