

TERMS AND CONDITIONS

1. Interpretation

- 1.1 In this Agreement, except where the context requires otherwise, the following terms shall have the meanings shown:
- (a) **Client** means where relevant, the other party to Manildra's head contract in respect to the project of which the Goods and Works form part, as stated in the Purchase Order.
 - (b) **Completion** is that stage when all of the Goods or Services have been provided as required by the Agreement
 - (c) **Conditions** means the Standard Terms and Conditions of Purchase Order set out in this document.
 - (d) **Date for Delivery** means the Required Date(s) specified in the Purchase Order by which the Supplier shall deliver the Goods at the Delivery Point, and where the context admits, as the date or dates may be changed in accordance with the Agreement.
 - (e) **Delivery Point** means the place specified in the Purchase Order to which the Goods are to be delivered by the Supplier.
 - (f) **Encumbrance** means and includes any interest or equity of any person or any mortgage, charge, pledge, lien or assignment, or any other encumbrance, priority or security interest or arrangement of whatsoever nature over or in the relevant property.
 - (g) **Goods** means the goods described in the Purchase Order.
 - (h) **Intellectual Property Rights** means all industrial or intellectual property rights including patent rights, copyrights, registered design, design rights, trademarks, service marks, confidential information and trade secrets, moral rights and other similar proprietary rights, all rights of whatever nature in computer programs, firmware, micro-code and other computer software and data, and all intangible rights and privileges of a nature similar to any of the foregoing.
 - (i) **Manildra** means the Manildra group entity shown in the Purchase Order.

- (j) **Price** means the amounts shown in the Purchase Order.
 - (k) **Purchase Order** is the document bearing that title, (including any attachments) and which together with these Terms and Conditions, forms the Agreement.
 - (l) **Recipient Created Tax Invoice (RCTI)** means an agreement made between Manildra and the Subcontractor that the Subcontractor will be paid in accordance with clause 8.4.
 - (m) **Services** means the services described in the Purchase Order.
 - (n) **Site** means the places (if any) stated in the Purchase Order where the Goods and Services are to be provided together with any other places made available to the Supplier by Manildra for the purposes of this Agreement, and includes the Delivery Point;
 - (o) **Specification** includes any design, plans, drawings, calculations, data or other information relating to the Goods, plant or equipment;
 - (p) **Sub-supplier** means any supplier or contractor of the Supplier who supplies materials, equipment, sub-assemblies or services to the Supplier in connection with the Goods or project.
 - (q) **Supplier** means the addressee of the Purchase Order.
 - (r) **Vendor Data** means any specifications, calculations, drawings or other similar information which are to be submitted by the Supplier prior to manufacture of the Goods, plant or equipment or at any time during the course of manufacture or execution, or to bring to completion the performance of its obligations to execute and/or deliver the Goods.
- 1.2 Words in the singular include the plural, and vice versa.
- 1.3 If any provision of the Agreement is, is deemed to be or becomes, void, unenforceable, severed or illegal, the remaining portions of the Agreement shall continue to have full force and effect.
- 1.4 In the interpretation of the Agreement, no rules of construction apply that would disadvantage a party because that party was responsible for drafting the Agreement or part of the Agreement.

2. Entire agreement

- 2.1 This Agreement consists of:
- (a) the Purchase Order;
 - (b) these terms and conditions; and
 - (c) any other document which is attached to, or incorporated by reference in, the Purchase Order.

- 2.2 If there is an inconsistency between the Agreement documents listed in the preceding clause, the document listed earlier prevails to the extent of the inconsistency.
- 2.3 The Supplier's standard terms, wherever they may be contained, are not agreed between the parties and will not affect Manildra's rights or the Supplier's obligations under the Contract.
- 2.4 The Supplier agrees that by entering into the Agreement:
- (a) the Agreement contains the entire agreement between the parties;
 - (b) the Supplier does not, except to the extent expressly stated in the Contract, rely on any representation, warranty, condition or other conduct which Manildra or any of Manildra's Personnel or any Group member or its Personnel may have made; and
 - (c) the Supplier has read the Contract and has made all necessary and independent inquiries in relation to all matters relevant to the entry into, and the performance of the Supplier's obligations under, the Contract.

