1. DEFINITIONS AND INTERPRETATION

Unless the context otherwise requires:

"Change Order" means a written amendment by Purchaser to the Goods and/or Services;

"Conditions" means these Standard Terms and Conditions.

"Contract" means the agreement between the Supplier and Purchaser consisting of the PO, these Conditions, and any other documents expressly referred to in the PO;

"Day" means the period of time commencing at midnight and ending 24 hours later;

"Delivery" or **"Delivered"** means the delivery of Goods and/or Services by the Supplier to the nominated Delivery Point and the acceptance of the Goods and/or Services by Purchaser;

"Delivery Date" means the date for Delivery specified in the PO;

"Delivery Point" means the place(s) or site(s) where the Goods and/or Services are to be delivered as specified in the PO;

"GC" means a provision of these Conditions;

"Goods and/or Services" means the goods and/or services to be delivered as described in the PO and, if applicable, the works to be carried out at the Site;

"Government Authority" means any government or governmental, semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;

"**Intellectual Property Rights**" includes patents, inventions, know-how, processes, designs, databases, copyrights, trademarks, brands, logos, domain names, business names, moral rights and any other intellectual property rights;

"PO" means the purchase order form sent to the Supplier including via the electronic ordering system the Electronic Data Interchange (EDI) (where applicable);

"Price" means the total amount payable to the Supplier set out in the PO;

"Purchaser" means the person or corporation set out in the PO;

"Related Body Corporate" has the meaning given to it in section 9 of the Corporations Act 2001 (Cth);

"Site" means any place nominated by Purchaser (including a site of Purchaser's client) where the Goods and/or Services are to be provided or carried out by the Supplier;

"Site Manager" means any person appointed by the Supplier under GC 9;

"Site Rules and Regulations" means the rules and regulations as advised to the Supplier by Purchaser as amended from time to time;

"Supplier" means the person or corporation set out in the PO and to whom the PO is issued, and where two or more persons are referred to in the PO, then the obligations on their part shall bind and be observed and performed by them jointly and severally;

"Taxes" means any and all present and future sales, use, personal, property, real property, value added, goods and services, 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 Purchaser's 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;

"Valid Tax Invoice" means an invoice provided by the Supplier that must include substantiation for the amount invoiced, the PO number and Supplier's bank account details for payment by electronic bank transfer;

The words **"including"** and **"include"** are a reference to "including, but not limited to"; and

Words importing the singular include the plural (and vice versa).

2. FORMATION OF THE CONTRACT

2.1. The Contract constitutes the entire agreement between the Supplier and Purchaser in relation to the Goods and/or Services and replaces any existing agreement or arrangement between the parties.

2.2. Except as may be specifically provided in the PO any terms and conditions contained in or relating to any other documents, including any of Supplier's documents, in respect of the Goods and/or Services are of no effect.

2.3. No terms stated by the Supplier in accepting or acknowledging the Contract will be binding unless Purchaser's prior written consent has been given.

2.4. In the absence of any written acceptance or acknowledgment of the Contract by the Supplier, the commencement of any work by the Supplier in connection with the Goods and/or Services or the provision of any Goods and/or Services will be deemed an acceptance of the Contract.

3. PERFORMANCE AND GOODS AND/OR SERVICES

3.1. The Supplier must perform and supply the Goods and/or Services and provide the Goods and/or Services in accordance with the Contract.

3.2. The Supplier must deliver and complete the performance of the Goods and/or Services by the Delivery Date.

3.3. The Delivery Date will be extended by a reasonable duration if and to the extent the Supplier is delayed by the Purchaser, provided that the Supplier provides written notice of the delay within 3 days of becoming aware of the delay and the Supplier takes all reasonable actions to mitigate the extent of the delay.

3.4. Where the Supplier fails to perform or supply the Goods and/or Services (or any part thereof) or fails to provide the Goods and/or Services to the Delivery Point by the relevant Delivery Date, such failure will constitute a material breach of the Contract and Purchaser may:

(a) deduct from payments due to the Supplier under the Contract any loss, cost or expense reasonably incurred by the Purchaser as a result of the delay; and/or

(b) immediately terminate the Contract.

