

Purchase Order Terms and Conditions

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these terms and conditions:

- (a) **Agreement** means an agreement between the Purchaser and Supplier for the supply of Goods or Services constituted by a Purchase Order, these Conditions and any agreed variation;
- (b) **Conditions** mean these terms and conditions of purchase;
- (c) **Date for Delivery** means the date for delivery of the Goods and/or performance of the Services as set out in the Purchase Order;
- (d) **Delivery Point** means in relation to Goods, the delivery address for the Goods as set out in the Purchase Order and in relation to the Services, the place for performance of the Services as set out in the Purchase Order;
- (e) **Goods** means the goods described in the Purchase Order;
- (f) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended (GST Act) or any replacement or any other relevant legislation and regulations;
- (g) **Intellectual Property Rights** means any intellectual or industrial property right, whether protected by statute, at common law or in equity, including any patent, registered design, (whether or not registrable), invention, trade secret, circuit layout design, or right in relation to circuit layouts, right to confidential information, technical information, trademark or name, copyright or other protected right;
- (h) **Laws** includes any requirement of any statute, rule, regulation, proclamation, order in council, ordinance or by-law whether commonwealth, state, territorial or local in relation to environmental and occupational health and safety matters;
- (i) **Loss** means any loss, liability, costs (including legal costs at the higher of an indemnity or solicitor-client basis) or expense incurred by the Purchaser relating to this Agreement;
- (j) **Personal Information** means:
 - i. information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion; or
 - ii. information or a document that relates to the affairs or personal particulars of another person (such as a company or a business), which is received or learnt from any source as a consequence of or in the performance of this Agreement.
- (k) **PPSA** means the *Personal Property Securities Act 2009* (Cth);
- (l) **Price** means the price payable by the Purchaser to the Supplier as shown on the Purchase Order.
- (m) **Purchase Order** means the Purchaser's order accompanying these Conditions or otherwise placed or communicated with the Supplier and includes these Conditions;
- (n) **Purchaser** means Rangelands NRM Coordinating Group Inc or any related body corporate (within the meaning of section 50 of the Corporations Act) as specified in the Purchase Order;
- (o) **Representative** of a party means that party's director, or authorised officer, employee, agent or sub-contractor;
- (p) **Services** means the services described in the Purchase Order;
- (q) **Specifications** means any technical or other specification relating to the Goods and/or Services referred to in the Purchase Order and details of which have been supplied by the Purchaser to its Representative to the Supplier; and
- (r) **Supplier** means the person who sells the Goods or provides the Services to the Purchaser.
- (s) **Work Health and Safety** means in clause 23, Construction Project, Inspector, Notifiable Incident, Person Conducting a Business or Undertaking, Purchaser Contractor, Regulator and

WHS Entry Permit Holder have the meanings given in the WHS Laws.

1.2 Interpretation

In the interpretation of these Conditions, unless the context or subject matter otherwise requires:

- (a) the singular includes plural and vice versa;
- (b) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (c) if a party consists of more than 1 person, the Agreement binds each of them separately and any 2 or more of them jointly;
- (d) an obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly; and
- (e) time is of the essence in respect of all of the Supplier's obligations to the Purchaser.

2. AGREEMENT

2.1 Consideration

The Supplier agrees to supply the Goods and/or Services to the Purchaser in accordance with the Agreement, and in consideration for this the Purchaser agrees to pay the Price to the Supplier.

2.2 Application

These Conditions apply to all Purchase Orders, and:

- (a) to the extent the Supplier's terms and conditions are supplied with the Goods and/or Services (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect; and
- (b) any terms and conditions implied by statute or otherwise are excluded to the extent it is lawful to do so.

3. BINDING TERMS AND CONDITIONS

3.1 Entire Agreement

The entire Agreement between the Purchaser and the Supplier for the purchase of the Goods and/or Services by the Purchaser from the Supplier is constituted by:

- (a) these Conditions;
- (b) any other terms and conditions (including Specifications) incorporated by reference in the Purchase Order as long as the Supplier has details of these terms and conditions;
- (c) any other terms and conditions which are imposed by law and which cannot be excluded; and
- (d) any agreed written variation.