3. Supply

- 3.1 The Supplier must supply the Goods and Services in accordance with the Purchase Order, for the Price, to the Delivery Point on the Date for Delivery. The Supplier must not add any other amount to the Price, unless specified on the Purchase Order. When the Supplier completes delivery of the Goods and/or Services to Customer's satisfaction, the Supplier is entitled (subject to the Supplier first providing a tax invoice that complies with the GST Legislation in respect of the supply of the Goods) to be paid the Price.
- 3.2 The Date for Delivery and any agreed date for delivery of Services or milestones or key dates for Services are essential obligations under this Agreement.
- 3.3 Unless specified in the Purchase Order, all additional expenses must be agreed in writing prior to the expense being incurred, and the Supplier must charge at cost only.
- 3.4 The Price is inclusive of all labour, plant, materials, packaging, packing, insurance, delivery, equipment, machinery, vehicles, tools, facilities and services overheads, profit and all ancillary and other works, expenditure, risks, overtime and contingencies, required or necessary to be undertaken, for the Goods to be provided.
- 3.5 Except as expressly provided in the Agreement, the Price is the Supplier's sole remuneration for providing the Goods and Services and performing the Agreement.
- 3.6 Taxes
- (a) The Price is inclusive of all Taxes (excluding GST) imposed or levied in Australia or overseas in connection with providing the Goods and Services.

- Subject to clause this clause, all Taxes must be borne by the Supplier, including all Australian import duties and charges payable on the Goods or components and materials imported by it into Australia for use in manufacturing the Goods, and all anti-dumping, countervailing and other special duties.
- (b) If at any time an applicable Law obliges Manildra to make a deduction or withholding in respect of Taxes from a payment to the Supplier, Manildra will make the deduction or withholding and Manildra is not required to pay the Supplier any amount to compensate for amounts deducted or withheld.
- (c) The Supplier must use best endeavours to:
- (i) import Goods free of import, customs and excise duties imposed by a Government Agency in relation to the importation of Goods to Australia (Duties); and
- (ii) obtain the benefit of any free trade agreement to which Australia is a party.
- (d) On written request from Manildra, the Supplier must provide to Manildra any information (in writing if required) in relation to any aspect of the Goods to allow Manildra to make an application for a refund, rebate, concession, exemption or reduction in Duties payable on the Goods.
- (e) Manildra withhold from payment any withholding amounts required by law, and remit such amounts to the relevant taxation authority.
- 3.7 In the event the Supplier discovers any ambiguity or discrepancies in any Specification, the Supplier must immediately notify Manildra thereof and shall comply with the determination of Manildra as to such ambiguity or discrepancy.
- 3.8 The Supplier must, at the time of delivery, supply Manildra all documents and information to be supplied with the Goods and Services, or necessary to enable Manildra to:
- (a) use the Goods for their intended purpose; and
- (b) assess the compliance of the Goods with the specification and performance of any work on the Site.
- 3.9 All Items provided by Manildra to the Supplier for the purposes of this Agreement shall remain the property of Manildra, kept separate from the Supplier's property, be clearly identified as the property of Manildra, and must be returned to Manildra promptly upon demand by Manildra at any time, or upon the termination of a supply under this Agreement. For the purposes of this clause, Items includes, tools, tooling, drawings, plans, papers, tapes, diskettes, information storage devices, and any other document or thing.

4. Acceptance

- 4.1 The Supplier shall be deemed to have accepted the Agreement upon the earlier of:
- (a) written acknowledgement by the Supplier;
- (b) Delivery of the Goods or Services by the Supplier to the Delivery Point;
- (c) submission to Manildra by the Supplier of an invoice for payment in respect of the Goods or Services, or
- (d) if the Supplier does not notify Manildra of its non-acceptance of the Purchase Order or any part thereof, 7 days after the Supplier's receipt of the Purchase Order.

5. Invoicing and Payment

- 5.1 Invoices for Goods or Services supplied in accordance with the Agreement must be sent to the Manildra Accounts Payable Department.
- 5.2 Unless the Purchase Order states that progress payments are to be made, the Supplier must invoice upon delivery of the Goods and Services.
- 5.3 Where progress payments are to be made, the Supplier must invoice Manildra at the end of each calendar month (or other period specified in the Order) for Goods and Services delivered in that month or that period (as the case may be).
- 5.4 The Supplier's tax invoice, must comply with laws relating to tax invoices, and include:
- (a) the Supplier's company name and Australian Business Number;
- (b) the Purchase Order number provided by Manildra;
- (c) the date the relevant Goods and Services were provided;
- (d) a description of the Goods and Services provided (as applicable);
- (e) the amount due to the Supplier and the basis of the Supplier's calculation, including:
- (i) the amount payable exclusive of GST;
- (ii) the amount of GST payable; and
- (iii) the total amount payable inclusive of GST;
- 5.5 In addition to a tax invoice the Supplier must submit to Manildra all relevant records (i.e. Proof Of Delivery, timesheets, payment claims, signed job sheets etc) to enable Manildra to calculate and/or verify the amount of the invoice together with the number of the Purchase Order. Each record accompanying a tax invoice (i.e. Proof Of Delivery, timesheets, payment claims, signed job sheets etc), must demonstrate evidence of acceptance by Manildra through a signature from a Manildra employee. Manildra is entitled to reject tax invoices which are not in correct form or supported by documentation as set out in this clause.

