

# CONTRACT RESOURCES PURCHASE ORDER TERMS AND CONDITIONS (ME)

## 1. Supply of Goods & Services

1.1 You must supply the Goods and/or provide the Services to us in accordance with, and as specified in the Order.

## 2. Conditions as to quality and description of the Goods

2.1 The Goods must match the description (including performance criteria) in the Order. If you gave us a sample of the Goods before you fulfilled the Order, the Goods must correspond with the sample in addition to matching the description.

2.2 The Goods must comply with any relevant standard and any other standard as may be specified in the Order.

2.3 The Goods must be 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.

2.4 The Goods must be new and of merchantable quality unless otherwise stated in the Order.

2.5 The Goods must be clearly marked with the identification marks specified in the Order. These identification marks must also be shown on drawings and on dispatch and shop lists.

2.6 Any computer software or hardware supplied in connection with the Goods must operate properly and in accordance with any specifications that may be set out in the Order.

2.7 The Goods must meet the Safety Performance Requirements of the intended purpose.

## 3. Conditions as to quality of Services

3.1 The Services must match the description of the Services in the Order.

3.2 If you provided us with a demonstration of the Services before you fulfilled the Order, the Services must correspond in nature and quality with the Services demonstrated.

3.3 If you showed us a result to be achieved by the Services before you fulfilled the Order, the Services must correspond in quality with that result.

3.4 The Services must be performed by appropriately qualified and trained personnel.

3.5 The Services must be performed with due care and skill.

3.6 The Services must be fit for the purposes for which those types of services are commonly bought and for any other purposes which we tell you about.

3.7 Any items which you use or supply in conjunction with the Services must be of merchantable quality, comply with any applicable standards and any other standards specified in the Order and be fit for their usual purpose and any purpose which we tell you about.

3.8 Where there is a procedure for obtaining accreditation in relation to the provision of a service of the same nature as the Services then the Services must be provided to the standard required by the relevant accreditation body and you must be accredited by the accreditation body at the time that the Services are provided.

## 4. Inspection and information

4.1 You must keep us fully informed on all aspects of the delivery of the Goods and/or the performance of any Services, as required by us from time to time.

4.2 You must provide to us at our request:

- (a) copies of all Technical Materials relating to the Goods and/or Services;
- (b) progress reports setting out, in such detail as we request, the different stages of design, manufacture and testing of the Goods and/or Services; and
- (c) a detailed program for the projected supply of the Goods and/or Services.

4.3 At all reasonable times, we have the right to:

- (a) inspect, examine and witness tests on the Goods or, the performance of the Goods;
- (b) inspect, examine and witness tests on any Services or their results; and

(c) carry out site inspections, at your premises and at the premises of any of your Sub-Contractors.

4.4 You agree to ensure that we are provided with access to your premises and that all facilities required for us to inspect, examine and witness the testing of the Goods and/or Services are made available to us.

4.5 You must advise us when any part of the Goods or the Services has been completed and is ready for review, inspection, examination or witnessing of testing.

4.6 You must give us and our representatives 10 days' notice of the date the Goods will be ready for delivery, final inspection or for performance tests prior to delivery, so that we or our representatives can be present.

4.7 If, as a result of our review, inspection, examination, or witnessing of testing, we are not satisfied that the Goods and/or any Services will comply in all respects with the Order and we inform you in writing of our dissatisfaction, you agree to take such steps as are necessary to ensure compliance with the Order.

4.8 We have the right to withhold any payment of money due to you under the Order until such time as the Goods and/or Services comply with the Order.

4.9 Any review, inspection, examination or witnessing of testing that we undertake prior to delivery of the Goods and/or provision of the Services does not relieve you of your responsibilities under these Standard Terms and Conditions

## 5. Performance on Our Premises

5.1 You must, in delivering the Goods to Our Premises and performing the Services:

- (a) use your best efforts not to interfere with any of our activities, or the activities of any other person, on Our Premises;
- (b) be aware of, comply with, and ensure that your Personnel comply with:
  - (i) all applicable laws regulations and industrial awards and agreements, including all applicable safety, health and environment laws and regulations; and
  - (ii) all safety, health and environment guidelines, rules and procedures applicable to Our Premises or specified in the Order; and
  - (iii) all directions and orders given by our representatives; and
- (c) ensure that Our Premises are left secure, clean, orderly and fit for immediate use.

## 6. Plant & equipment

6.1 Unless the Order provides differently, you agree to supply, at your own expense, all labour, plant, equipment, tools, appliances or other property and items you require to fulfil your obligations under the Order.

6.2 Any plant, equipment, tools, appliances or other property and items that we provide to you to enable you to complete the Order remains our property and must only be used for the purposes of fulfilling your obligations under the Order.

6.3 You must keep our property in good order and condition. Allowance for fair wear and tear may be made in specified cases prior to the provision of our property.

6.4 You are responsible and must compensate us for any loss or damage to or waste of Our Premises or property by your Personnel.