For the avoidance of doubt, nothing in this clause is intended to exclude liability for fraud or fraudulent misrepresentation.

3.2 Precedence

These Conditions shall apply to all contracts for the purchase of Goods and/or Services by the Purchaser from the Supplier to the exclusion of any other terms and conditions or any other materials which the Supplier may purport to apply or which are endorsed upon any correspondence or documents issued by the Supplier, irrespective of their date of communication to the Purchaser, except to the extent that the Supplier's terms and conditions are agreed to in writing and signed by the Purchaser.

3.3 Acceptance

Acceptance of a Purchase Order by the Supplier will occur on the earlier of:

- (a) the Supplier's signed acceptance being received by the Purchaser; or
- (b) 5 business days after the Purchase Order Agreement is sent by the Purchaser to the Supplier, provided the Supplier has not rejected the Purchase Order within that period.

and will constitute acceptance of these Conditions by the Supplier.

4. PRICE

4.1 Price of Goods and/or Services supplied

The Price specified in the Purchase Order is fixed and is not subject to increase. The price includes all costs of testing, inspection, labelling, packing and freight and delivery to and off-loading at the Delivery Point as specified in the Purchase Order.

4.2 GST

The Price at which the Goods and/or Services are provided by the Supplier to the Purchaser includes (unless otherwise stated or agreed in writing) GST, if applicable.

4.3 Freight

Unless otherwise stated or agreed in writing the Supplier is responsible for freight and delivery to the Delivery Point as specified in the Purchase Order.

5. PAYMENT

5.1 Payment Terms

Payment for Goods and/or Services supplied by the Supplier to the Purchaser will be tendered within the terms stated on the Purchase Order.

5.2 Invoices

The Supplier must provide the Purchaser with a GST compliant tax invoice for the Goods and/or Services provided under this Agreement. Each invoice must include:

- (a) a reference to the Purchase Order number;
- (b) a reference to the item number;
- (c) a detailed description of the delivered Goods or performed Services (including sizes, quantities, weight, unit and price);
- (d) the Price relating to the Goods and/or Services, broken down to reflect the same Price components on the Purchase Order; and
- (e) the amount of any applicable GST.
- (f) Provision of an executed Statutory Declaration state the that goods and/or services have been provided in accordance with the Purchase Order.

The Purchaser will only accept invoices which bear such information and may require the Supplier to reissue a valid invoice prior to payment.

6. DELIVERY AND PERFORMANCE

6.1 Delivery of Goods and Performance of Services

- (a) The Supplier must ensure that the Good and/or Services are delivered or performed (as applicable) at the Delivery Point on the Date for Delivery. Should any change in the Date for Delivery (or dates) be proposed by the Supplier for any reason, immediate written notice must be given to the Purchaser who may, acting reasonably, accept or reject such proposal.
- (b) If the Purchaser rejects a proposal to change the Date for Delivery and the Supplier fails to deliver on the Date for Delivery, the Purchaser may by written notice to the Supplier, terminate this Agreement or the agreement to supply particular Goods and/or Services under a Purchase Order. If the Purchaser has paid a deposit, the Supplier must refund the deposit in full to the Purchaser. This clause does not limit other rights or remedies available to the Purchaser under this Agreement.

7. TITLE AND RISK

7.1 Title

Property in the Goods passes to the Purchaser on delivery of the Goods by the Supplier.

7.2 Risk

The Supplier bears all risks of loss and damage (excluding loss or damage caused by the Purchaser) to the Goods and/or Services until final acceptance by the Purchaser in accordance with clause 7.4.

7.3 Final inspection and acceptance

Notwithstanding any prior inspections, usage or payments, all Goods shall be subject to:

- (a) final inspection which may include measurement, testing or examination; and
- (b) acceptance at the Purchaser's facility within a reasonable time (but not more than 90 days) after receipt of the Goods.