- 5.6 If the parties have entered into the Recipient Created Tax Invoice (RCTI) Agreement at Schedule 1:
- (a) Manildra will issue the RCTI in respect of the liability to pay;
- (b) The RCTI will be issued by Manildra on the date of determination of the value of the payment due;
- (c) The RCTI will not be payable before the due date for payment; and
- (d) Where the determination of the amount payable in respect of a taxable supply has been made in accordance with this Agreement and Manildra has not issued a RCTI within 28 days of that determination, the provisions of subclause 8.5 will apply to payment of that amount for that Taxable Supply, but not otherwise and will not constitute a breach of the RCTI Agreement.
- 5.7 Manildra must pay all undisputed amounts of correctly rendered invoices 30 days after the end of the month in which the invoice was submitted, except where Manildra exercises its right to retain part of the price pursuant to this Agreement, or disputes the amount of the invoice, in which case:
- (a) Manildra will pay the undisputed part of the relevant invoice (if any) and dispute the balance;
- (b) Manildra are only obligated to pay the value of the invoice up to the amount of the Purchase Order unless accompanied by a variation.
- 5.8 By submitting an invoice under this Agreement, the Supplier represents and warrants that all of the Supplier's Personnel and Supplier's Subcontractors have been paid all monies due and payable to them for work related to the Agreement.
- 5.9 Manildra may require the Supplier to provide reasonable evidence that it has complied with the representation and warranty given under the preceding subclause.
- 5.10 Manildra may set-off any payment due to the Supplier under this Agreement Order by any amount for which the Supplier is liable to Manildra, including costs, charges, damages and expenses. This is not an exclusive remedy and Manildra may recover amounts owing as permitted by law.
- 5.11 Manildra is only obliged to pay for Goods or Services which have demonstrated evidence of receipt by Manildra by way of a signature from a Manildra employee.
- 5.12 Payment for the Goods will be made in Australian dollars, unless another currency is specified in the Purchase Order.

6. The Site and safety

- 6.1 The Supplier must examine the Site and the Delivery Point and their surroundings, and satisfy itself of the relevant conditions of the Site and Delivery Point, the nature of and access to the Site and Delivery Point and all other matters



- which can in any way affect the delivery of the Goods and Services.
- 6.2 The Supplier hereby acknowledges it has not and shall not rely on any information given, or statement made to it, by Manildra in respect of the condition or future condition of the Site or Delivery Point, other than as this is included in the Agreement or is otherwise provided in writing by Manildra.
- 6.3 The Supplier agrees that it enters the Site at its own risk.
- 6.4 If the Supplier enters the Site, the Supplier and the Supplier's Personnel must:
- (a) complete Manildra's safety induction and visitors' site orientation programs before commencing work at the Site;
 - (b) comply with Manildra's Site rules and directions; and
 - (c) hold and maintain current relevant Safety Qualifications;
 - (d) not interfere with any of the activities of Manildra or any other person at the Site;
 - (e) not damage any Manildra or third party property or cause a nuisance to any person;
 - (f) remove all rubbish and other debris from the Site and leave the Site secure, clean, orderly and fit for any use specified by Manildra, failing which a debt is due to Manildra from the Supplier for any costs Manildra incurs to ensure the Site is secure, clean, orderly and fit for the use specified by Manildra; and
 - (g) keep any tools, equipment, material or other products brought onto the Site secure from theft or damage.
- 6.5 Manildra is entitled to require the Supplier to remove from the Site any or all of its personnel in its absolute discretion. If the Supplier is a sole trader, Manildra shall be entitled to terminate the Agreement.
- 6.6 Manildra may at any time, including if there is any hazardous, unsafe, unhealthy or environmentally unsound condition or activity at the Site, give notice that the Supplier to stop work and to abate or eliminate such condition or activity within the time stipulated in the notice, failing which Manildra may by itself or by its contractors or agents do the same at the cost of the Supplier. Any failure by Manildra to serve such notice shall not relieve the Supplier of its responsibility to otherwise abate or eliminate such conditions.
- 6.7 The Supplier must comply with all relevant workplace health and safety laws and regulations, and all Manildra policies.
- 6.8 The Supplier must take all precautions and provide all protection to prevent damage, injury or loss to:

