

## TERMS AND CONDITIONS OF PURCHASE

### 1. CONTRACT

- 1.1. The following documents form the entire Agreement between the parties:
  - (a) the Purchase Order;
  - (b) these Terms and Conditions of Purchase; and
  - (c) any other document referred to in the Purchase Order.If there is any inconsistency between the documents listed above, precedence will be given to the document highest in the list unless expressly agreed otherwise.
- 1.2. By commencing to supply the Goods or Services, the Supplier unconditionally accepts the terms and conditions of the Agreement and any terms or conditions proposed by the Supplier are expressly excluded regardless of how provided.
- 1.3. The Supplier acknowledges that UNIQUIP's:
  - (a) offer to acquire the Goods or Services; and/or
  - (b) acceptance of any offer by the Supplier to supply the Goods or Services,is conditional on the Supplier acceptance these terms and conditions.
- 1.4. To the extent permitted by Law, any statement, representation or promise made in any document, negotiation or discussion has no effect except to the extent expressly set out or incorporated by reference into this Agreement.
- 1.5. The Supplier must obtain all permits, approvals and licences required by Law to supply the Goods and perform the Services.
- 1.6. The Supplier must ensure that the Goods or Services:
  - (a) comply with the Law and applicable Australian Standards of Standards Australia Ltd;
  - (b) conform precisely in quality, quantity, specification and all other respects with any description provided to UNIQUIP by the Supplier or nominated by UNIQUIP to the Supplier;
  - (c) are accordance with the Agreement.
  - (d) are fit for the purposes for which goods and services of the same kind are commonly supplied and for any other purpose made known to the Supplier; and
  - (e) meet the standards that would be expected of a skilled and experienced supplier who regularly supplies goods and services similar to the Goods and Services.
- 1.7. The Supplier must ensure that the Goods:
  - (a) are new, of merchantable quality and free from defects in materials and workmanship;
  - (b) are free from all Security Interests, liens, charges and encumbrances of any kind; and
  - (c) comply with any samples inspected by UNIQUIP prior to or after the Purchase Order was issued.
- 1.8. In performing its obligations, the Supplier must act reasonably and honestly, must perform the Services in a good and workmanlike manner and in accordance with best industry practice.
- 1.9. UNIQUIP may direct the Supplier at any time to vary, amend, increase, decrease, omit or change the quality, character, extent or amount of Goods or Services ("**Variation**"). If the parties cannot agree the adjustment to the Price or Delivery Date for a Variation, UNIQUIP will determine a reasonable increase or decrease to both the Delivery Date and Price, if applicable.

### 2. INSPECTION AND DESPATCH

- 2.1. All Goods and materials must be available at all reasonable times at the Supplier's or any sub-supplier's works for inspection by or on behalf of UNIQUIP.
- 2.2. The Supplier must promptly rectify any defects or non-conformances identified by an inspection.
- 2.3. Inspection by or on behalf of UNIQUIP will in no way release the Supplier from its obligations under this Agreement.

- 2.4. The Supplier must at its own cost carefully and properly prepare, secure and pack the Goods in a manner suitable to ensure adequate protection against damage and corrosion until delivered, and safely transport the Goods along appropriate routes.
- 2.5. Goods shipped or despatched in 'knocked down' form must be match-marked for site erection.
- 2.6. Where so specified in the Purchase Order or any Technical Materials, items or pieces must be marked either with a steel stamp or tag. Packages, bundles or cases must be marked as stipulated in the Purchase Order.
- 2.7. The Supplier is solely liable for any loss incurred because of any failure to comply with this clause 2.