## 7. Price

7.1 We agree to pay you the Price specified in the Order.

7.2 Unless the Order provides otherwise, the Price is inclusive of:

- (a) all charges for packaging, packing, insurance and delivery of the Goods in accordance with the Order;
- (b) the cost of the Services and any items used or supplied in conjunction with the Services; and

- (c) all Taxes except VAT.
- 7.3 Unless the Order provides otherwise, the Price excludes VAT. Subject to clause 13.9, the Price may not be increased without our prior written consent. We have the right to refuse to give our consent.
- 8 Invoicing and payment**
- 8.1 Unless the Order states that progress payments are to be made, you must invoice us upon delivery of the Goods and/or upon completion of the Services.
- 8.2 Where progress payments are to be made, you must invoice us at the end of each calendar month (or other period specified in the Order) for Goods delivered and/or Services performed by you in that month or that period (as the case may be).
- 8.3 When submitting your invoice under clause 8.1 you must provide us with all relevant records to enable us to calculate and/or verify the amount of the invoice together with the number of the Order.
- 8.4 We will pay all invoices rendered to us by you under clause 8.1 or clause 8.2, 30 days after the end of the month in which the invoice was submitted, except where we:
- (a) exercise our right to retain part of the price pursuant to clauses 4.8, 8.5 or 16.8; or
  - (b) dispute the invoice, in which case:
    - (i) we will pay the undisputed part of the relevant invoice (if any) and dispute the balance; and
    - (ii) if the resolution of the dispute determines that we are to pay an amount to you, we will pay that amount as soon as practicable after resolution of that dispute; or
  - (c) receive an invoice that is submitted more than 90 days after the Goods have been delivered and/or performance of the Services has been completed.
- 8.5 We may reduce any payment due to you under the Order 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.
- 8.6 We may, at any time on written notice, conduct an audit of the basis of your charges using your records. This right continues for 12 months after the end of this Agreement.

**9 Title and risk**

- 9.1 Unless otherwise stated in the Order, title to and risk in the Goods does not pass to us until we take delivery of the Goods.
- 9.2 You warrant that:
- (a) you have complete ownership of the Goods free of any liens, charges and encumbrances and will provide the Goods to us on that basis; and
  - (b) we will be entitled to clear, complete and quiet possession of the Goods.

**10 Delivery and/or Completion**

- 10.1 Except where the Order provides otherwise, you are responsible for ensuring that the Goods are properly marked, packed and delivered by the time or times and to the place specified in the Order. Such markings and packaging must be in compliance with government regulations and any requirements specified in the Order.
- 10.2 You must deliver the Goods to us by such means as is specified in the Order and you must comply with all relevant road and rail transport laws and regulations.
- 10.3 If the quantity of Goods delivered is greater than that specified in the Order, we may return to you, or demand in writing that you collect from us, any excess quantities at your sole risk and expense. You must collect any such excess quantities of Goods from us as soon as possible after receiving our demand.
- 10.4 You must include a delivery docket in each package of Goods delivered to us. The delivery docket must detail the:
- (a) Order number
  - (b) item number;
  - (c) Units of measure (as per the Order); and
  - (d) quantity delivered.
- 10.5 You must clearly mark each package of Goods to be delivered to us with its gross dead weight and with such marks and shipping numbers as are specified in the Order.

- 10.6 Subject to clause 11 and unless agreed otherwise, where a Delivery Date and/or Completion Date is specified you must ensure that the delivery of the Goods and/or the provision of the Services are completed on or before that date.
- 10.7 You must advise us not less than 12 hours before the time of any commissioning of any Goods and must adhere to any relevant manufacturer's recommendations.
- 10.8 Prior to bringing any substance, including but not limited to dangerous or hazardous substances, onto Our Premises, you must:
- (a) give us a copy of the relevant MSDS, which must comply with any relevant regulations or codes of practice on the preparation of Material Safety Data Sheets; and
  - (b) ensure that our Safety, Health and Risk Department has approved the use of the substance on Our Premises.
- 10.9 You and your Personnel must:
- (a) in delivering the Goods comply with:
    - (i) all laws and regulations that apply to the transport of Goods by road or rail; and
    - (ii) operating standards provided to you by us;
  - (b) provide to us any information or documents reasonably required by us to audit your and your Personnel's compliance with our fatigue management requirements and relevant driver fatigue management legislation where applicable; and
  - (c) supply vehicles which can safely and legally carry the loads provided for transport.

**11 Extension of Time**

- 11.1 Clause 11.2 applies if you are or will be delayed in supplying the Goods and/or performing the Services:
- 11.2 You must give us the earliest possible notice in writing stating:
- (a) the cause of the delay; and
  - (b) the effect on the completion of the Services and/or the delivery of the Goods (as the case may be).
- 11.3 The giving of any notice by you under clause 11.2 above does not affect your obligation to deliver the Goods and/or complete the Services by the specified Delivery Date or Completion Date in accordance with clause 10.6 and we reserve all our rights, remedies and powers under the contract formed in relation to the Order and under the law in relation to any breach by you of clause 10.6.
- 11.4 We may, at any time, and for any reason whatever, by notice in writing to you extend the time for completion of the Services and/or delivery of the Goods.