3.5. Partial performance or supply of the Goods and/or Services or partial provision of the Goods and/or Services (including the supply of non-compliant Goods and/or Services) by the relevant Delivery Date constitutes a failure to deliver and/or perform and GC 3.4 applies, unless Purchaser confirms in writing that partial performance, supply or Delivery is acceptable.

3.6. If a licence, certificate or consent of any Government Authority is required for the performance or supply of the Goods and/or Services, the Supplier must obtain such licence, certificate or consent at Supplier's expense and produce evidence of it to Purchaser on demand.

3.7. The value of the Goods and/or Services performed and supplied must not be greater than the Price, unless amendments have been made to the Goods and/or Services by the issue of a Change Order.

4. NON-COMPLIANT GOODS AND/OR SERVICES

4.1. Notwithstanding that payment has been made to the Supplier, Purchaser will not be deemed to have accepted the Goods and/or Services unless and until Purchaser has had a reasonable opportunity to inspect them and has notified the Supplier of Purchaser's acceptance.

4.2. If any Goods and/or Services (or any part of them) are defective, or do not comply with the Contract, Purchaser may reject such Goods and/or Services.

4.3. If Purchaser rejects any Goods and/or Services under GC 4.2, the Supplier must re-perform or re-supply such rejected Goods and/or Services within 10 days of being notified (or such other time reasonably directed by Purchaser) at the Supplier's cost.

4.4. If such Goods and/or Services are not re-performed or re-supplied by the Supplier within a reasonable time, such Goods and/or Services may be re-performed or re-supplied by Purchaser and Purchaser may immediately terminate the Contract in whole or part and the Supplier must refund any payments made by Purchaser for any Goods and/or Services rejected by Purchaser within 14 days. Any additional costs incurred by Purchaser arising out of the re-performance or re-supply of such Goods and/or Services shall be to the Supplier's account.

4.5. If Purchaser requests the Supplier to remove any person from the performance or supply of the Goods and/or Services on the grounds the person is not complying with the requirements of the Contract or is otherwise not behaving appropriately then the Supplier must comply and promptly replace the person.

5. RISK AND TITLE

5.1. Without prejudice to Purchaser's rights under GC 4, unless otherwise specified in the Contract, ownership of the Goods and/or Services passes to Purchaser on the earlier of:

(a) Delivery of the Goods and/or Services; or
(b) payment for any of the Goods and/or Services prior to Delivery.

5.2. Where ownership of any Goods passes to Purchaser before Delivery, the Supplier must ensure that the Goods are properly stored and protected, and kept separate from goods of a similar nature and labelled the property of Purchaser. The Supplier must indemnify and keep Purchaser indemnified from and against all losses, claims, liabilities and expenses (including legal and other professional fees and expenses) arising out its failure to comply with this GC 5.2.

6. CONTRACT PRICE AND PAYMENT

6.1. The Supplier is deemed to have satisfied itself of the correctness and sufficiency of the Price which covers all the Supplier's obligations under or in connection with the Contract.

6.2. Purchaser is only liable to pay for Goods and/or Services specified in the PO at the Price stated in the PO.

6.3. Subject to the Supplier providing a complete Valid Tax Invoice to Purchaser at the address for the submission of invoices indicated on the PO, Purchaser will make payments due to the Supplier within 30 days from the end of month of issue of a Valid Tax Invoice.

6.4. If Purchaser is required by any law to deduct an amount in respect of Taxes from a payment under the Contract, Purchaser will pay the Supplier the difference between the payment due under the Contract to the Supplier and the amount deducted.

6.5. Purchaser may set-off any amount owing to Purchaser from the Supplier against any amount owed to the Supplier by Purchaser. Purchaser may separately recover from the Supplier any debt owed by the Supplier to Purchaser arising out of or in connection with the Contract.

6.6. Unless otherwise notified by Purchaser in writing, all payments made by Purchaser to the Supplier will be by electronic bank transfer.

