

PURCHASE ORDER - SUPPLY OF GOODS

Recitals

- A. Robson and the Principal have executed a contract in respect of the Project (**Head Contract**).
- B. Robson requires the Goods to be supplied in respect of the Project.
- C. This Agreement sets out the terms on which the parties agree that the Supplier will supply the Goods.

1 Definitions and Interpretation

1.1 Definitions

In this Agreement:

Agreement means this document and the Purchase Order.

Business Day means any day other than:

- (a) a Saturday, Sunday or public holiday in Sydney; or
- (b) 27, 28, 29, 30 or 31 December.

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated as confidential on its disclosure; or
- (c) the Supplier knows or ought to know is confidential.

Date for Delivery means the date identified as such in the Purchase Order.

Date of Agreement means the date identified as such in the Purchase Order.

Defects Liability Period means the period identified as such in the Purchase Order, as extended in accordance with this Agreement.

Delivered means the point when, where the Purchase Order states that the Supplier is:

- (a) to unload the Goods, the Goods have been delivered to and safely unloaded at the Delivery Point; or
- (b) not required to unload the Goods, the Goods have been delivered to the Delivery Point and are ready for unloading by or on behalf of Robson, and

the Supplier has satisfied all other delivery obligations identified in the Purchase Order.

Delivery Date means the date identified as such in the Purchase Order.

Delivery Point means the point identified as such in the Purchase Order.

Delivery Time means the time identified as such in the Purchase Order.

Goods means the goods identified in the Purchase Order.

Insurances means that term as defined in clause 14.

Legislative Requirement means all:

- (a) acts, regulations, by-laws and orders;
- (b) licences, approvals and authority requirements; and
- (c) fees payable in connection with any of the foregoing.

Personnel means a party's employees, agents, officers and contractors, excluding the Supplier in the case of Robson.

Price means the price for the Goods set out or determined in accordance with the Purchase Order.

Principal means the person identified as such in the Purchase Order.

Project means the project identified in the Purchase Order.

Purchase Order means the purchase order issued by Robson to the Supplier in respect of the Goods.

Robson means Robson Civil Projects Pty Ltd.

Robson's Representative means the person identified as such in the Purchase Order or such other person notified to the Supplier by Robson from time-to-time.

Site Rules means all rules, standards, procedures, directions and policies of Robson or the Principal that apply to the Site.

Supplier means the supplier identified in the Purchase Order.

Supplier Reference Document means a delivery document which refers to this Agreement and describes the Delivered Goods, including their quantity, weight, price, Delivery Date and all other things required by Robson.

Supplier's Representative means the person identified as such in the Purchase Order.

Tax Invoice means a tax invoice that complies with the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

1.2 Ambiguity or discrepancy

- (a) If the Supplier discovers any ambiguity or inconsistency in or between any document(s) that form this Agreement, it must promptly advise Robson's Representative in writing.
- (b) Following its receipt of a notice under clause 1.2(a), Robson's Representative must give the Supplier a direction as to the interpretation that applies and the Supplier must comply with such direction at its own cost.

1.3 Application of this Agreement

This Agreement applies to Goods supplied by the Supplier prior to the Date of Agreement and payments made to the Supplier by Robson prior to that date in relation to such Goods are deemed to have been made pursuant to this Agreement.

2 Representations and Warranties

2.1 General

The Supplier warrants and repeats on each day of the term of this Agreement that:

- (a) prior to executing this Agreement it did all things needed to ascertain the risks associated with performing this Agreement and it has the resources needed to do so;
- (b) it did not rely upon any representation made to it by or on behalf of Robson in entering into this Agreement;
- (c) all Delivered Goods will:
 - (i) have unencumbered title;
 - (ii) comply with this Agreement, the Head Contract and all relevant Legislative Requirements and Australian Standards;
 - (iii) be new, defect free, fit for the purposes for which they are to be used by Robson and the Principal and of merchantable quality;
 - (iv) have a life expectancy commensurate with that expected of the same or similar goods; and
 - (v) remain defect free for the duration of the Defects Liability Period;
- (d) it and its Personnel will comply with all Site Rules, Legislative Requirements and Robson directions;
- (e) Robson will have the full benefit of all manufacturer's warranties applicable to the Goods from Delivery; and
- (f) it does not enter into this Agreement as trustee of a trust.