### 3. DELIVERY AND COMPLETION

- 3.1. Delivery will have occurred only when the Supplier has:
  - (a) delivered the Goods to the Site, and unless otherwise specified in the Purchase Order, unloaded the Goods at the location designated by UNIQUIP's representative or in the Purchase Order, and received written confirmation of receipt from UNIQUIP;
  - (b) completed the Services (including the provision of all deliverables and products of the Services and all third-party warranties to UNIQUIP) and received written confirmation of completion from UNIQUIP.
- 3.2. The Supplier must achieve Delivery by the Delivery Date and in any case expeditiously and without delay.
- 3.3. If the Goods and Services are not Delivered by the Delivery Date, the Supplier will be indebted to UNIQUIP for liquidated damages at the rate set out in the Purchase Order (if any) for each day that Delivery is delayed beyond the Delivery Date, until the earlier of:
  - (a) liquidated damages incurred meet the limit, if any, set out in the Purchase Order;
  - (b) the Agreement is terminated by UNIQUIP; or
  - (c) Delivery is completed,but if no such rate is set out in the Purchase Order, UNIQUIP will be entitled to common law damages for the delay.
- 3.4. UNIQUIP:
  - (a) may postpone the Delivery Date for any duration and for any reason in its absolute discretion, at any time before or after the Delivery Date; or
  - (b) must postpone the Delivery Date for a Delay Event, but only if the Supplier notifies UNIQUIP in writing of the cause, expected duration and its efforts to minimise the effect of the Delay Event, within 3 Business Days of when the Supplier should have become aware of it, failing which the Supplier will not be entitled to any postponement of the Delivery Date.
- 3.5. Any delay by UNIQUIP in postponing the Delivery Date will not set time at large but may entitle the Supplier to damages.
- 3.6. The Supplier may not subcontract any of its obligations without the prior consent of UNIQUIP. Despite any consent, the Supplier remains responsible for all acts and omissions of its subcontractors and must ensure that they comply with all applicable terms and conditions of this Agreement.

### 4. SECURITY

- 4.1. If required by UNIQUIP, the Supplier must provide the payment security of the kind and in the amount specified in the Purchase Order ("**Security**").
- 4.2. Within 10 Business Days of Delivery, UNIQUIP will release part of the Security so that the total value of the Security held will not be more than 5% of the Price.
- 4.3. Within 10 Business Days of the end of the Warranty Period, UNIQUIP will release any Security then held by UNIQUIP provided that there are no moneys owed from the Supplier to UNIQUIP.

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### 5. DEFECTIVE GOODS AND SERVICES

5.1. During the Warranty Period, the Supplier warrants that it will, at its own cost, promptly repair or replace any Goods or Services that are found to be unsatisfactory, defective, of inferior quality, design or workmanship, or that fail to meet any requirements of the Agreement ("Defective"). All replacements or repairs must be carried out at the times nominated by UNIQUIP and so as to minimise any inconvenience to users of the Site.

5.2. The Supplier acknowledges and agrees that UNIQUIP has provided its customer with equivalent warranties to those contained in this Agreement and that UNIQUIP will suffer a loss if the Supplier fails to comply with its obligations under this clause 5.

5.3. If UNIQUIP determines that any Goods or Services are Defective, UNIQUIP may, in its absolute discretion and at the Supplier's cost, direct the Supplier to do any one or more of the following:

- (a) re-take possession of the Defective Goods and refund the Price for the Defective Goods to UNIQUIP;
- (b) Deliver replacements for the Defective Goods or re-perform the Defective Services; or
- (c) repair the Defective Goods or remedy the Defective Services,

and to reimburse UNIQUIP any damages or loss it has suffered as a direct result of the supply of the Defective Goods or Services. These rights are in addition to any other rights of UNIQUIP under the Agreement, at Law or in equity.

5.4. If UNIQUIP requires the Supplier to re-take possession of Defective Goods:

- (a) the risk of loss or damage to the Defective Goods reverts to the Supplier; and
- (b) the Supplier must collect the Defective Goods within 10 Business Days from the date when UNIQUIP so notifies the Supplier, failing which UNIQUIP may (but is not obliged to) return the Defective Goods to the Supplier at the Supplier's cost and risk.

5.5. The Supplier must do all things to ensure that UNIQUIP has the benefit of any warranties given by any third parties in respect of Goods and must give UNIQUIP all documentation relating to such warranties. Third party warranties are in addition to the obligations of the Supplier in respect of the quality of the Goods.

5.6. If the Supplier fails to correct Defective Goods or Services as and when directed under clause 5.3, UNIQUIP may, without further notice to the Supplier, engage another to replace or repair Defective Goods or re-perform Defective Services, and all costs and damages suffered by UNIQUIP in connection with the Supplier's failure will be a debt due and payable to UNIQUIP.

### 6. TITLE AND RISK

- 6.1. Risk in the Goods passes to UNIQUIP on Delivery.
- 6.2. Title to the Goods passes to UNIQUIP on payment or Delivery (whichever occurs first).

### 7. SAFETY AND ENVIRONMENT

7.1. The Supplier must perform its obligations under the Agreement with due regard for, and must take all precautions necessary to protect, the health and safety of persons and the environment.