**12 Acceptance of the Goods and Services**

- 12.1 We will not be deemed to have accepted any Goods or Services until we have had a reasonable time to inspect the Goods after delivery and to inspect and test the results of any Services after performance. Payment for the Goods and any Services or the signing of delivery receipts before inspection does not constitute acceptance of the Goods or the Services.
- 12.2 If upon inspection we find any Goods to be Defective Goods, we may, at our option, and after notifying you in writing:
- (a) reject the Defective Goods; or
  - (b) make good the Defective Goods. You must collect any Defective Goods that we reject as soon as possible after receiving our written notification.
- 12.3 If upon inspection or testing we find any Services to be Defective Services, we may, at our option, and after notifying you in writing:
- (a) reject the Defective Services; or
  - (b) make good the Defective Services.
- 12.4 At our option and request, you agree to:
- (a) refund to us any payments made by us in respect of any Defective Goods and any Defective Services that we reject; or
  - (b) make good free of charge any Defective Goods and any Defective Services that we reject; or
  - (c) reimburse us for any expenses we incur in making good any Defective Goods and any Defective Services, under clauses 12.2 and 12.3.

- 12.5 Our inspection, testing or acceptance of some or all of the Goods or Services does not in any way:
- (a) change or affect your obligations under the Order; or
  - (b) affect our rights to claim for any damage or loss we may suffer because of your breach of warranty or failure to fulfil any of your other obligations under the Order.

- 12.6 If we decide to accept some Goods or some Services from you which do not comply with the terms of the Order, this decision does not bind us to accept future shipments of Goods or the future performance of Services which do not comply with the terms of the Order. Payment for Goods or work done prior to inspection is not to be construed as an acceptance of defective Goods or Services by us.

### **13 Termination, variation and suspension of the Order**

- 13.1 We may immediately terminate the contract formed in relation to the Order by notice in writing to you if:
- (a) you do not comply with or are in breach of any of your obligations under the Order or these Standard Terms and Conditions and such non-compliance or breach is not remedied within 14 days after we request you to remedy it;
  - (b) any representation, warranty or statement made by or repeated by you in or in connection with the Order is untrue or misleading (whether by omission or otherwise) in any material respect when so made or repeated;
  - (c) an Insolvency Event occurs in respect of you; or
  - (d) in our opinion, there is a Change of Control in relation to you. You acknowledge that each and every of the events described above are deemed to be fundamental breaches of the contract formed in relation to the Order for the purposes of that contract and in the event of termination we are entitled to full contractual damages.
- 13.2 We may terminate the contract formed in relation to the Order at any time by notice in writing for reasons of professional misconduct, professional incompetence or misrepresentation of technical skills by you.
- 13.3 We may terminate the contract formed in relation to the Order at any time upon 24 hours written notice to you.
- 13.4 We may vary the Order or part of the Order at any time upon 7 days' written notice to you.
- 13.5 When you receive a notice of variation from us, you must:
- (a) vary the Order in accordance with our notice; and
  - (b) send us a Written Claim with an adjusted Price for the Order within 30 days of the effective date of variation.
- 13.6 When you receive a notice of termination from us, you must:
- (a) stop work to the extent required by the notice;
  - (b) take such action as necessary or as we direct, for the transfer, protection and preservation of our property;
  - (c) do your best to minimise the cost of termination to us; and
  - (d) where the notice is given under clause 13.3 only, send us a Written Claim with an adjusted Price for the Order within 30 days of the effective date of termination.
- 13.7 Your Written Claim must:
- (a) set out all costs incurred to date in relation to the Order;
  - (b) set out all costs and cost savings that result from the variation or termination of the Order;
  - (c) where the Order has been terminated under clause 13.3, not specify an adjusted Price that is greater than the Price specified in the Order; and
  - (d) not specify an adjusted Price that includes any amount for anticipated profit, unperformed work or consequential loss or damage.
- 13.8 We have the right to audit the adjusted Price specified in your Written Claim.
- 13.9 The adjusted Price will apply to the Order, if:
- (a) we are satisfied that the adjusted Price specified in your Written Claim is equitable; and
  - (b) the termination or variation of the Order is not a result of any default or action on your part, or on the part of your Personnel (including, without limitation, any of the events specified in clauses 13.1 or 13.2),

- 13.10 Any expiration or termination of the Order does not affect:
- (a) any rights of the parties which may have accrued before the date of termination; and
  - (b) the rights and obligations of the parties under clauses 17, 18 and 19 which survive termination of the Order.

### **14 Independent contractor**

- 14.1 Both parties acknowledge that you are our contractor and not our employee or agent.
- 14.2 You must ensure that each of your Sub-Contractors acknowledges in each sub-contract that the Sub-Contractor is your contractor and not your employee or agent.

### **15 Warranties**

- 15.1 You warrant that:
- (a) the Goods will be free from any defect in design, performance, workmanship and
  - (b) makeup, and will conform with the Order (including, without limitation, clause 2); and
  - (c) the Services and the results of the Services will be in conformity with the Order (including, without limitation, clause 3), of high quality and workmanship and otherwise satisfactory, for the Warranty Period.
- 15.2 If, during the Warranty Period, we find any of the Goods to be Defective Goods, we may, at our option, and after notifying you in writing:
- (a) reject the Defective Goods; or
  - (b) make good the Defective Goods.
- You must collect any Defective Goods that we reject as soon as possible after receiving our written notification.
- 15.3 If, during the Warranty Period, we find any of the Services or their results to be Defective Services, we may, at our option, and after notifying you in writing:
- (a) reject the Defective Services; or
  - (b) re-perform or make good the Defective Services.
- 15.4 At our option and request, you agree to:
- (a) repair or, at our option, replace any Defective Goods that we reject free of charge;
  - (b) re-perform or make good any Defective Services that we reject free of charge; and
  - (c) reimburse us for any expenses we incur in making good any Defective Goods and any Defective Services, during the Warranty Period.
- 15.5 Any repairs or replacement Goods provided by you under this clause will be subject to the same warranty as the original Goods, from the date of repair or replacement.
- 15.6 Any Services that are re-performed or made good by you under this clause will be subject to the same warranty as the original Services, from the date of re-performance or on which the Services were made good.
- 15.7 You will not be liable for any defect in the Goods or any fault in any Service that is caused by our negligence or the negligence of our employees.
- 15.8 The remedies provided in this clause do not exclude any other remedies provided by law.