7.4 Date of acceptance

Acceptance of the Goods and/or Services by the Purchaser will occur on the earlier of:

- (a) the date upon which the Purchaser notifies the Supplier in writing of acceptance; or
- (b) if the Purchaser has not rejected the Goods and/or Services under clause 7.5, 90 days after receipt of the Goods and/or Services. or

7.5 Rejected Goods or Services

The Purchaser may, within 90 days of delivery of the Goods or performance of the Services at the Delivery Point, reject any Goods and/or Services which do not comply strictly with the Agreement. Once the Goods and/or Services are rejected, the Purchaser, in its sole discretion, may require:

- (a) in the case of either Goods or Services, the Supplier to refund any payment within 14 days; or
- (b) in the case of Goods, replacement of the Goods to the Purchaser's satisfaction; or
- (c) in the case of Services, the re-supply of the Services.

Title and risk in the rejected Goods immediately re-vests in the Supplier. The Supplier must, at its cost, remove from the rejected Goods any of the Purchaser's intellectual property or any other distinguishing features such as name or symbols.

7.6 No Waiver

The Purchaser's acceptance does not waive rights. If the Purchaser accepts any Goods or Services, this does not extinguish any of the Purchaser's rights if the Goods or Services do not comply with a term of the Agreement.

8. SUPPLIER WARRANTIES

8.1 Warranties relating to Goods

The Supplier warrants that the Goods:

- (a) are safe and free from risk to health and safety and compliant with all relevant laws;
- (b) are and will remain free from any Security Interest (as that term is defined in the PPSA), or any other security, charge or encumbrance;
- (c) are free from all defects or faults;
- (d) are of acceptable quality;
- (e) are clearly and durably labelled identifying the Goods and including any appropriate and correct warning and instructions;
- (f) are fit for the purpose for which purchased (as communicated by the Purchaser before the Purchase Order or as should be reasonably understood by the Supplier of the Goods who is experienced in such technical and specific matters relating to the Goods and the purpose they are intended for);
- (g) match the description and the Specifications referred to in the Purchase Order;
- (h) comply with any representations, descriptions, samples or other specifications (including the Specifications) including quality, function, performance or design;
- (i) comply with all legislation, regulations and other governmental requirements in Australia relating to the Goods including those relating to manufacturing, packaging, labelling and transportation; and
- (j) include any applicable Supplier's warranty that passes to the consumer from the Purchaser without liability to the Purchaser.

8.2 Warranties relating to Services

The Supplier warrants that the Services:

- (a) shall be performed by personnel that are suitably qualified, experienced and hold all requisite licences and authorisations necessary to conduct the Services;
- (b) shall be performed in compliance with all policies and procedures of the Purchaser (as are applicable to the provision of the Services and notified to the Supplier from time to time); and
- (c) shall be provided with due care and skill, with the same or higher level of care and skill as would reasonably be expected of a person qualified and experienced in the supply of the same or similar Services, taking all necessary care to avoid Loss or damage.

9. INTELLECTUAL PROPERTY RIGHTS

- (a) The Supplier warrants that the Goods and or Services, and the Purchaser's reasonably foreseeable use of them will not infringe the Intellectual Property Rights of any person. The Supplier indemnifies the Purchaser against breach of this warranty.
- (b) The Purchaser will own all Intellectual Property Rights arising from delivery of the Goods and the performance of the Services. The Supplier assigns such rights to the Purchaser and agrees to execute any document reasonably required by the Purchaser to evidence or perfect such ownership.
- (c) The Supplier grants the Purchaser a licence of the Intellectual Property Rights to enable it to use, modify, maintain and repair the Goods and enjoy the benefit of the Services.

10. CONFIDENTIALITY

The Supplier must ensure that its Representatives keep confidential all information supplied by the Purchaser or relating to this Agreement (**Information**), and not use or disclose that information except to fulfill its obligations under this Agreement. The Information supplied remains the property of the Purchaser and the Supplier must not disclose the Information without prior written consent of the Purchaser.

This clause does not apply to information, which is lawfully obtained from a third party, is public knowledge, is already known or is otherwise independently developed by Representatives of the Supplier who have not been exposed to the Information.

11. WORK ON THE PURCHASER'S PREMISES

If any Services are to be performed on the Purchaser's premises, the Supplier must comply with all applicable Laws and all of the Purchaser's then current policies and procedures (as notified to the Supplier) including, without limitation, the Purchaser's then current safety and other applicable policies (as notified to the Supplier). The Supplier shall provide the Purchaser with a complete list of all chemicals, hazardous materials, and ingredients in the composition of goods used in the performance of the Services and a copy of the material safety data sheet for such chemicals and hazardous materials. The submission of such list by the Supplier shall not relieve the Supplier of exclusive responsibility for the safe transportation, use, storage and disposal of such materials prior to acceptance by the Purchaser. All chemicals and hazardous materials brought by the Supplier to the Purchaser's premises shall bear a label stating the identity of the chemical of material and the hazards associated therewith.

