



## PURCHASE ORDER TERMS AND CONDITIONS – GOODS AND SERVICES

### 1. Definitions and interpretations

(a) The following definitions are to be used for the purpose of interpreting the Purchase Order and these terms and conditions:

**Anti-Bribery Law** means the *Criminal Code Act 1995* (Cth), the *Foreign Corrupt Practices Act 1977* (United States) and the *Bribery Act 2010* (United Kingdom).

**Business Day** means a day other than a Saturday, Sunday or public holiday in Western Australia on which the banks are open for business in Perth, Western Australia.

**Confidential Information** means the Contract and all information of FG or any of its related bodies corporate (regardless of form) which:

- (i) relates to the business, operations, facilities or affairs of FG or its related entities;
- (ii) relates to the clients, personnel, contractors or service providers (other than the Supplier) of FG or a related entity of FG;
- (iii) relates to the FG Provided Items;
- (iv) is Data;
- (v) regarded by the FG as confidential to it, marked as confidential by FG or can reasonably be inferred to be confidential from the circumstances in which it is disclosed; and
- (vi) disclosed to or observed by the Contractor (whether before, on or after the date of the Contract and whether by the Supplier or any other person).

**Consequential Loss** means loss of contract or business opportunity, loss of production, loss of revenue or anticipated revenue, loss of profits or anticipated profits, loss of savings, increased cost of financing or damage to goodwill or reputation.

**Contract** has the meaning given in clause 2(a).

**Data** means any:

- (i) data or information which relates to the business, operations, facilities or affairs of FG or its related entities, in whatever form the information or data exists, including any:
  - a. documentation or records related to such data or information;
  - b. database in which such data or information is contained; and
  - c. data or information captured, compiled or generated as part of the Goods or Services provided under the Contract;
- (ii) data or information which is provided to the Supplier by or on behalf of FG or which FG makes accessible to the Supplier, in connection with the Contract or the provision of the Goods or Services under the Contract;
- (iii) outputs or derived data resulting from the processing, use, manipulation or modification of data or information described in paragraphs (i) and (ii) above; and

- (iv) any copies of any data or information described in clauses (i) to (iii) above.

**Defect** means any aspect of the Goods or Services not in accordance with this Contract, or any damage, error, omission, non-conformity, malfunction, deficiency, fault or inadequacy in the design, performance, workmanship, quality or makeup of the Goods or Services. **Defective** will have a corresponding meaning.

**Defects Liability Period** has the meaning given in clause 24(a).

**Delivery Date** has the meaning given in clause 10(a).

**Delivery Point** has the meaning given in clause 10(a).

**Dispute** has the meaning given in clause 27(a).

**Dispute Notice** has the meaning given in clause 27(b).

**FG** means Freo Group Pty Ltd (ACN 009 325 124) of 91 Investigator Drive, Hope Valley, Western Australia 6165.

**FG Provided Items** means any materials, equipment or services to be provided by FG to the Supplier for the performance of the Services.

**Force Majeure** means unforeseeable events or circumstances of acts of God, state or nationwide strikes, cyclones, tidal waves, earthquakes, landslides, bushfires, or other natural disasters of a similar nature beyond the reasonable control of the Party affected by them.

**Goods** means machinery, plant, equipment, apparatus, materials, articles and things of all kinds to be supplied, delivered, installed or commissioned by the Supplier in accordance with the Contract.

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

**Invoice** has the meaning given in clause 16(a).

**Modern Slavery** means slavery, servitude, forced labour, trafficking in persons (including orphanage trafficking of children), forced marriage, child labour, debt bondage and other slavery-like practices as defined in the Modern Slavery Laws.

**Modern Slavery Laws** means each of the *Modern Slavery Act 2018* (Cth), Divisions 270 and 271 of the *Criminal Code 1995* (Cth), any other anti-Modern Slavery Laws or regulations in force in Australia and where relevant in other jurisdictions including anti-slavery and human trafficking laws, international anti-slavery and human trafficking laws.

**Notice** has the meaning given in clause 28(a).

**Parties** means the FG and the Supplier, and **Party** mean either one of them (as applicable).

**Personal Information** has the meaning given to it in section 6 of the *Privacy Act 1988* (Cth).

**Personnel** means the officer, employees, agents, representatives, sub-contractors and consultants of a Party.

**PPSA** means the *Personal Property Securities Act 2009* (Cth) and any regulations made pursuant to it.

**PPSA Register** means the register established under the PPSA.



## PURCHASE ORDER TERMS AND CONDITIONS – GOODS AND SERVICES

**Price** means the amount payable, excluding GST, by the FG to the Supplier as set out in the Purchase Order.

**Privacy Laws** means the *Privacy Act 1988* (Cth) and all associated rules and regulations.

**Purchase Order** has the meaning given in clause 4(a).

**Revised Purchase Order** has the meaning given in clause 5(c).

**Revision** has the meaning given in clause 5(a).

**Sanctioned Entity** means an entity that is the subject of sanctioned imposed Sanctions Laws.

**Sanctioned Individual** means a natural person who is the subject of sanctions imposed by Sanctions Laws.

**Sanctions Laws** means laws relating to the implementation of all applicable sanctions, export control, import control, the trade of goods, technology, software and services imposed by the laws and resolutions of the United Nations and the European Union and/or laws of Australia, the United States of America, the United Kingdom and each of the countries in which FG operates or trades.

**Security Interest** has the meaning given to that term in section 4 of the PPSA.

**Services** means the services to be performed by the Supplier in accordance with the Contract.

**Services Completion Date** has the meaning given in clause 13(a).

**Site** means the place described as such in the Purchase Order, being the place for the use or storage of the Goods or the place at which Services are to be performed.

**Supplier** means the person (including an individual, firm or corporate entity) so named in the Purchase Order who is bound to supply and deliver the Goods and/or Services.