### **16 Insurance**

- 16.1 You must effect or cause to be effected all risks property insurance for the Goods and for any specialised plant and equipment used in relation to the supply of Goods against the risk of loss, damage or destruction caused by insurable risks including theft, malicious damage, fire, lightning, storm and tempest for their full reinstatement or replacement value and including cover while the Goods and specialised plant and equipment are in transit or, in temporary storage during the course of transit.
- 16.2 You must effect or cause to be effected:
- (a) except in respect of the risks dealt with at clause 16.2(b) and clause 16.2(c), a broad form public and products liability policy written on an occurrence basis with a limit of indemnity of not less than \$US10 million for each occurrence and, with respect to products liability only, also in the aggregate for all occurrences during the policy period, which covers your liability (including to us) in respect of:

- (i) loss of, damage to, or loss of use of property; and
  - (ii) the injury (including disease or illness) to, death of or illness of any person, happening anywhere in Australia and arising out of or in the course of or in connection with the performance by you of the contract formed in relation to the Order. The definition of products under the policy is to be sufficiently wide to include all Goods to be supplied by you;
  - (b) comprehensive motor vehicle insurance with a limit of liability of not less than \$US10 million for each occurrence which covers third party property damage arising from or in relation to any plant or vehicles (registered or unregistered) or any injury to or death of any person arising from or in relation to the use of any unregistered plant or vehicle in the course of performing the contract formed in relation to the Order; and
  - (c) compulsory third-party vehicle insurance for all registered vehicles used in the course of performing the contract formed in relation to the Order.
- 16.3 You must effect or cause to be effected insurance which fully insures any injury, damage, expense, loss or liability suffered or incurred by any person engaged by you in the performance of the contract formed in relation to the Order (or their dependants) giving rise to a claim under any statute relating to workers or accident compensation or for employers liability at common law in every State or Territory where the Agreement will be carried out as well as each State or Territory where your employees normally reside or where their contract of employment was made and, where possible at law or under the relevant State or Territory scheme extending to indemnify us as principal for principal's liability to persons engaged in performing the contract formed in relation to the Order by you.
- 16.4 You must effect or cause any other insurances reasonably required by us from time to time.
- 16.5 You must ensure that each insurance referred to in this clause is in effect from the date of the Order and are maintained:
- (a) in the case of the insurance referred to at clause 16.1, until the Goods are delivered and installed (if required) in the case of the Goods and until the expiration or termination of the Contract formed in relation to the Order, in the case of the specialised plant and equipment;
  - (b) in the case of the insurances referred to at clause 16.2 and clause 16.3 until the expiry or earlier termination of the contract formed in relation to the Order; and
  - (c) in the case of any insurance required by us under clause 16.4, until the date notified by us to you.
- 16.6 You must, if requested by us, in respect of each of the insurances referred to in this clause 16 provides us with a copy of the policy wording and a certificate of currency at the date of the Order.
- 16.7 If you do not comply with clause 16.6 we may, but are not obliged to, effect the relevant insurances and may recover the cost of doing so as a debt from you or deduct the premiums payable from any amounts payable to you under the Order.
- 16.8 You must notify us immediately that you receive a notice of cancellation or any other notice in respect of the insurances required to be maintained under this clause 16 from any insurer and you must provide us with a copy of that notice without undue delay.
- 16.9 You must ensure that the insurance referred to in clause 16.2 extends to insure us for our vicarious liability for acts or omissions by you and your Personnel and the policy must provide that the insurer waives all rights of subrogation which it may otherwise be entitled against us to the extent that we are insured under the policy.
- 16.10 In respect of any insurance effected which insures multiple insureds you must ensure that the policy includes a cross-liability clause, a clause in which the insurer agrees not to impute the acts or omissions of one insured to another insured and, a clause in which the insurer agrees that any non-disclosures or misrepresentations prior to the effecting of the policy by any person will not be imputed to any other insured.
- 16.11 Subject to your obligations to your insurers, you must inform us immediately you become aware of any actual, threatened or likely claims under any of the insurances referred to in this clause 16 which could materially reduce the available limit.
- 16.12 You must ensure that all Sub-Contractors are similarly insured as required by this clause 16 as if they were you, as is appropriate given the nature of the goods to be supplied or services to be provided by those Sub-Contractors.
- 16.13 The provisions of this clause 16 are not to be read so as to reduce your liability under any other provision of the Order or these Standard Terms and Conditions.
- ## 17 Liability and indemnities
- 17.1 You acknowledge that if you enter Our Premises then, to the extent permitted by law, you do so at your own risk. You must ensure that your Personnel are also aware that they enter Our Premises at their own risk.
- 17.2 You will be liable for, and will indemnify us and keep us indemnified from and against any liability and any loss or damage of any kind whatsoever arising directly or indirectly from:
- (a) any breach of any warranty or any of the other terms and conditions of the Order by you;
  - (b) any loss or damage arising out of, or in connection with, any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused or contributed to by:
    - (i) the Goods and the performance of any Services by you; and/or
    - (ii) the entry onto, and the activities undertaken on and in, Our Premises by you or your Personnel;
  - (c) any negligence or wilful act or omission by you and/or any of your Personnel in connection with fulfilment of the Order;
  - (d) any claim made against us by or on behalf of any of your Personnel, or by any government or regulatory authorities, in respect of any relevant legislation concerning pay-roll tax, remuneration, income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal;
  - (e) any penalty imposed for breach of an applicable law in connection with the performance of the Services by you;
  - (f) loss or damage to any plant, equipment, tools, appliances or other property owned, rented or hired by you and used in relation to the Order; and
  - (g) 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 of any person; except to the extent that any liability, loss or damage is solely and directly caused by our wilful misconduct or Gross Negligence or that of our Personnel (other than you).
- 17.3 Every exemption, limitation, defence, immunity or other benefit contained in the Order to which we are entitled will also be held by us to the benefit of, and will extend to protect, each of our Personnel (excluding you and your Personnel).
- 17.4 Each indemnity in the Order is a continuing obligation separate and independent from your other obligations and survives termination of the Order.
- 17.5 It is not necessary for us to incur expense or make payment before enforcing a right of indemnity conferred by the Order.
- 17.6 If we enter the Order as agent for and on behalf of joint venture partners, the liability of each of those joint venture partners under the Order is several and not joint, nor joint and several.
- ## 18 Intellectual property
- 18.1 You acknowledge that we own all right, title and interest in Our Technical Materials and that subject to Clause 18.2 you have no right, title or interest in Our Technical Materials.
- 18.2 We grant you a licence to reproduce and use Our Technical Materials as necessary for the purpose of completing the Order. You must not reproduce, use or otherwise deal with Our Technical Materials, or allow any other person to do the same, for any other purpose. We have the right to revoke this licence at any time by notice in writing to you.
- 18.3 We acknowledge that you remain the owner of all Background IP.