12. INDEMNITY AND RELEASE

The Supplier indemnifies the Purchaser, its affiliated companies, and their Representatives, successors, and assigns and holds them harmless from and against any and all claims, suits, actions, liabilities, Loss, judgments or damages, whether ordinary, special or consequential arising directly or indirectly from or in connection with:

- (a) the acts, negligence, omissions or willful misconduct of the Supplier;
- (b) the Goods or Services supplied;
- (c) a breach of any of the Supplier's warranties or any other term of the Agreement;
- (d) the Supplier's negligent, unauthorised or wrongful acts or omissions with regards to the use or installations of hazardous materials;
- (e) a claim that any Goods or Services supplied to the Purchaser infringe upon or misappropriate the Intellectual Property Rights of another person; or
- (f) a claim of any lien, security interest or other encumbrance made by a third party.

The indemnity in this clause is reduced to the extent that the Purchaser has caused or contributed to such claims, suits, actions, liabilities, Loss, judgments or damages.

13. TERM AND TERMINATION

13.1 Term

This Agreement shall commence and end on the dates specified in the Purchase Order unless otherwise terminated earlier in accordance with the remainder of the clause 13. Clauses 10, 13.2 and survive termination of the Agreement.

13.2 Without cause

The Purchaser may, at any time on the provision of reasonable written notice, terminate the Purchase Order, in whole or in part, without cause, upon written notice to the Supplier. Following receipt of such

notice by the Supplier, the Supplier shall, to the extent specified by the Purchaser, stop all work on the Purchase Order, and cause its suppliers and subcontractors to stop work.

If the Purchaser terminates the Purchase Order under this clause, the Supplier will be entitled to claim, by written notice to the Purchaser, any non-recoverable costs that the Supplier properly and directly incurred prior to the date of termination for the purpose of fulfilling the Purchase Order. For the avoidance of doubt, such costs will not include anticipated profits for undelivered Goods or unperformed Services.

13.3 With cause

The Purchaser may terminate the Purchase Order immediately, in whole or in part, if the Supplier:

- (a) fails to make delivery of the Goods or perform the Services within the time specified in that Purchase Order;
- (b) fails to replace defective Goods or Services in accordance with these Conditions;
- (c) breaches a term of the Agreement that cannot be remedied, or for a breach capable of remedy, fails to remedy said breach within 14 days written notice by the Purchaser; or
- (d) becomes insolvent, files or has filed against petition in bankruptcy, or makes an assignment for the benefit of creditors.

14. SUBCONTRACTING, ASSIGNMENT AND ADVERTISING

The Supplier must obtain the Purchaser's written consent before it:

- (a) subcontracts any obligation under the Agreement; or
- (b) assigns, charges or encumbers this Agreement or any rights under this Agreement; or
- (c) advertises or publishes anything concerning the Agreement.

15. INSURANCE

During the period of the Agreement, the Supplier has the risk in the Goods/Services and unless or until the Purchaser takes delivery and risk and title in the Goods/Services.

The Supplier must provide at its own expense the following insurances

- (a) maintain appropriate insurance in relation to public liability and product liability with a reputable insurer for at least (amount as defined on the Purchase Order);
- (b) maintain appropriate insurance in relation to professional indemnity with a reputable insurer for at least (amount as defined on the Purchase Order);
- (c) maintain workers' compensation in accordance with applicable legislation; and
- (d) insure the Goods and/or Services with a reputable insurer for their full replacement cost.

The Supplier must, upon the Purchaser's request, provide the Purchaser with certificates of currency with respect to these insurance policies.

16. RECOVERY OF MONIES

Any debt due from or moneys payable by the Supplier to the Purchaser whether under this Agreement or otherwise may be deducted by the Purchaser from any moneys due or to become due to the Supplier under this Agreement. The Purchaser is entitled to recover from the Supplier any balance that remains owing after deduction.

