

1 Application and supply of Goods & Services

- 1.1 These Standard Purchase Order Terms and Conditions apply to the supply by you to us of any Goods and/or Services ordered by us in a Purchase Order.
- 1.2 You must supply the Goods and provide the Services to us in accordance with, and as specified in, this Agreement.

2 Conditions as to quality and description of the Goods

- 2.1 The Goods must match the description (including performance criteria) in this Agreement and any sample of the Goods you gave us before we entered into this Agreement.
- 2.2 The Goods must comply with any relevant Australian or New Zealand standards and any other standards specified in this Agreement.
- 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 unless otherwise specified and of merchantable quality.

3 Conditions as to quality of Services to be provided with the Goods

- 3.1 The Services must match the description of the Services in this Agreement.
- 3.2 If you provided us with a demonstration of the Services before we entered into this Agreement, the Services must correspond in nature and quality with the Services demonstrated.
- 3.3 The Services must be performed by appropriately qualified and trained personnel. Where specific persons are identified in this Agreement to provide the Services the Services must be performed by those persons unless otherwise agreed in writing by us.
- 3.4 The Services must be performed with due care and skill and in accordance with the Services Levels.
- 3.5 Any items which you supply in conjunction with the Services must be of merchantable quality, comply with any applicable standards and any other standards specified in this Agreement.

4 Delivery of Goods

- 4.1 Unless otherwise specified, you are responsible for ensuring that the Goods are properly packed and delivered to the place specified in a Purchase Order or otherwise by us.
- 4.2 You will include a packing list in each package of Goods delivered.
- 4.3 You must comply with any packaging directions or guidelines given to you by us from time to time.
- 4.4 If the Goods are not delivered by the required date specified in a Purchase Order or otherwise by us, we may cancel the delivery and/or appoint an alternative date or place of delivery of the undelivered Goods without incurring any liability in relation to the cancellation or adjustment.
- 4.5 If you deliver incorrect Goods, we may return those Goods to you at your sole risk and expense.

5 Inspection and acceptance of Goods

- 5.1 We have a reasonable time to inspect the Goods after delivery. Payment for the Goods or the signing of delivery receipts before inspection does not constitute acceptance of the Goods.
- 5.2 If upon inspection we find any Goods to be Defective Goods, we may:
 - (a) reject the Defective Goods by returning them to you; or
 - (b) repair the Defective Goods.
- 5.3 Transfer of title and acceptance of the Goods by us does not constitute acknowledgement by us as to the condition of the Goods or that the Goods are in conformity with this Agreement, and we may at any time reject and return to you any Goods which are not in conformity with this Agreement.
- 5.4 You agree to refund to us when requested any payments made by us in respect of Defective Goods which we reject.

6 Inspection and acceptance of Services

- 6.1 You must provide to us at our request progress reports on the performance of the Services. A progress report must be detailed enough to allow us to ascertain whether the Services are in conformity with this Agreement.
- 6.2 At any time during the performance of the Services we may inspect or witness the Services or their results.
- 6.3 If upon inspection we find any Services or their results to be Defective Services, we may:
 - (a) reject that part of the Services which are Defective Services by notifying you that we are rejecting them;
 - (b) require you to perform the Defective Services again; or
 - (c) require you to reimburse us for any expenses we incur in making good any such Defective Services.
- 6.4 We have the right to reject any Services which are not in conformity with this Agreement even if we have paid for those Services.
- 6.5 You agree to reimburse us for any expenses we incur in making good Defective Services.
- 6.6 You agree to refund to us when requested any payments made by us in respect of Defective Services which we reject.
- 6.7 The remedies provided in this **clause 6** do not exclude any other remedies provided by law.

7 Title and risk in Goods

- 7.1 Title and risk in the Goods does not pass to us until:

- (a) we take delivery of the Goods; and
 - (b) we inspect and accept the Goods.
- 7.2 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.
- 7.3 You understand that the Goods are for our use and the Goods may be incorporated in other products, or subject to further process or manufacture. You may not make any claim for royalty or other additional compensation due to or arising out of such use or manufacture.

8 Performance of the Services

- 8.1 You must, in performing the Services:
- (a) use your best efforts, and ensure that your employees, agents, contractors and sub-contractors use their best efforts, not to interfere with any of our activities, or the activities of any other person, on our premises;
 - (b) comply with, and ensure that your employees, agents, contractors and sub-contractors comply with:
 - (i) all applicable laws regulations and industrial awards and agreements; and
 - (ii) all security, occupational health and safety, health and environment guidelines, rules and procedures and information technology protocols provided to you by us; 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.
- 8.2 Subject to **clause 11** where a completion date is specified you must ensure completion occurs on or before that date.