7.2. While carrying out Services or performing Delivery, the Supplier must, and must ensure that its employees, agents and subcontractors:

- (a) attend any inductions UNIQUIP requires before they enter the Site or before they use any plant or equipment at the Site, as determined by UNIQUIP;
- (b) comply with all applicable policies and procedures of UNIQUIP and the Site in relation to health, safety and the environment;
- (c) comply with all directions issued by the person or persons in charge of the Site;
- (d) cooperate with others carrying out work at the Site and coordinate its work with the work of others so as to avoid disruption to others.

7.3. The Supplier must immediately advise UNIQUIP, and within 2 Business Days provide a written report to UNIQUIP, if:

- (a) it reasonably believes that any part of the Site or any plant or equipment at the Site is unsafe;
- (b) any person engages in work practices that are likely to put safety, health or the environment at risk; or
- (c) an incident or accident occurs.

7.4. Entry to the Site by the Supplier and the Supplier's Personnel and any others engaged to supply the Goods or perform the Services is at their own risk. UNIQUIP will not be responsible (to the extent permitted by Law) for any loss, damage or personal injury or death to such persons while on the Site or any other place provided by UNIQUIP in connection with Goods or Services.

7.5. The Supplier must, at its cost, immediately and permanently remove from the Site any person UNIQUIP considers (in its absolute discretion) is behaving in an unsafe or offensive manner.

### 8. PRICE & PAYMENT

8.1. The Price is fixed and not subject to any increase whatsoever, except to the extent expressly set out in this Agreement.

8.2. The Price includes all things necessary to supply the Goods or Services in accordance with the Agreement including:

- (a) labour, tools, equipment and materials;
- (b) complying with all Laws and obtaining all permits, licences and insurance;
- (c) packaging and transport; and
- (d) all taxes, duties, levies, excise and other government fees and charges (other than GST).

8.3. The Supplier may only issue a Payment Claim after Delivery has occurred, unless the Purchase Order specifies progress milestones, in which case a Payment Claim may be submitted after a milestone has been achieved. The Payment Claim must include:

- (a) written confirmation of delivery of the Goods and/or Services in accordance with this Agreement;
- (b) the relevant Purchase Order number or reference;
- (c) a detailed claim breakdown assigning a value to each individual work activity claimed and adequate proof of performance of each of the claimed work activities; and
- (d) if required by UNIQUIP, for the final balance of payment, a duly executed valid and enforceable release form, being a document if the form provided by UNIQUIP evidencing the release and discharge of UNIQUIP from any claims of the Supplier pursuant to this Agreement.

8.4. UNIQUIP is to pay the Supplier the Price in respect of the value of the Goods and Services Delivered in accordance with the Agreement at the time specified in the Purchase Order. If UNIQUIP intends to pay less than the amount claimed in a Payment Claim, it may:

- (a) give the Supplier a Payment Schedule within 10 Business Days of receipt of the Supplier's Payment Claim;
- (b) pay the agreed amount of the relevant Payment Claim (if any); and
- (c) dispute the balance of the Payment Claim, and if the resolution of the dispute determines that UNIQUIP is to pay an amount to the Supplier, UNIQUIP will pay that amount within 30 days.

8.5. The Supplier must submit to UNIQUIP a compliant tax invoice within 2 Business Days after receipt of the Payment Schedule. If the Supplier fails to submit a compliant tax invoice, the payment will not be processed.

8.6. UNIQUIP will pay the tax invoice 30 days from the end of the month of which it was received.

8.7. UNIQUIP may set off against any payment due to the Supplier any amount for which UNIQUIP determines the Supplier is liable to UNIQUIP, whether for expenses or damages, howsoever arising. If the amount payable by UNIQUIP is insufficient to discharge the liability of the Supplier, UNIQUIP may have immediate recourse to the

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Security. This clause does not limit UNIQUIP's right to recover any amounts in other ways.

exchange, but only to the extent that the information is required to be disclosed.

### 9. INDEMNITIES

- 9.1. The Supplier indemnifies UNIQUIP from any Claims, demands, suits, liabilities, actions, costs, losses, expenses, damages or penalties (including legal fees on an indemnity basis), which UNIQUIP may incur arising out of or in connection:
- breach of this Agreement by the Supplier;
  - wilful, unlawful or negligent act or omission of the Supplier;
  - loss of, loss of use of, destruction or damage to, property, caused or contributed to by the Supplier;
  - injury to or death of, persons caused or contributed to by the Supplier;
  - breach by the Supplier of a duty of confidence owed to UNIQUIP; or
  - any act of abandonment of some or all of this Agreement by the Supplier.