17. DISPUTE

- (a) Without affecting the rights of the Purchaser or of the Supplier at law or under any relevant or applicable statute, any dispute in connection with this Agreement must be resolved, at first instance, by discussion between a Representative nominated by the Purchaser and a Representative nominated by the Supplier.
- (b) If the Representatives fail to resolve the dispute, the dispute shall be referred to mediation. The mediator and the process will be agreed upon by the Supplier and the Purchaser.
- (c) Notwithstanding the existence of a dispute, the Supplier must continue to perform its obligations under this Agreement.

18. RELATIONSHIP

The Supplier is an independent contractor of the Purchaser. Nothing in these Conditions constitutes any other type of relationship between the parties.

19. WAIVER

A waiver by either party:

- (a) in respect of a breach of a provision of the Agreement by the other party will not constitute a waiver in respect of any other breach of that or any other provision; and
- (b) is not effective unless it is in writing, and only relates to the specific purpose for which it is given.

20. NO LIMITATION OF STATUTORY RIGHTS AND SEVERANCE

Nothing in this Agreement has the effect of or is taken to have the effect of excluding, restricting or modifying the provisions of any relevant or applicable statute. If it is determined that a word, phrase, sentence, paragraph or clause is unenforceable, illegal or void, then it is severed, and the other provisions of this Agreement remain operative.

21. VARIATIONS

21.1 Variation

The Purchaser may, prior to delivery of Goods or performance of the Services, direct the Supplier in writing to add, omit, amend, supplement or replace any Purchase Order, Specification or these Conditions. The Supplier must, within 7 days of such direction, advise the Purchaser in writing if it accepts the variation to the Purchase Order. If the Supplier rejects the variation or fails to advise the Purchaser with the specified period, the Purchase Order shall be terminated unless otherwise agreed between the parties.

21.2 Price

Where a direction for a variation would result in variation to the Price, the Supplier must immediately advise the Purchaser in writing of the varied Price (which must be determined by the same method of pricing for the provision of the original Goods and/or Services). A variation to the Price is not effective unless it is communicated to the Purchaser in writing and signed by the Purchaser.

21.3 Agreement

If, in the opinion of the Supplier, a direction for a variation is likely to prevent the Supplier from meeting its obligations under the Agreement, it must immediately notify the Purchaser. The Purchaser will decide whether the variation will take effect and notify the Supplier of its decision in writing and may, in its discretion, modify the Agreement to the extent required to enable the Supplier to deliver the variation.

22. PRIVACY

The Purchaser collects Personal Information for the purposes of performing its obligations under this Agreement.

By executing this Agreement, the Supplier consents to the Purchaser using the Personal Information to perform its obligations under this Agreement.

The Supplier may contact the Purchaser to gain access to and request correction or amendment to the Supplier's Personal Information.

The Purchaser may disclose the Supplier's Personal Information to:

- (a) third parties that are associated or connected with giving effect to the transaction contemplated under the Agreement and the performance of the Supplier's obligations under this Agreement; and
- (b) the Supplier's Related Entities (as defined in section 9 of the Corporations Act 2001).

Where the Purchaser has been requested to extend credit to the Supplier, the Supplier:

- (a) agrees that the Purchaser may disclose the Supplier's Personal Information to investigate the credit worthiness of the Supplier, including (without limitation), conducting a credit check at any time, making enquiries with persons nominated by the Supplier as trade references, its bankers or any other credit providers (**Information Sources**);
- (b) authorises the Information Sources to disclose to the Purchaser all information concerning the Supplier which is within the possession of the Information Sources, and which is requested by the Purchaser; and
- (c) consents to the Purchaser giving to, and obtaining from, the Information Sources, Personal Information about the Supplier and information about the commercial credit arrangements of the Supplier for the purpose of collecting overdue payments or for notifying other credit providers of default by the Supplier.

23. WORK HEALTH AND SAFETY

The Supplier acknowledges and agrees that it has a Work Health and Safety program in place that abides by the WHS Act.