- (a) Manildra, its personnel, and all other occupiers and users of the Site; and
 - (b) all buildings, structures, fittings, fixtures, equipment and other property at the Site and adjacent thereto including trees, shrubs, lawns, pavements, roadways and utilities.
- 6.9 The Supplier must not bring an animal onto the Site unless the animal is an assistance animal within the meaning of the *Disability Discrimination Act 1992* (Cth).

7. Compliance with Laws

- 7.1 The Supplier must at its own expense comply with all laws and regulations relevant to the delivery of the Goods and Services.
- 7.2 The Supplier must prior to the commencement of performance of the Agreement and as and when necessary, at its own cost, obtain from governmental and other competent authorities all necessary approvals, consents, licences and permits whatever which may be from time to time required for or in connection with any matter relating to or arising out of the Agreement, and shall at its own cost, keep current and promptly renew from time to time all such necessary approvals, consents, licences and permits and promptly deliver to Manildra on demand certified true copies of all such approvals, consents, licences and permits and documentary evidence of payment of all fees, duties and or impositions levied by the relevant authorities.

8. Property and risk

- 8.1 The property in the Goods shall pass to Manildra upon the later of:
- (a) delivery at the Delivery Point or such other date as specified in the Purchase Order; or
 - (b) Manildra has reviewed the Goods and notified the Supplier that it has accepted the Goods as complying with the Purchase Order.
- 8.2 If Manildra accepts Goods that do not comply with the Specification or Purchase Order then such acceptance does not waive Manildra's rights in relation to the non-compliance, and does not affect Manildra's rights to reject non-complying Goods in subsequent deliveries.
- 8.3 Risk in the Goods shall pass to Manildra upon delivery at the Delivery Point.
- 8.4 The Supplier shall ensure that any Goods in which property has passed to Manildra, but which remain in the possession of the Supplier or its Sub-suppliers, are clearly marked and identified as Manildra's property, and kept separate from other goods or property of the Supplier and any third party and be properly stored, protected and insured.
- 8.5 Manildra may at any time to require the Supplier to deliver to Manildra any Goods in which property has passed to Manildra, and if the Supplier fails to do so as soon as

reasonably possible, to enter the premises of the Supplier or any third party where the Goods are stored and remove the Goods. The Supplier hereby irrevocably grants to Manildra and its authorised agents a licence to enter the Supplier's premises for the purposes aforesaid and must ensure that any relevant third party will grant to Manildra a licence in similar terms.

- 8.6 The Supplier warrants that it has the right to sell, and that Manildra shall acquire good clear title to, all Goods free of any encumbrance.
- 8.7 The Supplier plant, tools, equipment or other property belonging to it or its suppliers is at the sole risk of the Supplier, and any loss or damage to the same or caused by the same shall, except for any loss or damage due to any wilful act of Manildra, be the sole liability of the Supplier.

9. Insurance

- 9.1 The Supplier shall at his own expense, keep in force during the entire period of performance of the Agreement, the following insurances:
- (a) unless otherwise agreed, comprehensive public and products liability insurance for not less than \$20 million; and
 - (b) workers compensation insurance as required by law;
 - (c) if the performance of this Agreement requires the Supplier to perform design or other professional services, unless otherwise agreed by the Company in writing, professional indemnity insurance with a limit of liability of not less than \$2 million for any one claim (which must be maintained until 6 years after completion of the supply of Goods and Services under this Agreement;
 - (d) all insurances required by law;
- 9.2 The Supplier must upon request provide Manildra with certificates of currency of all insurances required under this Agreement.

10. Quality Inspection at Premises

- 10.1 Where set out in the Purchase Order, the Supplier shall establish and maintain quality systems acceptable to Manildra. Unless otherwise shown in the Purchase Order, the Supplier's quality systems shall comply with the current version of AS/NZS ISO 9001 'Quality management system – requirements.
- 10.2 Manildra and the Client shall be entitled at any time during Supplier's normal business hours to make on-site visits to the Premises and to inspect and test any Goods during manufacture, processing or storage at the Premises and may inspect witness or expedite any tests carried out by the Supplier.
- 10.3 If as a result of inspection or testing Manildra is not satisfied that the Goods will comply in all respects with the

Agreement, and Manildra so informs the Supplier, the Supplier shall take such steps as are necessary to ensure compliance.