2.2 Supplier acknowledgments

The Supplier acknowledges and agrees that Robson enters into this Agreement relying on the warranties included in clause 2.1 and would not have done so without them.

3 Engagement of the Supplier

- (a) The Supplier must Deliver the Goods in accordance with this Agreement and Robson must pay the Supplier the Price for doing so.
- (b) This Agreement will be deemed to be accepted by the Supplier on the earliest of the Supplier:
 - (i) returning a signed copy of the Purchase Order to Robson;
 - (ii) indicating to Robson in writing its intention to supply the Goods; or
 - (iii) commencing the supply of the Goods after receipt of the Purchase Order.

4 Delivery

The Supplier must:

- (a) ensure that all Delivered Goods are:
 - (i) packed and labelled in accordance with all relevant Legislative Requirements;
 - (ii) packed in a manner that avoids damage during their transit and storage; and
 - (iii) accompanied by a Supplier Reference Document; and Safety Data Sheet(s) as applicable and
- (b) Deliver the Goods to the Delivery Point:
 - (i) at the Delivery Time on the Delivery Date;
 - (ii) in accordance with site directions, instructions and
 - (iii) in accordance with all Legislative Requirements.

5 Delay

5.1 Notice

The Supplier must, within 24 hours after it became aware of a matter likely to delay its Delivery of Goods, give written notice to Robson's Representative detailing the:

- (a) cause of the delay;
- (b) estimated duration of the delay; and
- (c) actions it has taken or will take to mitigate it, and thereafter:
- (d) every 2 days during the delay provide written reports to Robson's Representative updating it on the matters referred to in this clause 5; and
- (e) take all necessary steps to avoid or minimise the delay.

5.2 Relief

- (a) Subject to clause 5.2(b), the Supplier is not entitled to an extension of time or to recover any costs or damages from Robson for any delay or disruption in performing this Agreement.
- (b) If the Subcontractor:
 - (i) is delayed in performing this Agreement by a breach of this Agreement by Robson; and
 - (ii) complies with clause 5.1,then Robson's Representative must grant a reasonable extension of time to the Date for Delivery as the Supplier's sole entitlement for such breach and delay.

5.3 Robson rights

If the Goods are not Delivered by the Date for Delivery then, without limiting its other rights, Robson may:

- (a) refuse to take further deliveries of Goods;
- (b) cause the Supplier to use another form of delivery nominated by Robson and at the Supplier's expense;
- (c) direct the Supplier to obtain the Goods from a third party within a nominated period;
- (d) cancel the supply and obtain substitute goods from a third party; or
- (e) terminate this Agreement with immediate effect.

6 Inspection, testing and acceptance

6.1 Offsite inspection

- (a) Robson and its nominees:
 - (i) must be given full and free access at all times to inspect the manufacture and supply of the Goods; and
 - (ii) have the right to reject Goods in manufacture that do not comply with this Agreement.
- (b) Any inspection or failure to inspect by Robson will not relieve the Supplier of any obligation under this Agreement and a failure to reject a Good does not constitute acceptance of it.

6.2 Inspection and testing after Delivery

- (a) Acceptance of Goods by Robson is subject to Goods passing all inspections and testing required by Robson, including during unpacking, installation and operation.
- (b) If Robson believes Delivered Goods do not comply with this Agreement, without limiting its other rights, it may:
 - (i) reject some or all of the Delivered Goods and require the Supplier to immediately refund all amounts paid to it by Robson in respect of them;
 - (ii) require the Supplier (at its cost) to repair or replace the defective Goods within a nominated period; or
 - (iii) convert the Goods into a condition acceptable to Robson and all associated costs will be due and payable from the Supplier to Robson.

7 Risk and title

- (a) Risk in Goods passes to Robson upon their Delivery in accordance with clause 4.
- (b) Title in Goods passes to Robson upon their Delivery, unless Robson has paid for the relevant Goods prior to their Delivery in which case title will pass upon payment.