23.1 General obligations

- (a) The Supplier must ensure the Services are performed in a safe manner.
- (b) The Supplier must not and must ensure that the Supplier's Personnel do not, by act or omission place the Purchaser in breach of its obligations under the WHS Laws.
- (c) The Supplier must, and must ensure that the Supplier's Personnel, if using or accessing the Purchaser's premises or facilities, comply with all instructions, directions, policies and procedures relating to work health and safety in operation at those premises or facilities whether specifically drawn to the attention of the Supplier or as might reasonably be inferred from the circumstances.
- (d) Where the health and safety of any person may be affected by the performance of the Services, the Supplier must consult, cooperate and coordinate with the Purchaser, or any other relevant Person Conducting a Business or Undertaking, in relation to the health and safety issue.
- (e) The Supplier must inform itself of and comply with and ensure that the Supplier's Personnel inform themselves of and comply with, the Purchaser's work health and safety policies and procedures relevant to the Services.
- (f) The Supplier must ensure that the Supplier's Personnel:
- (g) comply with the WHS Laws in relation to the Services;
- (h) perform the Services in accordance with the Work Health and Safety Plan (if required by the Purchaser);
- (i) comply with all relevant work health and safety policies and procedures of the Purchaser whether specifically drawn to the attention of the Supplier or as might reasonably be inferred from the circumstances; and
- (j) immediately comply with any instruction or direction from the Purchaser regarding work health and safety in relation to the Services, including to suspend the Services.
- (k) To the extent that the Services, or any part of the Services, are a Construction Project, the Purchaser engages the Supplier as Purchaser Contractor for the Construction Project and authorises the Supplier to have management or control of the workplace and to discharge the duties of a Purchaser Contractor under the WHS Laws. Notwithstanding any engagement the Supplier is authorised to have management and control of any workplace where the Services are being performed.

23.2 Notifying the Purchaser

- (a) The Supplier must notify the Purchaser as soon as practicable of any concern the Supplier has regarding work health and safety in relation to the Services.
- (b) The Supplier must immediately on becoming aware notify the Purchaser of any:
 - i. breach or suspected breach of the WHS Laws in relation to the Services;
 - ii. incident or event that occurred in connection with the Services that had the potential to cause (but did not cause) a serious injury or death to any person, including any Notifiable Incident;
 - iii. cessation of work on the Services, or direction to cease work on the Services from any person having authority under the WHS Laws to do so, due to unsafe work;
 - iv. entry by a WHS Entry Permit Holder or Inspector to any place where Services are being performed; or
 - v. proceedings against, decision by the Regulator in relation to, or request from the Regulator to, the Supplier or the Supplier's Personnel under the WHS Laws.
- (c) if required by the Purchaser, the Supplier must provide the Purchaser with the following information in writing in the timeframe specified by the Purchaser, and if no timeframe is specified, within 2 Business Days:
 - i. a brief description of how the incident occurred;
 - ii. the precise location where the incident occurred;
 - iii. when the incident occurred;
 - iv. the names, positions and employers (if any) of the persons involved;
 - v. details of any known injuries or property damage;
 - vi. the names, positions and employers (if any) of the persons who saw the incident or were present when it occurred; and

- vii. any additional information identified by the Purchaser as being necessary for it to comply with its own notification and reporting obligations under the WHS Laws.
- (d) The Supplier must provide to the Purchaser a copy of any notice issued to the Supplier under the WHS Laws in relation to Services performed as soon as possible and in any event within 24 hours after receipt.
- (e) If a Notifiable Incident occurs with respect to the Services, the Supplier must:
 - i. in accordance with the WHS Laws, notify the Regulator of the Notifiable Incident and provide a copy of any written notice to the Purchaser; and
 - ii. if requested by the Purchaser, provide within the timeframe specified by the Purchaser a report on the Notifiable Incident that contains the information clause 9.3(c), the results of any investigations into its cause, and any recommendations for prevention in the future.
- (f) If the Purchaser wishes to conduct its own investigation of any incident connected with the Services, the Supplier must, and must ensure that the Supplier's Personnel, cooperate fully with the Purchaser's investigation including by promptly providing all information and documents requested by the Purchaser and access to the Supplier's Personnel, including for the purpose of the Purchaser conducting interviews with them.
- (g) If the Purchaser (acting reasonably) considers that action or intervention is required to respond to an incident listed in clause 9.3(b) or a direction is given by a Regulator under any WHS Laws that action or intervention is required, the Purchaser may, if and to the extent that the Supplier is responsible for the relevant incident:
 - i. direct the Supplier to take the action or intervention, in which case the Supplier must take whatever action or intervention is required at its own cost; or
 - ii. where the Purchaser considers it reasonable in the circumstances, take the action or intervention itself, in which case the reasonable costs and charges incurred by the Purchaser are a debt due and payable by the Supplier to the Purchaser.