- 10.4 For the purposes of conducting any visits, inspections or tests pursuant to this Clause 17, the Supplier shall, and shall procure that its Sub-suppliers will, grant to Manildra and its authorised representatives (including the Client) full access to all Premises and provide all tools, testing equipment and manpower, and render all necessary assistance to Manildra.
- 10.5 The Supplier's obligations to supply conforming Goods shall not in any way be affected by any inspection (including final inspection) or testing or attendance at Supplier's testing or otherwise, or the issue of an Inspection Release, or failure on Manildra's part to inspect or test.
- 10.6 Wherever it is practicable to do so the Supplier shall, at the request of Manildra, furnish Manildra with any necessary supporting evidence or information confirming that the Goods, whether fixed or unfixed, comply with the requirements of the Agreement.

11. Quality Inspection at Site

- 11.1 Manildra shall be entitled at any time to inspect and test any Goods during installation, commissioning or maintenance at the Site and may inspect, witness or expedite any tests carried out by the Supplier at the Site.
- 11.2 Manildra may direct the opening up or inspection of any work covered up, or the carrying out of tests or investigations of any goods, materials or executed work, or the postponement of further work until the results of the tests or investigations are known. If such direction is reasonable and prudent in the circumstances, including (but not limited to) where there is evidence that some of the work is, or is likely to be, defective, or there has been defective work by the Supplier or a breach of contract or negligence or omission on the part of the Supplier or any Sub-supplier, then, the Supplier shall comply with the direction at its own expense, and shall not be entitled to an extension of time, notwithstanding that no further defective work or breaches of contract are subsequently disclosed thereby, but in other cases the Supplier shall be entitled to reasonable compensation for any additional expenditure resulting from compliance with such instructions, and to an appropriate extension of time, unless defective work or other breaches of contract are disclosed thereby, in which event it shall not be entitled to such compensation or extension of time.
- 11.3 Without prejudice to any rights or remedies of Manildra, Manildra may direct the removal or demolition of any work, goods or materials which form part of the Goods, whether fixed or unfixed, which are not in accordance with the Agreement, and for their re-construction or replacement in exact accordance with the Agreement. Provided that Manildra may, but shall not be bound to, accept any work

containing defects not remedied and without removal or replacement, in which event the provisions of Clause 22.3(b)(i) shall apply.

- 11.4 No failure by Manildra to exercise any powers in this Clause shall prejudice any subsequent claim by Manildra against the Supplier at any time in respect of work which is not in accordance with the Agreement.

12. Packing, Marking and Despatch

- 12.1 A delivery docket or packing list must accompany each delivery or consignment of the Goods and must be displayed prominently. Unless otherwise specified in the Purchase Order or notified by Manildra, the delivery docket or packing list shall contain as a minimum the Purchase Order Number, Manildra's name, and the Supplier's name.
- 12.2 Unless the quantity is clearly stated on the packing list, Manildra's count shall be deemed to be final, conclusive and binding on the Supplier. Supplier will standardise the count multiples used in shipments.
- 12.3 All Goods shall be clearly marked in accordance with applicable regulations or requirements of the carrier or shipper, if any.
- 12.4 The Supplier shall ensure that all Goods are adequately lubricated, packed, protected and secured in accordance with industry standards to prevent loss, damage or deterioration during transit to the Delivery Point, loading and unloading and temporary storage at Manildra's premises or elsewhere at any time prior to installation and commissioning.
- 12.5 Large items or boxes shall be suitably lugged, battened or packed so as to permit loading and unloading using cranes and slings. The gross weights and preferred lifting points shall be clearly and conspicuously marked on the package.
- 12.6 Miscellaneous small items shall be packed in containers suitable for ease of handling, identification and storage.
- 12.7 The Supplier shall bear the cost of any loss, damage or deterioration to the Goods arising from inadequate marking, packing or protection and indemnify Manildra against all loss damages costs and expenses suffered or incurred by Manildra, arising from such loss, damage or deterioration.