**Terms** has the meaning given in clause 2(a).

- (b) In the Contract, headings are for convenience only and do not affect the interpretation of the Contract and, unless the context otherwise requires:
- (i) the singular includes the plural and the plural includes the singular;
  - (ii) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual;
  - (iii) a reference to a clause, Party, schedule, attachment or exhibit is a reference to a clause of, and a Party, schedule, attachment or exhibit, to the Contract;
  - (iv) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
  - (v) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document, except to the extent prohibited by the Contract;
  - (vi) a reference to conduct includes, but is not limited to, an omission, statement and undertaking, whether or not in writing;

(vii) a reference to a Party to a document includes that Party's successors and permitted assignees;

(viii) a reference to an amount of money is a reference to the amount in Australian dollars;

(ix) no provision of these Terms will be construed adversely to a Party because that Party was responsible for the preparation of the Contract or that provision;

(x) specifying anything after the words 'include' or 'for example' or similar expressions does not limit what else is included;

(xi) references to time are to local time in Perth, Western Australia;

(xii) if an act must be done on a specified day which is not a Business Day, that act must be done instead on the next Business Day; and

(xiii) a reference to "in writing" includes by email.

### 2. The Contract

- (a) These terms and conditions (**Terms**) apply to the supply of Goods and/or performance of Services by the Supplier pursuant to a Purchase Order. The Terms, the Purchase Order and any other documents stated in the Purchase Order to be incorporated by reference, together, constitute the contract between the parties (**Contract**) which (subject to clause 2(b)) will be formed upon the issue of a Purchase Order to the Supplier by FG.
- (b) The Supplier is deemed to have accepted the Purchase Order and entered into the Contract unless the Supplier issues FG a written notice within 5 Business Days of receipt of the Purchase Order that it rejects the Purchase Order.
- (c) The Contract is a non-exclusive contract for the supply of the Goods and/or performance of the Services, and it does not prevent or restrict FG from entering into other contracts for the supply of, or performance of, the same, or similar Goods and/or Services with other suppliers.
- (d) The Contract is the entire agreement between the Supplier and FG in relation to its subject matter. The Supplier acknowledges that it has not relied on any statement, promise or representation or assurance or warranty by FG that is not expressly set out in the Contract and the Contract is binding upon FG.
- (e) To the extent permitted by law, no other terms are implied by trade, custom, practice or course of dealing. For the avoidance of doubt, no terms and conditions submitted by the Supplier (including in any form of tender, quote, purchase order, correspondence, order acknowledgement, acceptance or other instrument) in respect of the Goods and/or Services will have any legal effect and will not constitute part of the Contract.
- (f) In the event of any conflict between the documents comprising the Contract, such conflict will be resolved according to the following order of precedence:
- (i) the Purchase Order;
  - (ii) these Terms; and



## PURCHASE ORDER TERMS AND CONDITIONS – GOODS AND SERVICES

(iii) any other documents specifically incorporated into the Purchase Order by reference.

### 3. Supply of goods and/or performance of services

- (a) In consideration of payment of the Price by FG, the Supplier agrees to diligently supply the Goods, and/or perform the Services, in accordance with the Contract.
- (b) The Supplier must supply and maintain, at its cost, everything the Supplier requires to supply the Goods and/or perform the Services in accordance with the Contract, including all personnel, goods, tools, equipment, materials and authorisations.
- (c) The Supplier represents and warrants that the Goods and/or Services will:
- (i) comply with the specifications, drawings, samples or other requirements specified in the Purchase Order;
  - (ii) be of merchantable quality and fit for the purposes specified by FG or, where no such purposes are specified, for their ordinary purposes;
  - (iii) be new and free of defects or faults of any kind;
  - (iv) be free from any encumbrances;
  - (v) be in the sole legal and beneficial ownership of the Supplier;
  - (vi) comply with relevant laws, standards, codes of conduct and industry best practices;
  - (vii) be provided with due care and skill and be of high quality and workmanship;
  - (viii) be fit for any purpose stated in the Purchase Order and in the absence of any such express statement, be fit for the purpose for which Goods and/or Services of that or a similar type are commonly acquired; and
  - (ix) be provided by appropriately qualified, competent, fit for work, trained, skilled, licenced, experienced and professional personnel.
- (d) The Supplier must pass on the benefits of any manufacturer's warranty applicable to the Goods. If required by FG, the Supplier must sign any documents, or take any reasonable actions, as FG reasonably requires securing the benefit of that warranty. Where the benefit of any warranty cannot be passed on to FG, the Supplier must take all actions necessary in order to exercise such benefit for FG.

### 4. Purchase Order

- (a) FG will issue to the Supplier a purchase order for Goods and/or Services being a written document titled 'Purchase Order' bearing an identifying 'Purchase Order number' and executed by an authorised representative of FG (**Purchase Order**).
- (b) The Purchase Order will contain a description of the Goods and/or Services, applicable prices, delivery details and any other details which expressly, as set out in the Terms or by their nature need to be, specified in a Purchase Order. The Purchase order may contain special conditions (if any) in a separate section titled 'Notes, Instructions and Special Conditions'. The Purchase Order may also include attachments (if any) referenced therein.

(c) Upon receipt of the Purchase Order, the Supplier must check it for discrepancies and promptly notify FG of any such discrepancies, which may be amended by FG (in its absolute discretion).

### 5. Revision

- (a) FG may at any time in relation to the Goods and/or Services revise the Purchase Order to correct any errors or omissions therein or make any changes including in respect of specifications, character, quality, quantity (including a reduction in quantity) and delivery (**Revision**).
- (b) A Revision will be made through the issue of a document titled "Purchase Order" having the same Purchase Order number as the previously executed Purchase Order and include a 'revision number' to signify the chronological order of issue of the respective Revisions.
- (c) The Supplier must not effect any Revision until it has received a revised Purchase Order and the cost and time impacts have been agreed between the Parties (**Revised Purchase Order**). Any costs incurred by the Supplier prior to the issue of the Revised Purchase Order will be at its own risk and cost and will not be recoverable from FG.