Any reference to the Supplier in this clause 9.1 includes the Supplier's Personnel.

- 9.2. The Supplier's liability is reduced to the extent a negligent act or omission of UNIQUIP contributed to the relevant claim, damage, expense, loss or liability.
- 9.3. Each indemnity in this Agreement is a continuing obligation, separate and independent from all other obligations and survives the termination or expiration of this Agreement.
- 9.4. A party must pay on demand any amount it must pay under an indemnity in this Agreement. It is not necessary for a party to incur an expense before enforcing an indemnity.
- 9.5. To the fullest extent permitted by Law:
- UNIQUIP has no liability to the Supplier under or arising out of this Agreement for any Excluded Loss; and
  - UNIQUIP's maximum aggregate liability under or arising out of this Agreement is limited to the Price.

### 10. INSURANCE

- 10.1. Unless otherwise specified in the Purchase Order, the Supplier must at its cost take out and keep current all necessary insurance policies reasonably expected of a Supplier of Goods and Services including (without limitation):
- marine cargo covering the Goods for their full replacement value whilst in transit to the Site;
  - where this Agreement requires the Supplier to perform or procure performance of any fabrication or erection at the Site:
    - contract works insurance in an amount equal to the Price; and
    - insurance of the Supplier's and its subcontractors' plant and equipment;
  - public and product liability for not less than \$20,000,000 per occurrence;
  - workers' compensation as required by Law;
  - third party comprehensive motor vehicle insurance until expiry of the Warranty Period; and
  - professional indemnity for not less than \$5,000,000.
- 10.2. The Supplier must provide UNIQUIP with evidence that these insurances have been effected in accordance with this clause within 2 Business Days of request by UNIQUIP, failing which UNIQUIP may take out such insurance itself and the cost of doing so will be a debt due and payable by the Supplier.

### 11. CONFIDENTIAL INFORMATION

- 11.1. The Supplier must keep confidential all Confidential Information and not disclose it to any other person, except:
- with the written consent of UNIQUIP;
  - to its professional advisers; or
  - to any of its workers who have a need to know in order to perform obligations under this Agreement, provided that the recipient agrees to keep the Confidential Information confidential.
- 11.2. Clause 11.1 does not apply to information that is required to be disclosed by Law or the requirements of a stock

### 12. INTELLECTUAL PROPERTY

- 12.1. All information and materials given to the Supplier by UNIQUIP under this Agreement are the property of UNIQUIP and only made available to the Supplier on condition that:
- the materials are to be used only for the purposes of the Agreement; and
  - if requested by UNIQUIP, all such materials and copies are promptly returned to UNIQUIP.
- 12.2. The Supplier gives UNIQUIP a non-exclusive, transferable, perpetual, royalty-free licence (including the right to sub-licence) to use, modify, maintain or destroy the Supplier's intellectual property in the Goods and Services (to the extent applicable).
- 12.3. The Supplier warrants that the supply of the Goods and Services by it, and the exercise of the rights granted under this Agreement, will not infringe any patent, trademark, copyright or other intellectual property right.

### 13. TERMINATION

- 13.1. UNIQUIP may terminate the Agreement immediately:
- on written notice to the Supplier, if the Supplier becomes insolvent, commits an act of bankruptcy, enters into administration, or appoints a liquidator, receiver, manager or controller;
  - if the Supplier breaches any term of the Agreement, and does not remedy the breach within the time specified by UNIQUIP in a notice to the Supplier of the breach (which time must not be less than 2 Business Days; or
  - for any reason in UNIQUIP's absolute discretion on 7 days' written notice to the Supplier or as otherwise specified by UNIQUIP in the notice.
- 13.2. If UNIQUIP terminates the Agreement, the Supplier will have no Claim, demand, suit, liability or action against UNIQUIP or its directors, officers and employees and is not entitled to any costs, losses, expenses, damages or penalties arising out of or in connection with the Agreement or its termination or the supply of the Goods or Services.
- 13.3. If UNIQUIP terminates the Agreement in accordance with clause 13.1(a) or (b), any costs incurred by UNIQUIP in engaging another to complete the Supplier's obligations under this Agreement will be a debt due and payable from the Supplier to UNIQUIP.
- 13.4. If UNIQUIP terminates the Agreement in accordance with clause 13.1(c), the Supplier will be entitled to the reasonable costs incurred by the Supplier in supplying the Goods or Services up to the date of termination provided that UNIQUIP receives title to any Goods that are paid for in accordance with this clause.
- 13.5. For the avoidance of doubt, nothing in this clause entitles the Supplier to any Excluded Loss.