8 Variations

8.1 Directions to vary

- (a) Robson may, by written notice titled 'Variation Direction', direct the Supplier to vary the Goods (including by way of increase, decrease, omission or change) and the Supplier must comply with such direction.
- (b) If the Supplier receives a direction from Robson which, although not identified as a 'Variation Direction', it considers to be a direction to carry out a variation, the Supplier must:
 - (i) immediately advise Robson's Representative of this belief; and
 - (ii) not comply with the direction until Robson's Representative confirms in writing whether:
 - (A) the direction is a Variation Direction;
 - (B) the Supplier should comply with it; or
 - (C) Robson withdraws the direction.
- (c) If the Supplier does not comply with clause 8.1(b), it is not entitled to make any claim in relation to its compliance with the relevant direction.
- (d) If Robson issues a Variation Direction which omits Goods, it may obtain them from a third party.

8.2 Valuation of variations

Unless otherwise agreed in writing by the parties, variations must be valued using:

- (a) the rates set out in the Purchase Order; or
- (b) if the Purchase Order does not include a relevant rate, rates that Robson considers reasonable.

9 Suspension of Delivery

- (a) Except where directed to do so by Robson's Representative, the Supplier must not suspend the Delivery of Goods.
- (b) Robson's Representative may immediately suspend the Delivery of some or all Goods by written notice to the Supplier and it must comply with such direction.
- (c) The Supplier must resume Delivery of suspended Goods promptly after being directed to do so by Robson's Representative.

- (d) The Supplier is not entitled to compensation as a result of a suspension of any Delivery.

10 Payment

10.1 Payment

- (a) The Supplier must claim payment of the Price progressively by issuing Tax Invoices in accordance with the Purchase Order that detail the Goods Delivered in the relevant month along with reasonable supporting documentation.
- (b) Subject to its rights under clause 10.4, Robson must pay the Supplier the amount claimed in a Tax Invoice within 30 days after the date on which it is received by Robson.

10.2 No other payments

Except as expressly provided in this Agreement, the Supplier is not entitled to payment from Robson other than the Price and acknowledges and agrees that the Price includes:

- (a) all charges for packaging, packing, insurance and Delivery of the Goods in accordance with this Agreement;
- (b) all Supplier costs associated with performing this Agreement; and
- (c) the cost of performing any miscellaneous services.

10.3 Conditions Precedent

The Supplier must not serve a Tax Invoice on Robson and Robson is not obliged to make a payment in accordance with clause 10.1(b), unless the Supplier has:

- (a) effected all insurances required by this Agreement; and
- (b) supplied Robson with a Supplier Reference Document in relation to the Delivered Goods referred to in the Tax Invoice.

10.4 Set off

If Robson has a claim to money against the Supplier, whether under this Agreement or otherwise, it may set off that money against any sum the Supplier is or may be entitled to in connection with this Agreement.

11 Taxes and GST

- (a) Subject to the remainder of this clause 11, the Supplier must pay all taxes concerning the supply of Goods.
- (b) Each party warrants to the other that it is registered for GST and must immediately notify the other if it ceases to be so registered.
- (c) If consideration given by a party (Payer) in connection with this Agreement does not include GST and is consideration for a taxable supply for which the party who makes the supply (Supplier) is liable for GST, the Payer must pay the Supplier an additional amount equal to the consideration multiplied by the rate of GST.

12 Defects Liability Period

- (a) The Defects Liability Period will commence on the date on which Delivered Goods are accepted by Robson and expires on the date specified in the Purchase Order.
- (b) Upon receipt of a notice from Robson of a defect in a Delivered Good during the Defects Liability Period, the Supplier must repair or replace the affected Good at no cost to Robson and within the period directed by Robson.
- (c) If the Supplier fails to rectify a defect in accordance with clause 12(b), Robson may rectify or cause to be rectified the defect at the Supplier's risk and expense and all costs incurred by Robson in doing so will be a debt due and payable from the Supplier to Robson.
- (d) Where a defect is rectified, a separate Defects Liability Period will apply in respect of the rectified Good and commence on the date its rectification is finished.