- 18.4 You give us a non-exclusive, transferable, royalty free licence to use all Background IP to the extent necessary to enable us to exercise rights in the Project IP.
- 18.5 You acknowledge and agree that all Project IP will be vested in us and will be our property as and when created and you hereby assign all rights, title and interest in and to the Project IP to us (including but not limited to the Project IP created prior to or after the date of the Order).
- 18.6 We give you a licence to reproduce and use the Project IP as necessary for the purpose of completing the Order. You must not reproduce, use or otherwise deal with the Project IP, or allow any other person to do the same, for any other purpose. We have the right to revoke this licence at any time by notice in writing to you.
- 18.7 You must not disclose, reproduce or otherwise deal with the Project IP, or allow any other person to do the same, for any purpose other than to complete the Order.
- 18.8 You warrant that:
- (a) the supply of Goods and/or provision of Services does not and will not infringe the rights (including, but not limited to, Intellectual Property Rights) of any third party;
  - (b) you will, at no further cost to us, procure all licences and consents to use any Intellectual Property Rights of a third party which are necessary to supply the Goods and/or provide the Services;
  - (c) the Project IP does not and will not infringe any rights of third parties (including without limitation any Intellectual Property Rights); and
  - (d) you have the right to assign all Project IP to us in accordance with clause 18.5.
- 18.9 You agree that any sub-contract you enter into in relation to the Order will contain a condition that the Sub-Contractor agrees to assign to us all Intellectual Property Rights in any Project IP created by it for the purposes of the Order.
- 18.10 You agree to notify us as soon as you become aware of any suspected, threatened or actual infringement of any Intellectual Property Rights in Our Technical Material and the Project IP and to provide all reasonable assistance in defending against such infringement.
- 18.11 You agree to provide all reasonable assistance we may request to protect the Intellectual Property Rights in Our Technical Material and the Project IP.
- 18.12 The obligations in this clause continue after the contract in relation to the Order is terminated.

## **19 Confidential information**

- 19.1 Each Party undertakes that it will not, during the term of the contract in relation to the Order and any time thereafter (except in the proper course of its duties under the Order or as required by law or by the other Party) disclose to any person any Confidential Information of or relating to the other Party of which it has become possessed as a result of the Order or the negotiations preceding the Order including, but not limited to, the terms of the Order.
- 19.2 Nothing in this clause 19 prohibits disclosure of information which:
- (a) is in the public domain;
  - (b) after disclosure to a Party becomes part of the public domain otherwise than as a result of the wrongful act of that Party;
  - (c) is received from a third party provided that it was not acquired directly or indirectly by that third party from a Party to the Order; or
  - (d) is required to be disclosed by law or any government or governmental body, authority or agency having authority over a Party.
- 19.3 The obligations under this clause 19 survive termination of the Order.
- 19.4 The terms of the Order may be disclosed to:
- (a) any legal, financial and other adviser of a Party;
  - (b) the auditor of a Party; or
  - (c) a bona fide prospective purchaser of a Party or the business of that Party provided that such bona fide prospective

purchaser agrees to keep the terms of this agreement confidential in accordance with clause 19.