6.7. Should any Taxes be levied on, in respect of, or in relation to, the Goods and/or Services, these will be to the Supplier's account. The Supplier will be responsible for payment of those Taxes and will immediately provide Purchaser with documentary evidence of payment if payment is made by the Supplier on Purchaser's behalf.

6.8. Where the amount payable to the Supplier for a supply of Goods and/or Services under or in connection with the Contract is based on the actual or reasonable costs incurred by the Supplier, the amount which the Supplier is entitled to be paid will be reduced by any input tax credits available to the Supplier, or Supplier's representative member, in respect of such costs.

6.9. The Supplier acknowledges and agrees that if a legislative requirement requires Purchaser to deduct an amount in respect of withholding tax from a payment under the Contract such that the Supplier would not actually receive on the due date the full amount provided for under the Contract, then on the due date Purchaser must pay:

(a) the relevant authority an amount equal to the amount deducted in accordance with applicable law and give the original receipt to the Supplier; and
(b) the Supplier an amount equal to the deducted amount.

7. INTELLECTUAL PROPERTY RIGHTS

7.1. The Supplier agrees that all Intellectual Property Rights created or produced by providing the Goods and/or Services will be owned by Purchaser.

7.2. The ownership of all Intellectual Property Rights owned by the Supplier and Purchaser prior to commencing the Goods and/or Services will remain with the owner and the owner grants an irrevocable, transferable, royalty free and perpetual licence to the other party to use those rights for the purpose of supplying the Goods and/or performing Services or using, the Goods and/or Services for purpose of the PO.

7.3. The Supplier must do everything necessary to ensure that the use, copying or modifying of the Goods and/or Services by Purchaser does not infringe any rights, including Intellectual Property Rights, of another person or entity.

8. OBLIGATIONS

8.1. The Supplier must ensure that:

(a) the Goods and/or Services comply with the Contract;
(b) the Goods and/or Services are of high quality, fit for purpose, and free from defects or computer viruses;
(c) the Goods and/or Services are, and at the time that title passes to Purchaser will be, free and clear of all liens and encumbrances;
(d) in providing the Goods and/or Services, the Supplier:
    i. informs itself of and complies with all applicable health, safety and environmental laws and regulations, as may be amended from time to time; and
    ii. complies with any safety, environmental or other policies, guidelines, procedures and requirements provided to the Supplier by Purchaser; and
(e) the Supplier provides the Goods and/or Services and exercising the care, skill and diligence reasonably expected of a competent, professional supplier of goods and/or services similar to the Goods and/or Services.

8.2. The Supplier must ensure that Purchaser receives the benefit of all warranties provided by the Supplier's subcontractors.

8.3. Purchaser's rights and remedies in this Contract are cumulative and are not exclusive of any rights or remedies provided at law or otherwise.

8.4. Purchaser's acceptance of the Goods and/or Services and does not relieve the Supplier from any of the Supplier's warranties, obligations or liabilities under or in connection with this GC 8.

9. SITE

9.1. This GC 9 applies in the event that any work on the Goods and/or Services are to be performed on the Site and which is not covered by a separate agreement between the Purchaser and the Supplier.

9.2. Purchaser must provide the Supplier with access to the Site as reasonably required for the proper performance of any Goods and/or Services. The Supplier acknowledges and agrees that it will not be given exclusive access to the Site.

9.3. Whilst on Site the Supplier and any of its employees, agents or subcontractors must:

(a) adhere to all applicable Site Rules and Regulations; and
(b) not enter any area on the Site for which it does not have express permission or authorisation to enter; and
(c) keep the Site free from all unnecessary obstructions and must at regular intervals remove any surplus materials, wreckage, rubbish or temporary works.

9.4. From the commencement of the supply or performance of any Goods and/or Services on Site until completion of demobilisation at the Site, the Supplier must appoint a suitable person to act as the Site Manager. The Site Manager must personally supervise the performance of all Goods and/or Services and be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Goods and/or Services. Whenever the Site Manager is absent from the Site, a suitable person must be appointed to act as its deputy.