13 Indemnity and Liability

13.1 Indemnity

- (a) The Supplier must indemnify Robson and its Personnel from and against all claims, damage, expenses, losses and liabilities in respect of any:
 - (i) breach of this Agreement by the Supplier;
 - (ii) wilful, unlawful or negligent act or omission of the Supplier or its Personnel;

- (iii) loss of, loss of use of, destruction or damage to, property, caused or contributed to by the Supplier or its Personnel;
- (iv) injury to, or disease, illness or death of, persons caused or contributed to by the Supplier or its Personnel;
- (v) breach by the Supplier or its Personnel of a duty of confidence owed to Robson; or
- (vi) any act of abandonment of some or all of this Agreement by the Supplier.

- (b) The Supplier's liability under clause 13.1(a) is reduced to the extent a negligent act or omission of Robson contributed to the relevant claim, damage, expense, loss or liability.
- (c) Each indemnity in this Agreement is a continuing obligation, separate and independent from all other obligations and survives the termination or expiration of this Agreement.
- (d) It is not necessary for a party to incur an expense before enforcing an indemnity.
- (e) A party must pay on demand any amount it must pay under an indemnity in this Agreement.

13.2 Indirect Loss

To the fullest extent permitted by all relevant Legislative Requirements, Robson has no liability to the Supplier or any of its Personnel under or arising out of this Agreement for any:

- (a) loss of revenue, use, production, goodwill, profit, business, contract or anticipated savings;
- (b) financing costs or increase in operating costs; or
- (c) other purely financial or economic loss or other special or indirect loss or damage.

13.3 Proportionate Liability

The parties acknowledge and agree that:

- (a) to the fullest extent permitted, Part 4 of the *Civil Liability Act 2002 (NSW)* (the **Liability Act**) is excluded in relation to claims arising out of this Agreement; and
- (b) if any provision of the Liability Act applies to any claim between the parties arising out of this Agreement, the Supplier will indemnify Robson and its Personnel from and against all losses, costs, expenses and claims they suffer or incur which the Supplier would be liable but for the operation of the Liability Act.

14 Insurance

- (a) Before the Date of Agreement and until the expiry of the last Defects Liability Period to expire, the Supplier must effect and maintain the following insurances (together, the **Insurances**):

- (i) a public and product liability insurance policy in the names of the parties (including a 'cross liability' clause) for at least \$20 million per claim;
- (ii) motor vehicle compulsory third party insurance as required by Legislative Requirement and motor vehicle comprehensive and third party property insurance for at least \$20 million per claim for all vehicles used in connection with the Supplier's performance of this Agreement;
- (iii) transit insurance for the full value of all Goods whilst they are in transit; and
- (iv) workers' compensation insurance as required by Legislative Requirement,

and ensure that all subcontractors do likewise.

- (b) Whenever requested by Robson, the Supplier must produce certificates of currency in respect of the Insurances.
- (c) If, after being so requested by Robson, the Supplier fails to produce certificates of currency in respect of the Insurances, Robson may suspend all payments to the Supplier and effect some or all relevant Insurance(s) and the premiums paid will be a debt due and payable from the Supplier to Robson.
- (d) The Supplier must:

- (i) not do or permit, or omit to do, anything which prejudices any Insurance or insurance policy maintained by Robson or the Principal;
 - (ii) immediately rectify anything which prejudices or could prejudice any Insurance or insurance policy maintained by Robson or the Principal;
 - (iii) promptly reinstate any Insurance should it lapse;
 - (iv) give full details to its insurer(s) of all matters the non-disclosure of which might prejudice any Insurance or reduce its cover;
 - (v) comply with the terms of each Insurance and insurance policy maintained by Robson or the Principal; and
 - (vi) to the extent it is able to recover under an Insurance (or could have but for a failure to maintain it), recover and indemnify Robson and its Personnel up to the relevant level of cover.
- (e) The Supplier must ensure that each Insurance is taken out with an insurer with a financial rating of at least A by Standard & Poor's.
- (f) The effecting of the Insurances does not limit its obligations and liabilities under this Agreement.