## **20 Payments to your Personnel and Set-Off**

- 20.1 If an Insolvency Event occurs in relation to you, we may, on behalf of you, make payments directly to any Personnel of you, out of moneys payable to you.
- 20.2 If any of your Personnel obtain a court order in respect of moneys owed to it by you and produces to us the court order and a statutory declaration that it remains unpaid, we may pay the amount of the order, and costs included in the order, to that Personnel and the amount paid shall be a debt due from you to us.
- 20.3 We will be entitled to deduct any moneys paid under clauses 20.1 or 20.2 above to the Personnel from any money due from us to you.
- 20.4 We may deduct from moneys due to you any money due from you to us whether under the contract in relation to the Order or otherwise.

## **21 Taxes**

- 21.1 Clauses 21.3 to 21.10 only apply where the terms of delivery as specified in the Order provide or require:
- (a) you to deliver the Goods to us at a point after the Goods have been cleared for import into Australia; or
  - (b) that duty is included.
- 21.2 Where the terms of delivery as specified in the Order provide that you must deliver the Goods to us at a location before the Goods have been cleared for import into Australia then unless the Order also provides that duty is included, all import taxes, duties or excises levied on, in respect of, or in relation to the importation of the Goods and/or Services into Australia by Australian authorities at and from the time they are cleared for import, will be to our account. All other Taxes (other than VAT) levied on, in respect of, or in relation to the Goods and/or Services will be to your account and you must provide documentary evidence of the payment of those Taxes if made on our behalf.
- 21.3 Except as provided by clause 21.2 above, should any Taxes be levied on, in respect of, or in relation to, the Goods and/or Services these will be to your account. You will be responsible for the payment of those Taxes and will provide documentary evidence of the payment of those Taxes if made on our behalf.
- 21.4 Without limiting clause 21.3, you will be solely liable for income tax imposed on you in respect of income derived by you in the provision of the Goods and/or performance of the Services.
- 21.5 Unless the consideration for the supply is stated to be inclusive of VAT, if VAT has application to any supply made by a supplier under or in connection with the Order, the supplier may, in addition to the consideration payable or to be provided for the supply, subject to issuing an invoice, recover from the recipient an additional amount on account of VAT, such amount to be calculated by multiplying the amount or consideration payable or to be provided for the supply by the prevailing VAT rate.
- 21.6 If any change in law (including the VAT law) effects or is accompanied by or undertaken in connection with a reduction in or abolition of any then existing Taxes (including, without limitation, the allowance to any person of a rebate, credit, grant or any other amount referable to a Tax but not including income tax payable by you on your income), the consideration (excluding any VAT) payable by us will be reduced by the same amount as your actual total costs are reduced as a consequence of a reduction in or abolition of Taxes, whether directly by way of a reduction in or abolition of Taxes paid or payable by you to your third party suppliers or to any government, or indirectly by way of reduction in the prices (excluding any VAT) charged by third party suppliers to you or the allowance to you or any other person of a rebate, credit, grant or any other amount referable to a Tax (whether such Tax has been paid or is payable by you or any other person).
- 21.7 If it is determined on reasonable grounds that the amount of VAT paid or payable by the recipient on any supply made under or in connection with the Order differs for any reason from the amount of VAT recovered or recoverable from the recipient then the amount of VAT recovered or recoverable from the recipient shall be adjusted accordingly.

- 21.8 All amounts payable by us to you by way of reimbursement of an amount paid or payable by you to any other person, or calculated on the basis of amounts incurred or to be incurred by you, shall be calculated on the basis of such amounts paid or payable by you, or costs incurred or to be incurred by you, excluding any applicable amount in respect of VAT incurred by you to the extent to which you are entitled to an input tax credit in respect of such VAT or amount.
- 21.9 We can request that you enter into a written agreement with us in relation to a particular supply or supplies under this Agreement which provides that:
- (a) we will issue a recipient created invoice for the acquisition that we make (or are deemed to make) from you and will provide you with a copy of any such recipient created invoice;
  - (b) you will not issue a invoice for the supply you make (or are deemed to make) to us;
  - (c) you will promptly provide us all information necessary to enable us to issue a recipient created invoice on a timely basis; and
  - (d) each Party will notify the other party if they cease to be registered for VAT or cease to satisfy the requirements for the issue of recipient created invoices.
- 21.12 In this clause 21 supplier means the party making the supply and recipient means the party to whom the supply is made.

## **22 Assignment, sub-contracting and Change of Control**

- 22.1 You may not assign the rights and/or obligations under the contract formed in relation to the Order without our prior written consent.
- 22.2 We have the right to assign any or all of our obligations or rights under the contract formed in relation to the Order at any time to any party that is financially capable of meeting our obligations under the Order.
- 22.3 You may not sub-contract your obligations under the Order unless we consent to such arrangement.
- 22.4 Any consent given by us under this clause must include a condition that the Sub-Contractor or assignee agrees to be bound by the Order.
- 22.5 Sub-contracting does not relieve you from any liability or obligation under the Order. You remain liable to us for the acts and omissions of any Sub-Contractors, as if they were your acts or omissions.
- 22.6 You must notify us immediately upon becoming aware of a Change of Control or the likelihood of a Change of Control, in relation to you. We have the right at any time on or after a Change of Control of you to terminate the contract formed in relation to the Order in accordance with clause 13.1(d).