9 Price

- 9.1 We agree to pay you the Price specified in this Agreement.
- 9.2 Unless the Purchase Order provide otherwise, the Price is inclusive of:
- (a) all charges for packaging, packing, insurance and delivery of the Goods in accordance with this Agreement;
 - (b) the cost of the Services (if any) to be provided with the Goods and any items used or supplied in conjunction with the Services;
 - (c) GST (unless the Agreement expressly states the Price excludes GST); and
 - (d) all other Taxes.
- 9.3 Subject to **clause 11.7**, the Price may not be increased without our prior consent. We have the right to refuse to give our consent.

10 Invoicing and payment

- 10.1 You must invoice us upon delivery of the Goods or, if later, upon completion of the Services.
- 10.2 When submitting your invoice under **clause 10.1** you must provide us with all relevant records to enable us to calculate and/or verify the amount of the invoice.
- 10.3 We will pay all invoices rendered to us by you under **clause 10.1** within 60 days of the end of the month in which that invoice was received except where we:
- (a) exercise our right to retain part of the price pursuant to **clause 10.5**; 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 upon resolution of that dispute.
- 10.4 We may reduce any payment due to you under these terms 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.
- 10.5 Unless otherwise specified, any money payable under this Agreement is to be paid in Australian currency.
- 10.6 No interest will be payable by us in respect of any invoice rendered to us by you under **clause 10.1** which remains due and unpaid.
- 10.7 If this Agreement involves the supply of Goods on a cost plus basis we have the right to conduct an audit of the basis of your charges using your records. This audit right continues for 12 months after we pay the relevant invoice.
- 10.8 If this Agreement involves the supply of Services on a cost plus or hourly basis you must provide us with relevant time sheets or records with the invoice to which that time spent relates and we have the right to conduct an audit of the basis of your charges using your records. This audit right continues for 12 months after we pay the relevant invoice.

11 Termination, variation and suspension of the Agreement

- 11.1 Either Party may immediately terminate this Agreement by notice in writing to the other Party if:
- (a) the other Party does not carry out its material obligations under this Agreement and fails to rectify that breach following reasonable notice; or
 - (b) the other Party becomes insolvent.

- 11.2 We may vary or terminate this Agreement or part of this Agreement at any time upon 7 days' written notice to you.
- 11.3 When you receive a notice of variation from us, you must:
- vary this Agreement in accordance with our notice; and
 - send us a Written Claim with an adjusted Price for this Agreement within 30 days of the effective date of variation.
- 11.4 When you receive a notice of termination from us, you must:
- stop work to the extent required by the notice;
 - take such action as necessary or as we direct, for the transfer, protection and preservation of our property;
 - do your best to minimise the cost of termination to us; and
 - where the notice is given under **clause 11.2**, send us a Written Claim with an adjusted Price for this Agreement within 30 days of the effective date of termination.
- 11.5 Your Written Claim must:
- set out all costs incurred to date in relation to the Agreement;
 - set out all costs and cost savings that result from the variation or termination of this Agreement;
 - where the Agreement has been terminated, not specify an adjusted Price that is greater than the Price specified in this Agreement; and
 - not specify an adjusted Price that includes any amount for anticipated profit, unperformed work or consequential loss or damage.
- 11.6 We have the right to audit the adjusted Price specified in your Written Claim and you must provide use with all documentation and materials relevant to determine whether we should accept an adjusted Price under this clause 11.
- 11.7 If:
- we are satisfied that the adjusted Price specified in your Written Claim is equitable; and
 - the termination or variation of the Agreement is not a result of any default or action on your part, or on the part of your employees, agents, contractors or sub-contractors (including, without limitation, any of the events specified in **clause 11.1**),
- the adjusted Price will apply to this Agreement.
- 11.8 Any or termination of this Agreement does not affect:
- any rights of the parties which may have accrued before the date of termination; and
 - the rights and obligations of the parties under **clauses 15, 16 and 17** which survive termination of this Agreement.

12 Independent contractor

- 12.1 Both parties acknowledge that you are our contractor and neither you nor your employees, agents, contractors and/or sub-contractors is our employee or agent.
- 12.2 You will be responsible and liable for the acts and omissions of your employees, agents, contractors and / or sub-contractors as if they were your acts and omissions.