15 Dispute resolution

- (a) If a dispute arises under or out of this Agreement, either party may issue a notice to the other setting out details of the dispute.
- (b) Within 10 days after a notice is received by a party in accordance with clause 15(a), senior representatives from each party must meet to attempt to resolve the dispute in good faith.
- (c) If a dispute is not resolved within 15 days after the meeting referred to in clause 15(b), either party may commence litigation to resolve it.
- (d) The Supplier must continue to perform this Agreement despite the existence of a dispute.
- (e) Nothing in this clause 15 prejudices the right of a party to seek injunctive or urgent relief.

16 Default and Termination

- (a) If the Supplier commits a substantial breach of this Agreement, Robson may issue it with a written notice to show cause which states:
 - (i) the alleged substantial breach;
 - (ii) that the Supplier is required to show cause in writing; and
 - (iii) the time by which the Supplier must do so.
- (b) If the Supplier fails to show cause to Robson's satisfaction by the required time, Robson may immediately terminate this Agreement by written notice to the Supplier.
- (c) Notwithstanding the remainder of this clause 16, if the Supplier commits a substantial breach of this Agreement that is incapable of remedy, Robson may immediately terminate this Agreement by written notice to the Supplier.

17 Termination for Insolvency

If Robson believes the Supplier is or may soon be financially unable to proceed with this Agreement, Robson may, to the extent permitted by law, immediately terminate this Agreement by written notice to the Supplier.

18 Termination for Convenience

- (a) Robson may:
 - (i) at any time, for its convenience and by written notice to the Supplier, terminate this Agreement effective from the time stated in the notice; and
 - (ii) thereafter procure some or all undelivered Goods from others.
- (b) If Robson terminates this Agreement under clause 18(a):
 - (i) it must pay the Supplier the applicable portion of the Price for Delivered Goods up to the date of termination; and

- (ii) except as set out in clause 18(b)(i), the Supplier is not entitled to compensation in respect of such termination.

19 Confidentiality

- (a) Subject to clause 19(b), the Supplier must not, without the prior written consent of Robson's Representative, divulge or permit its Personnel to divulge (other than to properly perform this Agreement) any Confidential Information.
- (b) The restrictions in clause 19(a) do not apply to Confidential Information which is:
 - (i) made public through no default of the Supplier or any of its Personnel; or
 - (ii) required to be disclosed by Legislative Requirement.

20 Media

The Supplier must not discuss this Agreement, the Project, the Principal or Robson (including its Personnel) with any media without Robson's Representative's prior written approval and must refer all such enquiries to Robson's Representative.

21 Notices

A notice under this Agreement is only effective if it is in writing, signed by the party's Representative, addressed to the other party's Representative and left at, mailed or emailed to the addressee's address in the Purchase Order. If:

- (a) left at the addressee's address between 9:00am and 5:00pm on a Business Days, it is taken to have been immediately received;
- (b) sent by mail, it is taken to have been received 3 Business Days after posting; or
- (c) sent by email, section 13A of the *Electronic Transactions Act 2000* (NSW) applies to determine when it is received.

22 Waiver

Nothing in this Agreement will be waived, discharged or released unless it is done so in writing.

23 Governing law

This Agreement is governed by the laws of New South Wales and each party irrevocably submits to the jurisdiction of the courts of that State.

24 Entire Agreement

This Agreement contains the entire agreement between the parties in respect of its subject matter.

25 Assignment and novation

The Supplier must not assign, transfer, novate or otherwise create an interest in any or all of its rights or benefits under this Agreement without the prior written consent of Robson's Representative.

26 Giving effect to this Agreement

The Supplier must do anything, and ensure that its Personnel do anything, that Robson may reasonably require to give full effect to this Agreement.

27 Invalidity and enforceability

The invalidity or unenforceability of any provision of this Agreement does not affect the validity or enforceability of any other provision of this Agreement and the invalid or unenforceable part is severable.

28 Amendment

This Agreement may only be amended by a document signed by or on behalf of each party.

29 Survival

This clause 29 and clauses 1, 2, 5.3, 6.2 and 7 - 28 survive the expiry or termination of this Agreement.