### 6. Drawings

If the Purchase Order requires the Supplier to procure or comply with drawings and data, the Supplier must ensure that all drawings and data used in connection with the Goods and/or Services have been certified for construction by competent and qualified design consultants and that the Goods are manufactured according to such drawings and data or any subsequent revisions thereof.

### 7. Title and risk

- (a) Unless the Purchase Order states that any incoterms apply, unencumbered title to, and property in, the Goods will pass to FG on the earlier of:
- (i) payment of any part of the Price; or
  - (ii) delivery to the Delivery Point specified in the Purchase Order, and acceptance of the Goods in accordance with clause 12(c).
- (b) Any Goods paid for in full, but undelivered by the Supplier, must be appropriately marked and identified as the property of FG.
- (c) Risk in the Goods will remain with the Supplier until the time FG takes delivery of, and accepts in accordance with clause 12(c), the Goods unless expressly stated otherwise in the Purchase Order.
- (d) Any loss or damage to the Goods howsoever caused prior to risk passing to FG must, at the Supplier's cost, be rectified by the Supplier.
- (e) After risk in the Goods has passed to FG, the Supplier is liable for any loss or damage caused to the Goods to the extent such loss or damage is caused or contributed to by the Supplier's negligence, wilful act, misconduct, fault, breach of duty (statutory or otherwise) or breach of the Contract.

### 8. Packaging and marking of Goods

- (a) The Supplier is responsible, at its cost, for packaging Goods.



## PURCHASE ORDER TERMS AND CONDITIONS – GOODS AND SERVICES

- (b) The Supplier must package, label, weather protect, secure and protect all Goods ready for dispatch in accordance with best industry practices and all applicable laws and safety requirements, having regard to:
- (i) the methods of cartage and handling;
  - (ii) the weather conditions through which the Goods will pass during the normal course of long distance transport;
  - (iii) the fact that the Goods may be stored in a sub-tropical climate; and
  - (iv) the need to facilitate inspections and repackaging for on-forwarding.
- (c) All Goods, delivery notes and other relevant documents must be clearly marked with:
- (i) the relevant Purchase Order number;
  - (ii) the material number (where applicable); and
  - (iii) the Delivery Point specified in the Purchase Order.
- (d) Failure to comply with this clause 8 entitles FG to reject the Goods and return them to the Supplier, at the Supplier's expense.
- (e) The Supplier will be liable for all or any damage, loss or destruction to any Goods or property resulting from a failure to comply with clause 8.
- 9. Transport of Goods**
- (a) Unless stated otherwise in the Purchase Order, the Supplier will be responsible (at its cost) for transporting the Goods to, and unloading the Goods at, the Delivery Point.
- (b) If the Delivery Point is a different location to the Site, the Supplier must:
- (i) still comply with its obligations in clause 9;
  - (ii) notify FG's representative of the details of those Goods ready for dispatch in sufficient time to enable transport to be arranged by FG;
  - (iii) make the Goods available for transportation by FG from the Delivery Point; and
  - (iv) provide transportation and loading/unloading instructions for the safe transportation of the Goods.
- (c) Transportation of the Goods by FG under this clause 9 will not constitute acceptance of the Goods by FG.
- 10. Delivery of Goods**
- (a) The Supplier must deliver, or ensure the delivery of, the Goods using the mode, on the date (**Delivery Date**) and at the place (**Delivery Point**) specified in the Purchase Order. Time is of the essence in respect of this obligation.
- (b) The Supplier must notify FG in writing, prior to delivery of:
- (i) all safety information and other necessary or relevant data relating to FG's use of the Goods, including material safety data sheets and operation manuals; and
  - (ii) the precise time at which the Goods will be delivered in accordance with the Purchase Order and the total weight and volume of the relevant consignment.
- (c) Any costs incurred by FG as a result of incorrect information being provided to FG are to the Supplier's account and will be a debt immediately due and payable upon demand.
- (d) If there is a delay or likely to be delay in the delivery by the Supplier of any Goods, the Supplier:
- (i) must as soon as possible after becoming aware of the delay or likelihood of delay notify FG in writing of the circumstances resulting in the delay; and
  - (ii) may request from FG in writing an extension of time to the Delivery Date, which FG may grant in its absolute discretion.
- (e) Where a delay described in clause 10(d) occurs or its likely to occur for any reason and FG has not granted the Supplier an extension of time to the Delivery Date, FG may in its absolute discretion by notice to the Supplier:
- (i) cancel the Contract without incurring any liability to the Supplier; and
  - (ii) acquire alternative suppliers for any shortfall in delivery of the Goods from sources other than the Supplier and FG will not be liable or obliged to accept the Goods.
- (f) If FG acts in accordance with clause 10(e)(i):
- (i) any price difference which is incurred by FG between the Goods that would have been supplied by the Supplier and the Goods that are actually procured by FG from another source; and
  - (ii) transport costs incurred by FG in respect of procuring the Goods from another source,
- will be a debt due and payable from the Supplier to FG except to the extent that the reason for the inability of the vendor to supply all or part of the Goods by the Delivery Date was a direct result of:
- (iii) any breach of Contract by FG or an act or omission if FG or its related entities; or
  - (iv) Force Majeure.
- 11. Health, safety and environment**
- (a) The Supplier must, and must ensure that all its Personnel:
- (i) perform all work and comply with all of its obligations under any applicable environmental or health and safety legislation and regulations;
  - (ii) at all times when on Site, comply with all reasonable directions of FG (including in relation to health and safety, industrial relations and environmental matters);
  - (iii) obtain and maintain, at the Supplier's expense, all licenses or permits required under applicable laws for the conduct of all activities performed by them in connection with this Contract;
  - (iv) adhere to accepted safe working practices and take reasonable precautions against accident or damage occurring on or to any Site from any cause;