13 Warranties

- 13.1 You warrant that:
- the Goods will be free from any defect in design, performance, workmanship and makeup, and will conform with this Agreement (including, without limitation, **clause 2**) for the Warranty Period; and
 - the Services and the results of the Services will be in conformity with this Agreement (including, without limitation, **clause 3**), will be performed with due care and skill to a high standard and will be otherwise satisfactory.
- 13.2 If, during the Warranty Period, we find any of the Goods to be Defective Goods at our option:
- we may return the Defective Goods to you;
 - we may make good the Defective Goods and you agree to reimburse us for any expenses we incur in making good any such Defective Goods; or
 - you agree to repair or, at our option, replace any such Defective Goods that we return to you free of charge.
- 13.3 Any repairs or replacement Goods provided by you under this Agreement will be subject to the same warranty as the original Goods, from the date of repair or replacement.
- 13.4 Any Defective Services that are re-performed or made good by you under this Agreement will be subject to the same warranty as the original Services.

14 Insurance

- 14.1 You must take out and maintain during the period of this Agreement:
- a comprehensive professional indemnity, public and products liability policy to cover all sums which you may become legally liable to pay as compensation consequent upon:
 - death of, or bodily injury (including disease or illness) to, any person;
 - loss of, or damage to, property, and
 - loss or damage due to your breach of this Agreement or your recklessness or negligence

happening anywhere in Australia arising out of or in connection with this Agreement. The limit of liability provided by this policy must be not less than \$10 million;

- statutory workers compensation or employer's liability insurance;
- insurance for the Goods up to the time title in the Goods passes to us for at least their replacement value; and
- other insurances required by law or reasonably required by us.

- 14.2 At our request, you must produce evidence that you are maintaining the insurances required by this **clause 14**.
- 14.3 We have the right to take out and maintain any policy of insurance required by this **clause 14** if you fail to do so.
- 14.4 You agree to reimburse us for any expenses we incur in taking out and maintaining any policy of insurance under this **clause 14**.

15 Liability and indemnities

- 15.1 You acknowledge that if you, your employees, agents, contractors and sub-contractors enter our premises, you do so at your own risk and you must ensure that your employees, agents, contractors and sub-contractors are also aware that they enter our premises at their own risk.
- 15.2 You will be liable for, and will indemnify us and keep us indemnified from and against any liability and/or any loss or damage of any kind whatsoever arising directly or indirectly from:
- any breach of any warranty or any of the other terms and conditions of the Agreement by you;
 - the illness, injury or death of any of your employees, agents, contractors and/or sub-contractors arising out of or in connection with this Agreement;
 - 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:
 - the Goods and the performance of any Services by you; and/or
 - the entry onto, and the activities undertaken on and in, our premises by you and/or your employees, agents, contractors and/or sub-contractors;
 - any negligence or wilful act or omission by you and/or any of your employees, agents, contractors and/or sub-contractors in connection with this Agreement;
 - any claim made against us by any of your employees, agents, contractors and/or sub-contractors in respect of any relevant legislation concerning income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal;
 - any penalty imposed for breach of an applicable law in connection with the performance of the Services by you;
 - loss or damage to any plant, equipment, tools, appliances or other property owned, rented or hired by you and used in relation to this Agreement; and
 - 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 Gross Negligence or that of our employees, agents, contractors and sub-contractors (other than you).
- 15.3 Each indemnity in this Agreement is a continuing obligation separate and independent from your other obligations and survives termination of this Agreement.
- 15.4 It is not necessary for us to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.
- 15.5 Neither Party will be liable to the other Party in any circumstances for any indirect, economic, special or consequential loss or damage, including but not limited to loss of revenue, loss of production or loss of profit.

16 Confidential information

- 16.1 Each Party undertakes that it will not, either during the term of this Agreement or at any time thereafter (except in the proper course of its duties under this Agreement 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 this Agreement or the negotiations preceding this Agreement including, but not limited to, the terms of this Agreement.
- 16.2 Nothing in this Agreement prohibits disclosure of information which:
- is in the public domain;
 - after disclosure to a Party becomes part of the public domain otherwise than as a result of the wrongful act of that Party;
 - is received from a third party provided that it was not acquired directly or indirectly by that third party from a Party to this Agreement; or
 - is required to be disclosed by law or any government or governmental body, authority or agency having authority over a Party.
- 16.3 The obligations under this **clause 16** survive termination of this Agreement.
- 16.4 Before disclosing any confidential information in the manner referred to in **clause 16.2(d)**, a Party must provide the other Party with:

- (a) sufficient notice to enable it to seek a protective order or other remedy; and
- (b) all assistance and co-operation which it considers necessary to prevent that disclosure of the confidential information.