### 14. RELATIONSHIP

The Supplier performs its obligations as an independent contractor of UNIQUIP and not as an employee, agent or partner.

### 15. GENERAL

- 15.1. If the Supplier comprises more than one person or entity, each of them will be jointly and severally liable for the full performance of the Supplier's obligations under the Agreement.
- 15.2. If any provision of the Agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in the Agreement.
- 15.3. UNIQUIP and the Supplier agree that the Laws in force New South Wales apply to the Agreement and both submit to the exclusive jurisdiction of the courts of New South Wales.
- 15.4. The failure of a party to require full or partial performance of a provision of the Agreement does not affect the right of that party to require performance subsequently.
- 15.5. No obligation in the Agreement is waived unless it is waived in writing and signed by the parties. A single or partial exercise of or waiver of the exercise of any right power or

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remedy does not preclude any other or further exercise of that or any other right, power or remedy.

- 15.6. The Agreement any only be amended by written agreement between all parties.

### 16. PPSA

- 16.1. The Supplier must not register any Security Interest over the Goods.
- 16.2. The Goods must be free of any Security Interests on Delivery.
- 16.3. If UNIQUIP pays part of the Price prior to Delivery, the Supplier grants to UNIQUIP a Security Interest in the Goods as a Purchase Money Security Interest for the unpaid portion of the Price.

### 17. INTERPRETATION

In this Agreement:

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

- (a) a Saturday, Sunday or public holiday; and
- (b) 27, 28, 29, 30 and 31 December.

**Claim** means any claim, right of action or demand (or similar legal entitlement), in any jurisdiction, including but not limited to at law, in tort (including negligence), under statute, in equity or for any other legal or equitable remedy.

**Confidential Information** means any information relating to the business or affairs of UNIQUIP or its customers, whether provided to or obtained by the Supplier prior to or after issue of the Purchase Order, except information in the public domain (other than due to breach of the Agreement) or information rightfully, in the possession of the Supplier and not subject to an obligation of confidentiality at the time it was obtained by the Supplier.

**Delay Event** means an act or omission of UNIQUIP in breach of this agreement that delays Delivery.

**Deliver/Delivery** means delivery of the Goods or performance of the Services in accordance with this Agreement.

**Delivery Date** means the date set out in the Purchase Order.

**Excluded Loss** means 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 use, loss of productivity, 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 any special, incidental, punitive, indirect or consequential damage of any kind.

**Goods** means the goods, if any, described in the Purchase Order and all applicable Technical Materials.

**Law** includes legislation, regulations, by-laws, orders, permits, approvals or licences.

**Payment Schedule** is a written notice that:

- (a) identifies the Payment Claim to which it relates;
- (b) states the amount of the payment, if any, that UNIQUIP proposes to make; and
- (c) if the amount that UNIQUIP proposes to make is less than the claimed amount, state why the amount is less, and if any money is being withheld, gives reasons why it is being withheld.

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

**Price** means the amount payable for the Goods or Services specified in the Purchase Order, as may be adjusted in accordance with the Agreement.

**Purchase Money Security Interest** has the same meaning as under the PPSA.

**Purchase Order** means a purchase order, quotation or acceptance for the Goods or Services that is issued by UNIQUIP, and includes the terms and conditions contained in this document.

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

**Security Interest** has the same meaning as under the PPSA.

**Site** means the site specified in the Purchase Order or any other place provided by UNIQUIP for the Supplier to perform work arising out of or in connection with the Goods or Services.

**Supplier** means the person described in the Purchase Order.

**Supplier's Personnel** means the Supplier's directors, officers, employees, agents, contractors, agents and invitees.

**Technical Materials** means all plans, designs, drawings, engineering information, data, specifications, reports, accounts, installation instructions, maintenance and operating manuals, spare parts lists and any other technical material reasonably required for the safe installation, use and maintenance of the Goods.

**Warranty Period** means the period commencing upon Delivery and as specified in the Purchase Order, failing which the first to expire of 18 months from Delivery or 12 months from putting into operation.

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