## PURCHASE ORDER TERMS AND CONDITIONS – GOODS AND SERVICES

- (v) minimise disruption to the operating Site;
  - (vi) not harm or damage the environment in the course of undertaking activities in connection with the Contract;
  - (vii) immediately report to FG and clean up at its own cost any harm to the environment caused by it or its Personnel in connection with the supply of Goods and/or performance of the Services under this Contract;
  - (viii) ensure the safe transportation, handling, storage and use of all substances brought onto the Site in connection with the supply of Goods and/or performance of the Services under this Contract;
  - (ix) provide all information or assistance as the Supplier reasonably requires in connection with any statutory or internal health and safety, environment or community investigation in connection with this Contract, the supply of Goods and/or the performance of Services under this Contract; and
  - (x) comply with FG's site policies, standards and procedures provided to the Supplier as part of the site pre-mobilisation, and FG's policies, including any site specific requirements (if applicable).
- (b) The Supplier warrants that it has systems in place to manage any environmental issues and health and safety risks associated with the supply of Goods and/or Services and has the necessary skills, competence, and experience to perform the work safely.
  - (c) If the Supplier or any of its Personnel fail to comply with any of the requirements of this clause 11, FG may in its absolute discretion deny that person or those persons access to the Site or permit such access subject to the terms and conditions FG considers appropriate.
  - (d) The Supplier acknowledges and agrees that if it enters onto a Site, it does so at the Supplier's own risk. The Supplier must ensure that its Personnel are also aware that they enter onto a Site at their own risk.
  - (e) The Supplier and its Personnel must permit FG to have access to the Supplier's premises, documentation and data and to interview the Supplier's Personnel in connection with the supply of the Goods and/or the performance of the Services, as necessary for FG to verify, monitor and audit the Supplier's compliance with the requirements of this clause 11.

### 12. Inspection and acceptance of Goods

- (a) FG may at any time during the course of manufacturing or otherwise inspect the Goods to be supplied (subject to FG first giving the Supplier reasonable notice of such inspection).
- (b) Notwithstanding the above, inspection by FG does not relieve the Supplier of its obligations under the Contract or otherwise waive FG's rights or remedies provided under the Contract or otherwise in connection with the delivery of the Goods.
- (c) Notwithstanding FG's right under clause 12(a), FG must have reasonable time (which must be no less than seven (7) Business Days) to inspect and/or test the Goods after delivery. Acceptance

of the Goods will be from the time a duly authorised representative of FG notifies the Supplier in writing that it accepts the Goods as delivered, collected or supplied at the Delivery Point, where such Goods have been inspected and/or tested, and are not defective or damaged in any way and comply with the Contract.

- (d) If the Supplier is required by the Purchase Order to provide 'Test Certificates,' the Supplier is to promptly provide those Test Certificates to FG upon completion of the testing.
- (e) If on inspection or testing, or after delivery, FG reasonably believes any Goods are damaged, defective or otherwise not in compliance with the requirements of the Contract, FG may reject the Goods and the Supplier must immediately remove and replace the Goods with Goods that comply with the requirements of the Contract at the Supplier's cost.
- (f) The remedies provided in this clause do not exclude any other remedies provided by law.

### 13. Time for Services

- (a) Time is of the essence and the Supplier must comply strictly with the date indicated on the Purchase Order for performance of the Services (**Services Completion Date**), unless otherwise agreed in writing with FG.
- (b) If the Supplier is delayed in performing the Services by the Services Completion Date due to a breach of the Contract by FG or Force Majeure, the Supplier must, in writing, notify FG within seven (7) Business Days of the commencement of each such occurrence or cause and request an extension of time. Provided the Supplier has taken all reasonable measures to mitigate the impact of such a delay, the Supplier may be entitled to such extension of time as is assessed by FG (acting reasonably) and granted in writing.
- (c) The Supplier will not be entitled to and hereby waives any and all claims to increased compensation for/or damages which it may suffer from any causes under clause 13(b) except where the Supplier is delayed by a breach of the Contract on the part of FG, in which case, the Supplier may be entitled to claim its reasonable direct costs incurred as a result.
- (d) If the Supplier is unable to perform all or any part of the Services in accordance with the Contract for any reason other than as a direct result of:
  - (i) any breach of Contract by FG or an act or omission if FG or its related entities; or
  - (ii) Force Majeure,

FG may, in its absolute discretion, source such part of the Services from any third party and the costs it incurs in doing so will be a debt due and payable from the Supplier to FG.

### 14. FG Provided Items

- (a) Subject to clause 14(b), FG must provide and make available the FG Provided Items (if any are specified in a Purchase Order) to enable the Supplier to perform the Services.
- (b) The Supplier acknowledges and agrees that the FG Provided Items:
  - (i) may be used by the Supplier for the performance of the Services but for no other purpose;