13. Variations

- 13.1 If, at any time during the Term, a Party wishes to vary any aspect of the Scope of Goods or Services (Variation), that Party may submit a written request for the Variation to the other Party's Representative.
- 13.2 Within 10 Business Days after receiving a written request, the other Party must notify the Party requesting the Variation whether it accepts or rejects the Variation.
- 13.3 A Variation is not valid or binding unless agreed in writing and signed by the Parties.

- 13.4 If the Parties do not agree in accordance with clause 19.3 or a Party does not respond to the Variation request, the Variation request will be deemed to have been rejected and both Parties must continue to perform their obligations under the Contract

14. Delivery and acceptance

- 14.1 The Supplier shall carry out the Agreement with diligence and due expedition at all times. The Supplier shall commence work under the Agreement promptly upon receipt of the Purchase Order and continue with the work until Completion.
- 14.2 If the Supplier is delayed in performance of its obligations under this Agreement it must at its own cost do all things necessary to minimise the delay, including the use of air freight and express freight.
- 14.3 The Goods shall be ready for handing over to Manildra at the Delivery Point on the Date for Delivery according to the delivery terms specified in the Purchase Order or within the period stated in the Purchase Order, in either case during Manildra's usual business hours.
- 14.4 The delivery docket must state:
- (a) the Purchase Order number, the Purchase Order line number and Manildra stock number (if applicable);
 - (b) the Supplier's name;
 - (c) the quantity, unit of measure and description of the Goods delivered as per the applicable Purchase Order;
 - (d) the Delivery Point;
 - (e) Manildra's destination Site name; and
 - (f) the Delivery Date.
- 14.5 Payment for the Goods and any Services or the signing of delivery receipts before inspection does not constitute acceptance of the Goods or the Services by Manildra.
- 14.6 If upon inspection Manildra finds any Goods or Services to be defective, Manildra may, at its option, and after notifying Supplier:
- (a) reject the Goods; or
 - (b) make good the defective Goods and require the Supplier to pay for the make good;
 - (c) reject the Services and not be liable to pay for the rejected Services.
- 14.7 Supplier must collect any rejected Goods promptly after receiving written notice.
- 14.8 Manildra may require the Supplier to:
- (a) refund any payments made in respect of any rejected Goods and Services;
 - (b) require the re-performance of the Services at no extra cost; or



- (c) make good free of further charge any defective Goods.

14.9 Acceptance of some or all of the Goods or Services does not limit Manildra's remedies for breach by the Supplier.

15. Goods and Services Warranties

15.1 The Supplier warrants to Manildra that all Goods will:

- (a) conform to any Specifications in this Agreement, Vendor Data, sample or other agreed description;
- (b) unless described as second hand, be new, fit and free from defects in design, material and workmanship;
- (c) be of merchantable quality and fit for any purpose held out by Supplier or made known to Supplier in the Agreement, or which would be reasonably expected;
- (d) comply with all relevant laws; and
- (e) be of merchantable quality and fit for any purpose held out by Supplier or made known to Supplier, or which would be reasonably expected, including that they will function and operate satisfactorily in the environmental and climatic conditions to which they are to be exposed, (including altitude, and operational conditions such as exposure to dust, atmospheric corrosion, corrosive chemicals and fluids and rough handling).

15.2 The Supplier warrants to Manildra that the Services will be performed in accordance with this Contract and by appropriately qualified and skilled personnel, and the Supplier has assessed the Personnel as having all competencies relevant to the duties they are expected to perform.

15.3 All express warranties of the manufacturer or distributor of Goods must be made available to Manildra.

15.4 All repairs and replacement Goods or parts are subject to the terms of this Agreement, including Manildra's rights to reject goods and services.

16. Supplier's Personnel, Subcontractors and Equipment

16.1 Personnel

- (a) Except with Manildra's prior consent, the Supplier must not allow any person to enter the Site other than Manildra's Personnel or the Supplier's Personnel.
- (b) Manildra may (and may direct the Supplier to) remove any of the Supplier's Personnel from, or refuse any of the Supplier's Personnel entry to, the Site for any reason including a person who, in Manildra's opinion:
 - (i) is unqualified, incompetent or negligent in the performance of work in relation to providing the Goods and Services;

- (ii) has engaged, or is likely to engage, in activities which are contrary or detrimental to the interests of Manildra; or

- (iii) has not complied, or is likely to not comply, with Manildra's Policies.

(c) The Supplier must promptly provide a suitable replacement for the person removed from, or refused entry to, the Site under this clause 16.1.