9.5. In respect of any Site visit, or prior to the performance of Goods and/or Services at the Site, the Supplier, its employees, agents and subcontractors must, in addition to the Supplier's own Site induction covering safety and other aspects of the Goods and/or Services, attend a Purchaser Site induction covering safety and other aspects of the Site. The Supplier shall not be entitled to any additional costs above the Price for attending such safety inductions, unless otherwise agreed by Purchaser in writing.

9.6. The Supplier must ensure that the working environment at the Site where the Goods and/or Services are to be performed is safe, without risks to the safety or health or exposure to hazards of its employees, agents, subcontractors, suppliers, Purchaser, any employee or other contractor of Purchaser or any member of the public.

9.7. The Supplier must ensure that safe work practices are in place in relation to the performance of its (and its employees') duties at the Site where the Goods and/or Services are to be performed. The Supplier must record those work practices in documented work health and safety policies and procedures that include:

(a) organisation structure and responsibilities;
(b) safe work practices; and
(c) work health and safety training and induction, performance monitoring and auditing and inspection procedures.

9.8. Immediately following a health and safety occurrence or incident, the Supplier must notify Purchaser of any accident, injury, loss or damage of any kind which occurs whilst Goods and/or Services are performed under this Contract.

9.9. When requested to do so by Purchaser, the Supplier must give all other documents relevant to any health and safety incident and also authorise Purchaser and its representatives or agents to conduct interviews with the Supplier's employees and contractors regarding all matters relevant to the incident.

9.10. The Supplier is responsible for industrial relations matters of its own workforce. Purchaser must not interfere in the industrial and personnel matters of the Supplier but may give guidance and assistance where Purchaser considers it necessary.

9.11. As between Purchaser and the Supplier, valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the Site will be and remain the property of Purchaser. Immediately upon the discovery of these items, the Supplier must:

(a) Take precautions to prevent their loss, removal or damage; and
(b) Give Purchaser written notice of the discovery.

9.12. The Supplier's reasonable extra costs necessarily incurred in connection with GC 9.11, which may include an allowance for off-site overheads and profit, will be added to the Price.

10. INDEMNITY AND INSURANCE

10.1. Subject to GC 10.2, the Supplier must indemnify and keep Purchaser, Purchaser's directors, employees and agents indemnified from and against all losses, claims, liabilities and expenses (including legal and other professional fees and expenses) arising out of injury or death to any person or damage to or destruction of any property in relation to the Supplier performing or supplying the Goods and/or Services.

10.2. The indemnity provided in GC 10.1 does not apply to the extent that the injury, death, damage, destruction or loss is the result of Purchaser's negligence.

10.3. The Supplier must effect and maintain all insurances as stated in the PO and which a prudent, competent, professional supplier of the Goods and/or Services would effect and maintain, including comprehensive public and products liability insurance, professional indemnity insurance, workers' compensation insurance, motor vehicle insurance and any other insurances required by law.

11. CIVIL LIABILITY ACT

11.1. The Supplier agrees that the operation of Part 1F of the Civil Liability Act 2002 (WA) is excluded in relation to all and any rights, obligations and liabilities under this Contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at law.

12. TERMINATION OR EXPIRY

12.1. Purchaser may immediately terminate the Contract by written notice to the Supplier:

(a) where these Conditions expressly permit Purchaser to do so;
(b) for convenience; or
(c) if the Supplier breaches any obligation under the Contract and does not rectify the breach within the time required by the Purchaser.

13. CONFIDENTIALITY

13.1. The Supplier must treat all information, data and materials provided by Purchaser as confidential and must not disclose it to any third party without Purchaser's prior written consent or use it for any purpose other than for provision of the Goods and/or Services.

13.2. Upon termination or expiry of the Contract and/or upon Purchaser's request, the Supplier must return or, at Purchaser's option, destroy all such information and provide evidence of such destruction.