## PURCHASE ORDER TERMS AND CONDITIONS – GOODS AND SERVICES

- (ii) are provided to the Supplier for use at its and its Personnel's own risk, and the use or reliance by the Supplier or its Personnel on the FG Provided Items does not in any circumstances relieve the Supplier's obligations under the Contract; and
  - (iii) to the extent applicable, must be returned to FG in a clean and safe condition and in good working order subject only to fair wear and tear.
- (c) The Supplier acknowledges and agrees that where any FG Provided Item is provided by a third party, FG will not be liable to the Supplier for any liability suffered or incurred by the Supplier as a result of, or which may arise in connection with, the acts or omissions of that third party in the provision of the relevant FG Provided Item.
- 15. Price**
- (a) Unless otherwise stated in the Purchase Order, the Price is in Australian currency and is fixed and not subject to escalation.
  - (b) The Price is the total consideration payable by FG and is inclusive of all risks, liabilities, obligations (expressed or implied in the Contract), packing, testing and documentation costs incurred in connection with the supply of the Goods and/or performance of the Services.
- 16. Payment**
- (a) Unless otherwise stated in the Purchase Order, the Supplier must not submit, and FG is not required to accept, any Invoice prior to the delivery and acceptance of the Goods and/or completion of the Services. Subject to the foregoing, the Supplier must submit a valid tax invoice for payment (**Invoice**) by the last Business Day of each month in which Goods are delivered and accepted and/or Services are performed in accordance with the Contract, the Supplier must submit to FG a valid tax invoice for payment (**Invoice**) which must include as a minimum:
    - (i) the date of the Invoice (which must be a date no earlier than the date upon which the Invoice was issued to FG);
    - (ii) a reference to the Purchase Order number;
    - (iii) a detailed description of the Goods supplied and/or Services performed;
    - (iv) the Price broken down to reflect any price components on the Purchase Order;
    - (v) the amount of any applicable GST;
    - (vi) proof of delivery;
    - (vii) any supporting documentation required to be provided as stated in the Purchase Order or as reasonably required by FG; and
    - (viii) any documentation necessary to support the Invoice.
  - (b) FG must pay the undisputed amounts in an Invoice within forty five (45) days of the date of an Invoice or such other period as may be agreed by with FG in writing or as may be required by law.
- (c) If FG disputes any part of the Invoice, it must notify the Supplier its reasons for disputing the Invoice in writing prior to the date for payment of the Invoice.
- 17. Set-off and deduction**
- In addition to any other rights that it may have under the Contract or otherwise, FG may set-off or deduct from any amounts due to the Supplier from FG any sums which are due and payable by the Supplier to FG or any amounts which are the subject of a *bona fide* claim by FG against the Supplier.
- 18. Taxes**
- (a) Unless expressly stated otherwise in the Contract, all amounts payable or consideration to be provided under the Contract are exclusive of GST.
  - (b) Where a Party (**supplier**) makes any supply under or in connection with the Contract to the other Party (**recipient**) the recipient must pay to the supplier an amount equal to any GST which the supplier is or becomes liable to pay in respect of the supply.
  - (c) If GST is payable on any supply made under the Contract, for which the consideration is not expressly stated to include GST, the recipient agrees to pay the supplier an additional amount equal to the GST payable at the same time that the consideration for the supply is provided, subject to the supplier providing the recipient a valid tax invoice.
  - (d) Where FG is liable to pay any tax or impost in the nature of GST in respect of any indemnity payment made by the Supplier to FG under or in connection with the Contract, the Supplier must, in addition to any other payment required by the Contract, pay FG on demand the GST imposed in respect of the indemnity payment.
  - (e) For the avoidance of doubt, the Supplier is solely responsible for all other taxes, duties or levies imposed on it under law that arise out of the supply of the Goods and/or the performance of the Services.
- 19. Insurance**
- (a) The Supplier must, at its cost, effect and maintain until the risk in the Goods and/or the Services passes to FG in accordance with the Contract adequate material loss or damage insurance at least to the full replacement value of the Goods including adequate transit insurance and also covering unloading if the Supplier is required to unload the Goods. Such insurance must cover the Parties' respective rights and if required by FG must be in the joint names of the Parties.
  - (b) The Supplier must effect and maintain during the term of the Contract (including any Defect Liability Period), as its own expense with a reputable insurer.
    - (i) worker's compensation insurance to insure against statutory and common law liability for death of or injury to persons employed by the Supplier to a limit of not less than that required by law;
    - (ii) public liability insurance covering all liability of the Supplier to pay damages or compensation in connection with any personal injury or death of any person or any damage to



## PURCHASE ORDER TERMS AND CONDITIONS – GOODS AND SERVICES

property, up to a limit of \$10,000,000 for any one claim and unlimited as to the number of occurrences;

- (iii) professional indemnity insurance for an amount not less than \$5,000,000 for any one claim and in the annual aggregate (where the Supplier is performing professional services, providing specialist advice or undertaking any design work as part of the Services);
  - (iv) to the extent that motor vehicles are used to provide the Goods and/or Services, motor vehicle insurance which covers damage to property and third party bodily injury unlimited in the aggregate number of occurrences; and
  - (v) the insurances stated in the Purchase Order and any other insurance required by applicable law.
- (c) Where the Supplier will perform work under the Contract (including the delivery of Goods) at the premises of FG or any of its related entities, the policies in clauses 19(b)(i) and 19(b)(ii) must be endorsed to include a principal's indemnity extension and a waiver of subrogation in favour of FG.
  - (d) The Supplier will be responsible for and will bear the cost of any excesses and deductibles in respect of the insurances required to be taken out by the Supplier in this clause 19.
  - (e) The Supplier must ensure any sub-contractor engaged by the Supplier effects and maintains the insurances on the terms contained or referred to in this clause 19 or the Supplier's insurances cover any liability of FG to sub-contracts and other persons not employed by the Supplier that supply any Goods and/or Services in relation to the Contract.
  - (f) Upon request by FG, the Supplier must provide FG with certificates of currency to demonstrate the required insurances are in full force and effect. FG reserves the right to withhold payment of Invoices if the Supplier fails to provide certificates of currency upon request.

### 20. Intellectual property

- (a) The Supplier must ensure that all intellectual property rights created in the course of supplying the Goods and/or Services under the Contract vest solely in FG. The Supplier may only use, disclose, copy or reproduce that intellectual property for the purposes of performing its obligations under the Contract. Nothing in the Contract provides a Party with any rights to any intellectual property held by the other Party or its Personnel prior to the date of the Contract, provided that FG has a non-exclusive, royalty free, perpetual and irrevocable licence to use, modify, adapt or sublicense any intellectual property owned by the Supplier or its Personnel to the extent necessary for FG to exercise its rights or perform its obligations under the Contract and obtain the benefit of or otherwise enjoy the Goods and/or Services. The Supplier must do all things reasonably necessary to give full effect to the rights and obligations contained in this clause 20.
- (b) The Supplier warrants that the Goods and/or Services supplied, other than to the extent Goods and/or Services supplied in accordance with technical plans or drawings provided to the Supplier by FG, do not infringe any patent, copyright, design or

trademark (whether foreign or domestic) which any person may in any way be entitled to.