(d) The Supplier must ensure that it and its subcontractor's Personnel act honestly, diligently in the performance of its obligations under this Agreement, and do not act in a manner which disrupts Manildra's business or adversely affects Manildra's reputation, interests or goodwill.

16.2 Key Personnel

(a) If any Key Personnel are nominated in the Purchase Order the Services must be primarily provided by them

(b) The Supplier must immediately notify Manildra if any Key Personnel are unable to provide the Services and the Supplier must promptly provide suitably qualified Personnel of equivalent or better experience and expertise to replace the Key Personnel who are unable to provide the Services for approval by Manildra.

16.3 Subcontractors

(a) The Supplier must not subcontract any part of the Contract without Manildra's prior written consent and in giving written consent, Manildra may in its absolute discretion impose any terms and conditions as it considers appropriate.

(b) The Supplier remains responsible to Manildra for supplying the Goods and providing the Services even though the Supplier may have subcontracted the performance of any part of the Contract and the Supplier's subcontracts must be subject to the terms and conditions of the Contract (to the extent they apply).

(c) A breach or failure to perform any subcontract does not excuse the Supplier from performance of the Contract in accordance with its terms nor will it affect the liability of the Supplier under the Contract.

16.4 Payments

(a) It is a breach of this agreement for the Supplier to not comply with all laws relation to payment of employees, contractors, subcontractors, superannuation, taxes, award payments any industrial laws.

(b) The Supplier must promptly and no later than within seven days, upon demand by Manildra,

provide access to Manildra to all documents and information necessary for Manildra to verify the Supplier's compliance with clause 16.4.

17. Insurance

17.1 The Supplier must at its own cost, keep in force during the entire period of performance of the Agreement, the following insurances:

- (a) unless otherwise agreed, comprehensive public and products liability insurance in an amount not less than AUD\$10million, to cover bodily injury or death and damage to property in respect of claims by third parties (with no limit on the number of claims during the period of insurance) with a combined single limit of liability AUD\$5million per occurrence;
- (b) worker's compensation insurance as required by law and employer's liability insurance;
- (c) if the performance of this Agreement requires the Supplier to perform design or other professional services, unless otherwise agreed by the Company in writing, professional indemnity insurance with a limit of liability of not less than \$2 million for any one claim (which must be maintained until 6 years after the services are supplied);
- (d) (where a motor vehicle is used in providing the Goods) statutory third party and other insurance covering Supplier's motor vehicles.

17.2 The Supplier must, upon request by Manildra, produce for inspection, copies of any policy required by this Agreement and certificates of currency for those policies.

18. Confidentiality and publicity

18.1 Each party undertakes and agrees:

- (a) that the nature, quantity and type of Goods and Services supplied under this Agreement is party of Manildra's confidential information;
- (b) to hold in strict confidence all information provided by the other party that is marked or stated to be confidential or is by its nature is recognisable as confidential information;
- (c) to disclose such information only to its employees and contractors to the extent necessary for the party to perform its obligations under this Agreement.
- (d) not to disclose such information otherwise except as required by law or pursuant to prior consent by Manildra in writing.

18.2 The Supplier must not make any public statements or make media releases in relation to goods and services provided to Manildra without prior consent of Manildra in writing.



19. Intellectual Property Rights

- 19.1 The Supplier warrants that any design, materials, equipment, documents and/or methods of working provided or used by the Supplier shall not infringe any Intellectual Property Rights of a third party. The Supplier hereby grants to Manildra an irrevocable, assignable licence to use all Intellectual Property Rights necessary for Manildra to use the Goods and Services without restriction. The Supplier indemnifies Manildra for all costs, expenses and claims arising out of or in connection with any breach of this warranty by the Supplier.

20. Indemnity

- 20.1 The Supplier is liable for and must indemnify Manildra against any loss, claims, costs, expense or damage and all liability for:
- (a) any injury to, illness, sickness, disease or death of, any person ;
 - (b) the loss of, loss of use of (whether total or partial), or destruction or damage to, any real or personal property;
 - (c) breach of any term of this Agreement;
 - (d) for any third party claim against Manildra; and
 - (e) for any fines, penalties or similar sanctions that arise out of or in connection with the Goods or Services.
- 20.2 The Supplier's liability for and responsibility to indemnify Manildra under this clause:
- (a) is reduced proportionately to the extent that an act or omission of Manildra contributes to the loss, liability, claims, costs, expense or damage;
 - (b) is reduced to the extent that the loss, liability, claims, costs, expense or damage is a consequential or indirect loss, but
 - (c) will not be reduced to the extent that the liability of the Supplier is or is required to be insured by the Supplier under this Agreement.