## **23 Notices**

- 23.1 Any notice, approval, consent or other communication in relation to the Order must:
- (a) be in writing;
  - (b) be marked for the attention of:
    - (i) in the case of a notice to us, the Contract Resources Representative; and
    - (ii) in the case of a notice to you, the Supplier Representative, and
  - (c) be left at or sent by prepaid ordinary post to the last notified address of the Party, sent by facsimile to the last notified facsimile number of the Party, or sent by electronic mail ("email") to the last notified email address of the Party.
- 23.2 A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.
- 23.3 If posted in Australia, a letter is taken to be received on the third day after posting.
- 23.4 If posted overseas, a letter is taken to be received on the seventh day after posting.
- 23.5 A facsimile is taken to be received at the time shown in a transmission report by the machine which indicates that the whole facsimile was sent.
- 23.6 An email is taken to be received at the time shown in a delivery confirmation report generated by the sender's email system.

## **24 These terms are exclusive**

- 24.1 You accept the Order and agree to be bound by the terms in the Order by executing the Order, or by delivering any Goods or by starting performance of Services under the Order.
- 24.2 The Order, when bearing an order number and duly signed on our behalf, is the only form which we will recognise as authority for charging Goods and/or Services to our account and supersedes all previous communications and negotiations in relation to the Goods and/or Services.
- 24.3 Except as may be specifically provided in the Order, any terms and conditions contained in or relating to any other documents, including any of your documents, in respect of the Goods and/or Services are excluded.

## **25 Other matters**

- 25.1 Any of our rights under these terms can only be waived by us in writing.
- 25.2 Subject to clause 13.4, these terms may not be varied except in writing signed by both Parties.
- 25.3 We may exercise a right, remedy or power in any way we consider appropriate.
- 25.4 If we do not exercise a right, remedy or power at any time, this does not mean that we cannot exercise it later.
- 25.5 To the extent of any inconsistency between the Order, these Standard Terms and Conditions and any other terms and conditions as may be set out in any attachment to the Order or referred to in the Order, then (subject to clause 25.6) the terms and conditions as set out in the Order prevail to the extent of any such inconsistency, then any terms and conditions in any attachment or reference and then these Standard Terms and Conditions.
- 25.6 The terms and conditions set out in clause 17 prevail over any inconsistent terms and conditions in the Order wherever they may be contained.
- 25.7 You must obtain at your own expense any necessary Licences or permits and comply with applicable laws in supplying the Goods and/or the Services to us.
- 25.8 Our rights, remedies and powers under the Order are in addition to any rights, remedies and powers provided by law.
- 25.9 You will use your best efforts to conduct your relationship with us in accordance with the highest moral and ethical standards. You shall comply with our Code of Business Ethics (copy available upon request). You will not, and will ensure that your SubContractors do not, make, offer, or agree to make, directly or indirectly, any gift or payment of any kind, or political contribution to any government employee or representative or any political candidate or party in connection with the supply of the Goods and/or the performance of the Services nor to any other person or party for the purposes of inducing that person or party to act (or to not act) in a certain manner.

## **26 Governing law**

- 26.1 This Agreement is governed by the laws of the United Arab Emirates (UAE). However, you and we agree that the United Nations Convention on Contracts for the International Sale of Goods (adopted at Vienna on 10 April 1980) does not apply in any respect to the Order.

## **27 Special Conditions**

- 27.1 This Agreement is subject to any special conditions identified on the Order. In the event of an inconsistency between this Agreement and a special condition on the Order, the terms of the Order shall apply.

## **28 Dispute Resolution**

- 28.1 Either party may provide written notice to the other of any dispute arising in relation to this Agreement or Order. This notice is to contain sufficient particulars of the alleged dispute.
- 28.2 Within 14 days of receiving a notification of dispute under clause 28.1, the representatives of the parties are to meet together and use their reasonable endeavours to settle the dispute
- 28.3 If after a period of 30 days, representatives have been unable to resolve a dispute, either of them may by notice in writing escalate the dispute by referring it to an arbitration administered by the Institute of Dubai International Arbitration Centre ("Institute") in accordance with the DIAC Arbitration Rules ("Rules"). If the parties

are not able to agree on an arbitrator, then the arbitrator is to be nominated by the Institute in accordance with the Rules.

## 29 Interpretation

- 29.1 In these Standard Terms and Conditions unless the contrary intention appears:
- (a) a reference to the Order or another instrument includes any variation or replacement of either of them;
  - (b) the singular includes the plural and vice versa;
  - (c) the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
  - (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns;
  - (e) 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;
  - (f) a reference to an annexure, attachment or schedule is a reference to an annexure, attachment or schedule to the Order;
  - (g) a reference to a clause is a reference to a clause in these Standard Terms and Conditions;
  - (h) a reference to a third person or a third party is a reference to a person who is not a party to the Order; and
  - (i) a reference to "\$", "US", "dollar" or "\$" is a reference to US dollar currency.
  - (j) the words "includes" or "including" means includes or including without limitation.
- 29.2 Headings are inserted for convenience and do not affect interpretation of these Standard Terms and Conditions.

## 30 Definitions

**Background IP** means your Intellectual Property Rights which:

- (a) are in existence at the date of the Order; or
- (b) come into existence after the date of the Order otherwise than in connection with the Order.

**Contract Resources Entity** means Contract Resources Oilfield Services LLC or any of its related entities, as stated in the Order and on whose behalf the Order has been issued and in the absence of any entity identified in the Order, will be Contract Resources Proprietary Limited.