- (c) The Supplier indemnifies and holds harmless FG from and against all claims and proceedings for or on account of any infringement of clause 20(a) in respect of the Goods and/or Services supplied by the Supplier and from and against all related claims, demands, proceedings, damages, costs, charges and expenses.

### 21. Suspension

FG may suspend all or part of the supply of the Goods and/or the Services at any time for any period of time by notice in writing to the Supplier. The Supplier must comply with the notice and recommence supply when notified by FG to do so. The Supplier will not be entitled to any additional payment arising as a result of the suspension to the extent it has caused or contributed to the suspension by its act, omission or breach of the Contract. If the suspension has been directed for FG's sole convenience or benefit, FG will pay the Contractor its direct, reasonable and unavoidable costs incurred as a result of the suspension.

### 22. Termination for convenience

FG may in its absolute discretion terminate the Contract at any time by providing at least ten (10) Business Days' notice. FG's liability in respect of a termination pursuant to this clause is limited to the value of the Goods delivered and/or the Services performed, in accordance with the Contract, up to the date of the termination which have not yet been paid for.

### 23. Termination for default

- (a) If the Supplier:
  - (i) fails to make delivery of the Goods in accordance with the Contract;
  - (ii) fails to perform the Services as specified in the Contract;
  - (iii) delivers non-conforming Goods;
  - (iv) fails to make progress so as to endanger performance of the Contract; or
  - (v) materially breaches any of its obligations pursuant to the Contract and such breach is not able to be remedied or, if it is able to be remedied, is not remedied within five (5) Business Days of notice to do so,

FG may notify the Supplier of the breach and the Supplier must remedy the breach within the timeframe reasonably required by FG having regard to the nature and complexity of the breach. If the Supplier fails to remedy the breach within the timeframe required, FG may terminate the Contract by written notice to the Supplier.

- (b) FG may terminate the Contract with immediate effect by written notice to the Supplier if the Supplier becomes insolvent or bankrupt or is convicted of a criminal offence.
- (c) The Supplier is liable to FG for all additional costs reasonably incurred by FG as a direct result of the Supplier's insolvency.
- (d) Subject to clause 17, in the event of termination of the Contract, the Supplier is entitled to payment for all Goods and/or Services



## PURCHASE ORDER TERMS AND CONDITIONS – GOODS AND SERVICES

provided in accordance with the Contract up to the date of the termination, except in the event of termination due to the Supplier's breach or insolvency where such payment will not be due until:

- (i) the costs of providing the Goods and/or Services and all other costs arising from the Supplier's breach or insolvency; or,
- (ii) all other amounts otherwise due and payable to FG by the Supplier,

have been determined.

- (e) Termination of the Contract for any reason does not affect the rights and obligations of a Party which have accrued prior to termination.

### 24. Defects liability period

- (a) At any time during the period that is twelve (12) months from the later of the date of delivery, or from installation of the Goods or completion of the Services (as applicable) (**Defects Liability Period**) FG may (at FG's discretion) require the Supplier to repair, replace, rectify or resupply any Defective Goods and/or Services at the Supplier's cost. FG will promptly notify the Supplier as soon as practicable after FG becomes aware of a Defect.
- (b) If the Supplier fails to repair, replace, rectify or resupply the Defective Goods and/or Services within a reasonable timeframe required by FG, FG may have the Defective Goods and/or Services repaired, replaced, rectified or resupplied at the Supplier's cost, which will be a debt immediately due and payable upon demand by FG.
- (c) If the Supplier repairs, replaces, rectifies or resupplies the Goods and/or Services during the Defects Liability Period, then those Goods and/or Services repaired, rectified, replaced or resupplied have a further warranty for a period of twelve (12) months from the date such repairs, replacement, rectification or resupply occurred.

### 25. Indemnity

- (a) The Supplier indemnifies, and keeps indemnified, FG, and FG's Personnel and related bodies corporate, from and against any loss, liability, cost, damage or expense of any nature, including legal fees and expenses, suffered or incurred arising in any manner out of or in any way in connection with the supply, performance, installation, use, misuse, malfunctioning or failure of the Goods and/or Services including, without limitation:
  - (i) any breach of law by the Supplier or its Personnel;
  - (ii) any breach of the Contract on the part of the Supplier or its Personnel;
  - (iii) the wilful misconduct or negligent act or omission of the Supplier or the Supplier's Personnel or invitees;
  - (iv) the loss of, or any damage to, any property of any person;
  - (v) the death, illness or injury of any person.
- (b) However, the Supplier's liability to FG under clause 25(a) will be reduced proportionally to the extent that a negligent act or omission of FG may have contributed to the loss or damage.

- (c) The provisions of Part 1F of the *Civil Liability Act 2002* (WA) are excluded from operation with respect to any matter arising out of or in connection with the Contract.
- (d) The rights and obligations under this clause 25 continue after termination or expiry of the Contract.

### 26. Limitation of liability

- (a) Subject to clause 26(c), neither FG nor the Supplier is liable, whether in contract, tort (including negligence) or otherwise, to the other Party for Consequential Loss.
- (b) Subject to clause 26(c), the Supplier's maximum liability to FG under or in connection with the Contract (whether in contract, tort (including negligence) or otherwise) is limited to the greater of \$200,000 or the Price.
- (c) The limitations of liability in clauses 26(a) and 26(b) do not apply to any liability of the Supplier:
  - (i) in respect of the indemnities set out in clause 20(c) and 25(a); and
  - (ii) which is covered by a policy of insurance required to be taken out by the Supplier under the Contract, or that would have been covered by those insurance policies had the Supplier taken out, maintained and complied with those insurances and diligently pursued claims under them.