17 Intellectual Property

- 17.1 You acknowledge that all Intellectual Property Rights in the Materials are our property.
- 17.2 You assign to us all your right, title and interest (present and future) in the Materials and will:
 - (a) execute all documents necessary to perfect our ownership or confirm our right, title and interest in the Materials; and
 - (b) procure the assignment of all Intellectual Property Rights in the Materials created by your agents, employees, contractors and sub-contractors in the performance of the Services.

18 Taxes

- 18.1 Should any Taxes (other than GST if this Agreement expressly states that the Price excludes GST) 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.

19 Assignment & sub-contracting

- 19.1 Subject to **clause 19.2**, neither Party may assign its rights and/or obligations under this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld).
- 19.2 We have the right to assign any or all of our obligations or rights under this Agreement at any time to any Related Body Corporate.
- 19.3 You may not sub-contract your obligations under this Agreement unless we consent to such arrangement.

20 These terms are exclusive

- 20.1 By accepting the Purchase Order you agree to be bound by the terms in this Agreement.
- 20.2 Except as may be specifically provided in this Agreement, 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.

21 Other matters

- 21.1 Any of our rights under these terms can only be waived by us in writing.
- 21.2 These terms may not be varied except in writing signed by both parties.
- 21.3 We may exercise a right, remedy or power in any way we consider appropriate.
- 21.4 If we do not exercise a right, remedy or power at any time, this does not mean that we cannot exercise it later.
- 21.5 To the extent of any inconsistency between the Purchase Order, Standard Purchase Order Terms and Conditions and any terms and conditions as may be set out in an attachment, annexure or schedule, then (subject to **clause 21.6**) the terms and conditions as set out in the Purchase Order prevail to the extent of any such inconsistency, then the Standard Terms and Conditions, then any terms and conditions in any attachment, annexure, or schedule.
- 21.6 The terms and conditions set out in **clause 15** prevail over any inconsistent terms and conditions in this Agreement wherever they may be contained.
- 21.7 You must obtain at your own expense any necessary Licences or permits and comply with applicable laws in supplying the Goods and the Services to us.
- 21.8 Our rights, remedies and powers under this Agreement are in addition to any rights, remedies and powers provided by law.

22 Governing law

- 22.1 This Agreement is governed by the laws of Victoria, Australia. 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 this Agreement.
- 22.2 Both Parties agree to submit to the non-exclusive jurisdiction of the courts of Victoria and the courts of appeal from them.

23 Interpretation

- 23.1 In this Agreement unless the contrary intention appears:
 - (a) a reference to this Agreement 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 this Agreement, and a reference to this agreement includes an annexure, attachment or schedule;
 - (g) a reference to a clause is a reference to a clause in this Agreement; and

- (h) a reference to a third person or a third party is a reference to a person who is not a party to this Agreement.

- 23.2 Headings are inserted for convenience and do not affect interpretation of this Agreement.

24 Definitions

In this Agreement unless the contrary intention appears:

Agreement means this agreement as constituted by the Purchase Order, Standard Purchase Order Terms and Conditions and any other annexures, attachments and schedules.

Defective Goods means Goods which are not in conformity with this Agreement or are defective in design, performance, workmanship, or makeup or otherwise.

Defective Services means Services or the results of any Services which are not in conformity with this Agreement, or are otherwise unsatisfactory.

Goods means the goods specified in the Purchase Order of this Agreement (including any part of the goods specified).

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

Intellectual Property Rights includes without limitation the protected rights attaching to inventions, patents, registered designs, trade marks, copyright, circuit layouts and confidential information.

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

Materials means all documents, works and inventions (including programs, source codes, software systems, marketing techniques, client information, manuals, designs, materials and records) conceived, developed, written or otherwise created by you at the request of us or in the course of providing the Services and doing what might reasonably be implied to be part of the Services.

Party means you or us.

Parties means you and us.

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

Purchase Order means the purchase order issued by us to you ordering the Goods and/or Services.

Related Body Corporate has the meaning given to that term in the Corporations Act.

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

Service Levels is as set out in the Purchase Order or otherwise applicable to the provision of the Services.

Standard Purchase Order Terms and Conditions means these terms and conditions.

Taxes means any and all present and future sales, use, personal, property, real property, value added, goods and services, GST, 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.

you means the person named in this Agreement as the supplier of the goods.

Warranty Period means the period of 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.

we and **us** means the Repco Group entity identified in the Purchase Order.

Written Claim means a written claim containing the information in **clause 11.6** and given by you in accordance with **clause 11.3(b)** or **clause 11.4(d)**.