21. Suspension

- 21.1 Manildra is entitled at any time to suspend performance of the Agreement in whole or part by giving notice in writing to the Supplier. Upon receipt of such notice, the Supplier must immediately cease to incur expenses in respect of the Agreement or the part thereof the performance of which has been suspended. The Supplier must take all steps to mitigate costs to Manildra of such suspension.
- 21.2 The Supplier shall immediately resume performance of the Agreement upon notice in writing from Manildra to the Supplier to do so.
- 21.3 Upon termination of any suspension under clause 21.1 Manildra may extend the time for performance of the Supplier's obligations under this Agreement. The Supplier

will not be entitled to extra costs or payment in relation to any suspension. The Supplier shall not be entitled to any extension of time, or the payment of any costs if the suspension was due to any act or omission of the Supplier, its servants or agents or Sub-suppliers, but shall be entitled to an extension of time where the suspension is caused otherwise.

22. Termination for Convenience

- 22.1 Manildra shall be entitled, at any time prior to delivery of the Goods and Services, to cancel the supply in respect of all or any part of the Goods and Services by giving notice in writing to the Supplier. Upon receipt of such notice, the Supplier shall immediately cease to incur expenses in respect of the Agreement or the part thereof which has been cancelled.
- 22.2 The Supplier shall take all steps to mitigate costs to Manildra of such cancellation, including selling the Goods to third parties, and upon such cancellation, Manildra's sole liability shall be to pay to the Supplier (after allowing for any previous payment):
- (a) the value of the Goods delivered to Manildra at the Delivery Point;
 - (b) where there is no ready market for the Goods, the value of any Goods manufactured but not delivered at the date of such determination;
 - (c) where there is no ready market for the unfixed goods or materials for incorporation in the Goods, the value of any unfixed goods and materials; and
 - (d) (wherever located) properly ordered for which the Supplier shall have paid or of which it is legally bound to accept delivery.

23. Termination for default and insolvency

- 23.1 Manildra shall be entitled to terminate the Agreement and any Purchase Order on written notice to the Supplier if:
- (a) the Supplier ceases, or threatens to cease, to carry on business, becomes bankrupt or insolvent or has a receiver, manager, administrator or liquidator appointed; or
 - (b) the Supplier commits a material breach of any of its obligations under the Agreement which is not remedied within 14 days of written notice by Manildra to remedy.
- 23.2 Manildra may terminate this Agreement on notice whether written or oral for any breach of any law or regulation by the Supplier in the performance of this Agreement.
- 23.3 Upon termination of this Agreement for any reason, the parties shall promptly do all things necessary, including the cessation of delivery of Goods and Services, issue of invoices and making of payments owing, to satisfy the relevant party's obligations under this Agreement.

24. Waiver

- 24.1 A failure by Manildra to enforce or exercise any rights conferred upon it under the Agreement or at law shall not be deemed to be a waiver of any such rights (unless made in writing by Manildra) or operate so as to bar the exercise or enforcement thereof at any subsequent time or times. No waiver in respect of any breach of the Supplier shall operate as a waiver in respect of any subsequent breach.

25. Relationship

- 25.1 The relationship between Manildra and the Supplier is one of principal and contractor, and not one of employer and employee, or principal and agent.
- 25.2 The Supplier must do all things necessary to ensure that its employees, contractors and subcontractors are not Manildra's employees or agents.

26. Governing Law

- 26.1 This Agreement is governed by the laws of the State or Territory in Australia in which the Goods or Services are to be delivered and subject to the exclusive jurisdiction of such State or Territory.
- 26.2 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 the Order.

27. Dispute Resolution

- 27.1 Dispute resolution
- (a) If a dispute or difference of opinion (Dispute) arises under or in connection with the Contract, a party may give to the other party a written notice specifying the Dispute and requiring its resolution.
 - (b) The Dispute must be referred to a senior management representative of each Party in a bona fide attempt to resolve the Dispute by negotiation within 14 days.
- 27.2 Notwithstanding any Dispute, the parties must continue to perform all of their obligations under the Contract, unless the Parties otherwise agree.
- 27.3 To the extent applicable, the provisions of the Building and Construction Industry Security of Payment Act 1999 (NSW) or similar legislation will apply to disputes under this agreement relation to construction work as it is defined in that Act.

END OF TERMS AND CONDITIONS