### 27. Dispute resolution

- (a) The Party claiming that a dispute has arisen from or in connection with the Contract (**Dispute**) must not commence legal proceedings arising from or relating to the Dispute, other than a claim for urgent interlocutory relief, unless that Party has attempted to resolve the Dispute in accordance with this clause 27.
- (b) A Party claiming that the Dispute has arisen must give written notice to the other Party setting out the details of the Dispute (**Dispute Notice**), and the Parties must each appoint a senior representative to meet within fifteen (15) Business Days of the Dispute Notice who must attempt in good faith to resolve the Dispute.
- (c) If the senior representatives are unable for any reason to resolve the Dispute or agree how it will be resolved within ten (10) Business Days of the Dispute being referred to them, either Party may refer the dispute to mediation administered by the Resolution Institute, with such mediation to be conducted in accordance with, and subject to, the Resolution Institute Mediation and Conciliation Rules. The mediator will be an independent person agreed by the Parties or, failing agreement, a mediator will be appointed by the President of the Resolution Institute (WA Chapter). Any mediation meetings and proceedings under this clause 27(c) must be held at the Site or in the capital city of the state in which the Site is located (at FG's discretion).
- (d) Without otherwise limiting clause 27(c), the Parties may agree in writing to an alternative dispute resolution procedure at the meeting between the Parties pursuant to 27(b).

### 28. Notices

- (a) Unless otherwise agreed to by the Parties, any notice (and other documents) or other communication (**Notice**) required or permitted



## PURCHASE ORDER TERMS AND CONDITIONS – GOODS AND SERVICES

to be given or delivered under the Contract must be in writing and delivered and addressed to the Party at the address or email address set out in the Purchase Order.

- (b) A Notice is deemed to have been received by a Party:
- (i) if delivered by hand to the nominated address, when delivered to the nominated address;
  - (ii) if sent by pre-paid post, at 9:00 am (addressee's time) on the second Business Day after the date of posting; or
  - (iii) if sent by email, at the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

### 29. Confidentiality

- (a) The Parties undertake that they will not at any time disclose to any person any Confidential Information concerning the other Party's business, affairs, customers, clients or suppliers, except as permitted by clause 29(b).
- (b) Either Party may disclose the other Party's Confidential Information:
- (i) where the information is in the public domain as at the date of the Contract (or subsequently becomes in the public domain other than by breach of any obligation of confidentiality binding on either of the Parties);
  - (ii) if either of the Parties are required to disclose the information by applicable law or the rules of any recognised stock exchange or other document with statutory content requirements, provided that the recipient has to the extent practicable having regard to those obligations and the required timing of the disclosure consulted with the provider of the information as to the form and content of the discloser;
  - (iii) where the disclosure is expressly permitted under the Contract;
  - (iv) if disclosure is made to each Party's respective officers, employees and professional advisers to the extent necessary to enable either Party to properly perform their obligations under the Contract or to conduct their business generally, in which case each Party must ensure that such persons keep the information secret and confidential and do not disclose the information to any other person;
  - (v) where the disclosure is required for use in legal proceedings regarding the Contract; or
  - (vi) if the Party to which the information relates has consented in writing before the disclosure.
- (c) Each Party may only use the other Party's Confidential Information for the purpose of fulfilling their obligations under the Contract.
- (d) This clause 29 will survive termination of the Contract.

### 30. Privacy

- (a) The Supplier must comply with its obligations under Privacy Laws in respect of Personal Information obtained or disclosed to it under or in connection with this Contract.
- (b) The Supplier agrees to:
- (i) use or collect Personal Information for the sole purpose of providing the Goods or performing the Services;
  - (ii) promptly destroy or permanently de-identify the Personal Information if that information is no longer needed to provide the Goods or Services or to otherwise comply with the Supplier's obligations under the Contract; and
  - (iii) protect the Personal Information from misuse and loss and from unauthorised access, modifications or disclosure.
- (c) The Supplier must immediately notify FG in writing if the Contractor:
- (i) becomes aware of any breach of the obligations under this clause 30 by itself or its Personnel or its related entities;
  - (ii) becomes aware that a disclosure of the Personal Information may be required by law; or
  - (iii) receives an individual's complaint by a person regarding the processing of their Personal Information.
- (d) In the event of a breach of security, leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Information or an eligible data breach, the Supplier must invoke a data breach management procedure.

### 31. Data

- (a) Data remains the property of FG and FG owns all rights (including intellectual property rights) in and to the Data immediately from creation (including part creation).
- (b) The Supplier hereby unconditionally assigns, and must procure that the Supplier's related entities and Personnel unconditionally assign, to FG all intellectual property rights in and to the Data from creation (including party creation). If required by FG, the Supplier must not in any way use or reproduce the Data (in whole or in part) except to the limited extent necessary for the provision of the Goods and/or Services under the Contract.

### 32. Announcements

The Supplier must not make, or permit any person to make any public announcement statement, press release or other publicity or marketing materials concerning the existence, subject matter or terms of the Contract, the wider transactions contemplated by it, or the relationship between the Parties without the prior written consent of the Supplier, except as required by law.

### 33. Applicable law

- (a) The Contract is governed by the laws of Western Australia.
- (b) Each Party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia in respect of any proceedings arising out of or in connection with the Contract. Each Party waives any objection to the venue of any legal process in these



## PURCHASE ORDER TERMS AND CONDITIONS – GOODS AND SERVICES

Courts on the basis that the process has been brought in an inconvenient forum.