23.3 Health and safety audits

- (a) The Purchaser (or any third party engaged by the Purchaser) may carry out audits of the Supplier's compliance with the health and safety requirements of this Agreement at any time. During any audit, the Supplier must provide all documents, access and assistance requested by the Purchaser.
- (b) An audit undertaken pursuant to this clause 9.4 may include a check on the Supplier's policies, procedures and records.
- (c) If any non-conformance or non-compliance is detected by the Supplier or the Purchaser with the WHS Laws, the Work Health and Safety Plan or direction or requirement of the Purchaser, the Supplier must immediately rectify the non-conformance or non-compliance at its cost.

23.4 Work Health and Safety Plans

- (a) If required by the Purchaser at any time during the term of the Agreement, the Supplier must develop and implement a Work Health and Safety Plan in accordance with the reasonable directions of the Purchaser.
- (b) the Supplier must develop and implement a Work Health and Safety Plan in accordance with the reasonable directions of the Purchaser.
- (c) The Supplier must develop and implement a Work Health and Safety Plan as set out in the Statement of Work, a Project Work Order or an Additional Services Work Order.
 - i. identify work health and safety risks associated with the delivery of the Services and Project(s) (including with regard to employees, subcontractors, volunteers and any other individuals or organisations associated with the Services or Project (s));
 - ii. identify appropriate strategies and actions to reduce the likelihood and impact of these work health and safety risks; and outline how these strategies and actions will be implemented.

23.5 Relationship to other obligations

- (a) If there is any inconsistency between this clause 9 and the WHS Laws, the WHS Laws prevail to the extent of the inconsistency.

- (b) The Supplier acknowledges that it is responsible for:
 - i. complying with its obligations under WHS Laws;
 - ii. performing the Services in accordance with this Agreement;
 - iii. and will not be relieved of that responsibility because of:
 - iv. anything in this clause 9 or in any policy or procedure referred to in this clause 9;
 - v. any instruction or direction or failure to give an instruction or direction under this clause 9;
 - vi. any exercise of, or failure to exercise, the Purchaser's rights under this clause 9; or
 - vii. any notice or other document or communication from the Supplier under this clause 9.
- (c) To the extent permitted by Law, the Purchaser is not liable to the Supplier for any Losses in connection with work health and safety in relation to the Supplier or the Supplier's Personnel.

23.6 Non-compliance

- (a) If, during the performance of any work under this Agreement, the Purchaser Notifies the Supplier that the Purchaser is satisfied that the Supplier is:
 - i. not performing the work in compliance with the Supplier's Work Health and Safety Plan, work health and safety management procedures, WHS Laws or the work health and safety procedures provided by the Purchaser from time to time; or
 - ii. performing the work in such a way as to endanger the health and safety of the Supplier,
 - iii. the Supplier must promptly remedy that breach of health and safety.
- (b) The Purchaser may direct the Supplier to suspend the work until such time as the Supplier satisfies the Purchaser that the work will be resumed in conformity with applicable work health and safety provisions. During periods of suspension referred to above, the Purchaser will not be required to make any payment whatsoever to the Supplier.
- (c) If the Supplier fails to rectify any breach of health and safety for which the work has been suspended within a reasonable period but no later than 10 Business Days after receiving notification from the Purchaser to do so, or if the Supplier's performance has involved recurring breaches of health and safety, the Purchaser may, at its option, immediately terminate this Agreement or reduce the scope of this Agreement, without further obligation to the Supplier. In this event, the Purchaser's liability will be limited to payment for the Services performed and costs incurred by the Supplier up to the time of termination or reduction in scope.

24. Governing Law

If required by the Purchaser at any time during the term of the Agreement, GOVERNING LAW

The law of the State of Western Australia governs this Agreement. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State of Western Australia

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