14. MODERN SLAVERY

14.1. The Supplier represents and warrants that:

(a) neither it nor any of its Personnel or Related Bodies Corporate have been convicted of or been the subject of any enforcement proceedings by a governmental or regulatory body relating to a modern slavery or human trafficking offence;
(b) it has carried out reasonable due diligence to identify and assess modern slavery risks in its supply chains and operations;
(c) it has taken, and is taking, reasonable steps to address and mitigate modern slavery risks in its supply chains and operations;
(d) it will notify the Purchaser as soon as reasonably practicable of any instances of modern slavery;
(e) If requested, the Supplier will permit the Purchaser to undertake verification activities to validate the Supplier's compliance with this clause, including access to the Supplier's premises and records as required;
(f) In the event that the Supplier does not remedy, or provide an acceptable plan to remedy, any identified instances of modern slavery within the time frame specified by the Purchaser, the Purchaser reserves the right to terminate this PO in accordance with clause 12;
(g) The Supplier must ensure that each subcontract it enters into in relation to this PO includes a clause similar in effect to this clause.

15. PRIVACY

15.1. Where the Supplier processes personal information in connection with this PO, the Supplier will:

(a) comply with all applicable privacy and data privacy laws; and
(b) take all appropriate technical and organisational measures against unauthorised or unlawful processing, loss or disclosure of personal information.

16. COMPLIANCE

16.1. The Supplier must ensure that the Goods and/or Services comply with all laws, rules and regulations and Government Authority requirements.

17. DISPUTE RESOLUTION

17.1. If there is a dispute between the parties arising out of or in connection with this PO, then within ten days of a party notifying the other party of that dispute, senior representatives from each party must meet and use reasonable endeavours to resolve the dispute by negotiation.

17.2. If the parties fail to resolve the dispute by negotiation in accordance with clause 17.1, then either party may commence legal proceedings.

17.3. Nothing in this clause 17 prevents a party form seeking urgent injunctive relief from a court.

17.4. The parties must continue to perform their respective obligations under this PO despite the existence of a dispute.

18. GENERAL

18.1. The Supplier must not assign or novate the Contract or subcontract the performance of all or part of the Goods and/or Services without Purchaser's prior written consent.

18.2. All notices must be in writing, addressed to Purchaser or the Supplier as appropriate, and delivered to the address and sent as an attachment to the email address of the recipient as shown in the PO, or any other address notified in writing by one party to the other.

18.3. Any notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.

18.4. A letter or email is deemed to be received:

(a) in the case of a posted letter, 3 days after posting (5 days in the case of a letter sent by airmail); and

(b) in the case of an email:

i. at the time shown in the delivery confirmation report generated by the sender's email system; or

ii. if the sender's email system does not generate a delivery confirmation report within 12 hours of the time the email is sent, unless the sender receives a return email notification that the email was not delivered, at the time which is 12 hours from the time the email was sent.

18.5. If any provision in these Conditions is invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions.

18.6. To the extent of any inconsistency between the documents forming the Contract, then the order of precedence is:

(a) the PO; and

(b) the Conditions.

18.7. The Contract may not be varied except in writing signed by a duly authorised representative of each of the parties.

18.8. If Purchaser does not exercise a right, remedy or power at any time, this does not mean Purchaser cannot exercise it later.

18.9. This Contract applies to any Goods and/or Services supplied or provided before, on and after the date of this Contract.

18.10. The parties are not entitled to recover any amount representing any kind of indirect or consequential loss or damage including loss of profit, loss of use, loss of contracts, loss of revenue or contribution to head office overheads arising out of or in connection with this Contract.

18.11. The Supplier is an independent contractor and not the Purchaser's employee. This Contract does not create a partnership, joint venture or agency relationship between the parties.

18.12. Clauses 5, 6.5, 7, 8, 9.9, 10, 11, 13, 14, 15, 17 and 18 will survive any termination or expiry of the Contract.

18.13. The Contract is governed by the laws of Western Australia and the parties agree to submit to the exclusive jurisdiction of the courts of Western Australia.