### 34. Novation, assignment and subcontracting

- (a) The Supplier must not novate the Contract, assign all or any part of its rights under the Contract, or subcontract all or any part of its obligations under the Contract without prior written consent of FG.
- (b) FG may, at any time without consent from the Supplier assign any or all of its rights and obligations or novate the Contract to a third party without consent from the Supplier, provided that the third party has the financial capacity to discharge FG's obligations under the Contract. The Supplier agrees to enter into any agreement on such reasonable terms and conditions as required by FG to give effect to this clause 34.
- (c) No subcontracting or assignment will relieve the Supplier of its obligations or liabilities under or in connection with the Contract.

### 35. Waiver and amendment

- (a) Neither Party may rely on the words or conduct of the other Party as being a waiver of any right, power, remedy or provision of the Contract nor consent to any departure from the Contract will be effective unless given in writing by the relevant Party.
- (b) Words or conduct referred to in clause 35(a) include any delay in exercising a right, any election between rights and remedies and any conduct that might otherwise give rise to an estoppel.
- (c) Except as provided by law or equity or elsewhere in the Contract, none of the provisions of the Contract will be varied or amended without the prior written consent of the other Party.

### 36. Rights cumulative

The rights and remedies of FG provided in the Contract are cumulative and do not exclude any rights or remedies provided by laws.

### 37. Severability

- (a) If the whole or any part of a provision of the Contract is or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.
- (b) Clause 37(a) does not apply if the severance of a provision of the Contract in accordance with that clause would materially affect or alter the nature or effect of the Parties' obligations under the Contract.

### 38. Relationship of the parties

The Parties acknowledge and agree that:

- (a) their relationship is solely and fully characterised as a civil relationship under which the Supplier is engaged as an independent contractor of FG and is not an employee of FG;
- (b) nothing in this Contract creates an employment relationship between FG and the Supplier; and
- (c) the Supplier has no authority or ability to bind FG without FG's specific written consent.

### 39. PPSA security registration and enforcement

- (a) The Supplier consents to FG effecting a registration of any relevant Security Interest that FG considers this Contract provides for on the PPSA Register (in any manner it considers appropriate) and agrees to provide all assistance reasonably required to facilitate this.
- (b) The provisions of the PPSA which section 115 of the PPSA permits parties to contract out of, other than section 117 and 118 (relationship with land laws) and 134(1) and 135 (retention of collateral), do not apply to the enforcement of any Security Interest provided pursuant to the Contract.
- (c) To the extent permitted by section 275 of the PPSA, the Parties agree to keep all information of the kind mentioned in section 275(1) of the PPSA confidential and to not disclose that information to any other person, except where disclosure is otherwise permitted or authorised under the Contract.
- (d) Notwithstanding anything in the Contract, notices or documents required or permitted to be given pursuant to the Contract for the purposes of the PPSA must be given in accordance with the PPSA.
- (e) The Supplier waives the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

### 40. Anti-bribery and corruption

- (a) The Supplier represents and warrants that, in connection with this Contract, no improper financial or other advantage is given, or agreed to be given, to any person (whether working for or engaged by the Supplier, its client or any third party) by, or on behalf of, the Supplier or its Personnel.
- (b) The Supplier must:
  - (i) implement anti-bribery policies and procedures; and
  - (ii) ensure it and its Personnel do not violate any applicable Anti-Bribery Law.

### 41. Modern Slavery

In connection with this Contract, the Supplier undertakes that it, and will procure that its related bodies corporate, will:

- (a) comply with Modern Slavery Laws;
- (b) have in place adequate and reasonable policies, controls, procedures and training designed to prevent, detect, assess, manage and remedy (as appropriate) Modern Slavery in its operations and supply chain; and
- (c) promptly provide the Supplier with such information and documentation as may be reasonably requested to permit the Supplier to undertake Modern Slavery due diligence, including by way of a questionnaire issued periodically.

### 42. Sanctions

- (a) The Supplier must comply with all applicable Sanctions Laws in exercising its rights and performing its obligations under the Contract.
- (b) The Supplier must not supply to FG any Goods or Services sourced in whole or in part:



## PURCHASE ORDER TERMS AND CONDITIONS – GOODS AND SERVICES

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- (i) in contradiction of Sanctions Laws;
  - (ii) from a Sanctioned Entity; or
  - (iii) from a Sanctioned Individual.
- (c) The Supplier represents and warrants that:
- (i) the Supplier is not, and is no way connected with, a Sanctioned Entity or a Sanctioned Individual; and
  - (ii) the Supplier does not, nor will it, sell any products acquired from a Sanctioned Entity or any Sanctioned Individual or acquired in contradiction of Sanctions Laws.
- (d) If FG determines that a contravention of this clause 42 has occurred, FG at its absolute discretion may terminate this Contract by providing five (5) Business Days' written notice to the Supplier of its intention to terminate under this clause 42(d).

### 43. Small business remedies

Without limiting any remedies available under the *Competition and Consumer Act 2010* (Cth), if the Supplier believes a term contained in this Contract is "unfair" as defined under the Australian Consumer Law, any dispute will be addressed at first instance via the process set out in clause 27.

### 44. Vienna Convention does not apply

The 1986 United Nations Convention on contracts for the International Sale of Goods adopted at Vienna, Austria on 10 April 1980 and opened for signature and also for accession on 11 April 1980 and any Act or other Law which gives effect to this convention do not apply to the Contract.

### 45. Costs and stamp duty

Each Party must bear its own costs arising out of the negotiation, preparation and execution of the Contract. All stamp duty that may be payable, including any related fines and penalties, in any relevant jurisdiction on, or in connection with the Contract must be borne by the Supplier.

### 46. Survival and merger

- (a) No term of this Contract merges on completion of any transaction contemplated by this Contract.
- (b) Clauses 1, 2, 7, 20, 25, 27, 29, 30 and 31 survive termination or expiry of the Contract, together with any other term which by its nature is intended to do so.