**Contract Resources Representative** means the person noted as the Contract Resources contact in the Order.

**Change of Control** means for a corporation, a change in:

- (a) Control of the composition of the board of directors of the corporation;
- (b) Control of more than half the voting rights attaching to shares in the corporation; or
- (c) Control of more than half the issued shares of the corporation (not counting any share which carries no right to participate beyond a specified amount in the distribution of either profit or capital).

**Completion Date** means the date specified for completion of the Services as set out in the Order.

**Confidential Information** means information in any form or media directly or indirectly given to a Party during the course of business relations, whether before, on or after the date of the Order. Confidential information includes information concerning a Party's or any Related Entity's business activities, strategies, plans and assets, products and their specifications, the method of production, the type and status of major items of plant and equipment used in relevant production facilities, the markets in which products are sold and methods of distribution, a party's Intellectual Property Rights, financial affairs, technologies, source and object codes and computer records, clients, customers, suppliers, distributors and their financial affairs and agreements with them and any other information that:

- (a) is, by its nature, confidential or non-public;
- (b) is marked or designated or confirmed by a Party as confidential or proprietary at the time of its disclosure; or
- (c) a Party knows or ought to know is confidential, but excludes information that is:

- (d) in or enters the public domain through no fault of either party;
- (e) or was made available to a Party by a person (other than the other Party) who, as far as that Party knows, has or then had the unrestricted legal right to do so; or
- (f) or was developed by a Party without that Party relying on, referring to, or incorporating any of the other Party's Confidential Information.

**Control** means a power or control that is direct or indirect or that is or can be, exercised as a result of, by means of or by the revocation or breach of a trust, an agreement, a practice, or any combination of them, whether or not they are enforceable. It does not matter whether the power or control is express or implied, formal or informal, exercisable alone or jointly with someone else.

**Defective Goods** means Goods which are not in conformity with the Order 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 Order, are of inferior quality or workmanship or are otherwise unsatisfactory.

**Delivery Date** means the date specified for delivery of the Goods as set out in the Order.

**Goods** means the goods specified in the Order (including any part of the Goods specified).

**Gross Negligence** means the failure to perform a duty in reckless disregard of the consequences.

**Insolvency Event** means for a person, being in liquidation or provisional liquidation or under administration, being unable to pay its debts or otherwise insolvent, taking any step that could result in the person becoming insolvent, entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

**Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trademarks, designs, patents, circuit layouts, plant varieties, inventions and Confidential Information, and other results of intellectual activity in any field whether or not registerable, registered or patentable. These rights include rights in applications to register these rights and all renewals and extensions of these rights.

**Licences** means all licences, qualifications, registrations and other statutory requirements necessary for performance of Services and supply of Goods under the Order.

**MSDS** means material safety data sheet.

**Order** means the agreement between the Parties consisting of our purchase order to which these Standard Terms and Conditions apply and all documents referred to in the purchase order as applicable to the purchase order.

**Our Premises** means the site to where Goods are delivered or Services are provided.

**Our Technical Materials** means all the Intellectual Property Rights in and the materials making up the plans, designs, drawings, engineering information, data, specifications, reports, accounts and other material provided by us in relation to the Order or specified in the Order, including all modifications and improvements to such material developed in connection with this Order.

**Party** means you or us.

**Parties** means you and us.

**Personnel** means, in relation to a Party, the employees, officers, agents, consultants and Sub-Contractors of that Party.

**PPE** means personal protective equipment.

**Price** means the price specified in the Order or the rates for supply of Goods and performance of the Services (as the case may be).

**Project IP** means all Intellectual Property Rights created, discovered or coming into existence as a result of, for the purpose of or in connection with the supply of Goods or provision of Services or the Order (including without limitation all Intellectual Property Rights developed by you in supplying the Goods and/or providing the Services and all modifications and improvements to Background IP developed in connection with this Order).

**Safety Performance Requirements** means those characteristics of the purchased item that need to be present to ensure safe functioning in the intended application. They include meeting any of our mandatory standards or external standard (such as ISO Standards and/or regulatory requirements). They also include those detailed specifications applicable to manufactured items that are necessary to guarantee the continued

safe operation of the process in which they are used. For Services, they include ensuring that Services are provided by suitably qualified personnel to a suitably accredited service standard.

**Services** means the services specified in the Order (including any part of the specified services and the results of the specified services).

**Standard Terms and Conditions** means these Standard Terms and Conditions for Purchase Orders.

**Sub-Contractor** means any contractor or sub-contractor engaged by a Party and that contractor's or sub-contractor's employees, officers, agents, consultants and contractors.

**Supplier Representative** means the person noted as your contact in the Order.

**Taxes** means any and all present and future sales, use, personal, property, real property, value added, goods and services, VAT, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever imposed (other than taxes on our net income) by any government, governmental, semi-governmental or other relevant authority, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed or otherwise payable.

**Technical Materials** includes plans, designs, drawings, engineering information, data, specifications, reports, accounts and any other material specified in the Order.

**VAT** means value added tax.

**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).

**We, our** and **us** means the Contract Resources Entity.

**Written Claim** means a written claim given by you in accordance with **clauses 13.5(b) or 13.6(d)**.

**You** means the person named in the Order as the supplier of the Goods and/or Services.