

## PURCHASE ORDER TERMS AND CONDITIONS

### 1. Formation of Contract

The Purchase Order constitutes IPL's offer to the Supplier. This offer is strictly limited to the terms and conditions included in this Agreement. The Supplier shall be deemed to have accepted this Agreement, and this shall be evidenced, by the Supplier commencing work or providing the Deliverables contained in this Agreement.

The Purchase Order constitutes the entire agreement between the parties in relation to its subject matter and supersedes all tendered offers and prior representations, communications, agreements, statements and understandings, whether oral or in writing.

### 2. Definitions

In this Agreement, unless the contrary intention appears:

**Acceptance** means the Deliverables are found to comply in all respects with this Agreement.

**Agreement** means these Purchase Order Terms and Conditions, and where applicable the Special Terms and Conditions and any document expressly incorporated as part of this Agreement.

**Background IP** means Intellectual Property that exists at the Effective Date or is subsequently brought into existence other than as a result of the performance of this Agreement and which is necessarily related to the Deliverables.

**Confidential Information** means any Information provided by either party to the other, that is:

- a) by its nature confidential; or
- b) the receiving party knows or ought to know is confidential, but does not include information which:
  - i. is or becomes public knowledge other than by breach of this Agreement;
  - ii. is in the possession of a party without restriction in relation to disclosure before the date of receipt;
  - iii. is strictly and necessarily required to be disclosed for the performance of this Agreement; in connection with legal proceedings relating to this Agreement; or given with the written consent of IPL; or
  - iv. has been independently developed or acquired without an obligation of confidentiality by the receiving party.

**Deliverables** means all the goods, supplies or services to be provided under this Agreement, including delivery of documents, equipment, reports, Intellectual Property, Technical Data, plans, charts, drawings, calculations, tables, schedules, models, software, goods, information and data stored by any means as detailed in the Purchase Order.

**Delivery** means the delivery of the Deliverables to the Delivery Location by the Delivery Date.

**Delivery Date** means the date specified on the Purchase Order under the field 'Delivery Date'.

**Delivery Location** means the location specified on the Purchase Order under the field 'Deliver To:'

**Effective Date** means the date that the Purchase Order is issued to the Supplier unless otherwise specified on the Purchase Order.

**Firm** means the price is unalterable in all respects.

**Foreground IP** means all Intellectual Property that is created or otherwise brought into existence for this Agreement.

**GST Act** means A New Tax System (Goods and Services Tax) Act 1999.

**GST** means as defined in the GST Act.

**Information** means any and all technical and non-technical information provided by either party to the other, including but not limited to, proprietary information including ideas, techniques, sketches, drawings, works of authorship, models, processes,

apparatuses, equipment, algorithms, software programs, software source documents, and formulae related to the current, future, and proposed products and services of each of the parties, and including, without limitation, their respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising, marketing plans and information the disclosing party provides regarding third parties.

**Intellectual Property** means all copyright (including moral rights), neighbouring rights and all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered and unregistered designs, Confidential Information (including trade secrets and know-how) and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

**IPL** means Insitu Pacific Limited ABN: 82 122 991 333.

**IPL's Representative** means any person specified in writing by IPL to the Supplier with authority to make decisions regarding this Agreement.

**Purchase Order** means the written order, placed with the Supplier by IPL for the provision of the Deliverables in accordance with this Agreement.

**Purchase Order Terms and Conditions** means these purchase order terms and conditions.

**Special Terms and Conditions** means any terms and conditions in addition to the Purchase Order Terms and Conditions which are annexed to the Purchase Order Terms and Conditions or are included on the face of the Purchase Order.

**Supplier** means the company named in this Agreement that will be responsible for providing the Deliverables.

**Third Party IP** means Intellectual Property that is owned by a party other than IPL or the Supplier and which is necessarily related to the Deliverables.

### 3. Precedence of Documents

In the event of inconsistency between the provisions of this Agreement, to the following order of precedence shall apply:

- a. where applicable, Special Terms and Conditions;
- b. the Purchase Order Terms and Conditions; and
- c. any document incorporated by express reference as part of this Agreement.

### 4. Delivery

The Supplier shall deliver the Deliverables to the Delivery Location by the Delivery Date DDP. In the event of any anticipated or actual delay, the Supplier shall immediately notify IPL in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay. Deliverables will be delivered with detailed identification documentation on each single package, and include a certificate of conformance/ release certificate detailing Agreement number, Purchase Order number, part number and description, serial number and quantity delivered. Where applicable, the Supplier shall provide a copy of the manufacturer's certificate of conformance along with the Supplier's release certificate.

### 5. Price, Payment & Taxes

The Purchase Order price is firm and unless the Purchase Order specifies otherwise, shall include customs duty, packaging, marking, handling, insurance, freight and delivery, all taxes including Australian Goods and Services Tax (GST), levies, and any other applicable duties, costs and charges. No alterations will be accepted unless by prior written agreement with IPL's Representative.

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All Deliverables under this Purchase Order must be invoiced on or after Delivery. Subject to satisfactory performance by the Supplier in accordance with the provisions of this Agreement, IPL shall pay the Supplier within thirty (30) days after the end of the month in which a correctly rendered invoice is received. A correctly rendered invoice is an invoice which complies with the GST Act, contains the Purchase Order number and the Agreement number, certificate of conformance/release certificate number, description and quantities of Deliverables delivered.

IPL shall have no liability for any other expenses or costs incurred by the Supplier.

The Supplier shall promptly repay to IPL any amounts paid in excess of amounts due to the Supplier.

### 6. Standards

The Deliverables shall comply with the latest revision of the standards or codes issued by Standards Australia, or equivalent.

### 7. Inspection and Test

IPL shall have the right to inspect and test the Deliverables including the right to reject and return the Deliverables at the Supplier's expense if, in the opinion of IPL, the Deliverables do not comply in any respect whatsoever with the Agreement. Any inspection or test carried out pursuant to this clause does not relieve the Supplier from any of its responsibilities and obligations under this Agreement unless otherwise stated by IPL.

During the term of this Purchase Order, the Supplier shall permit representatives of IPL or any person authorised by IPL access to its premises, and access to any of its records or accounts in connection with the provision of the Deliverables.

### 8. Risk and Title

Risk in the Deliverables shall pass from the Supplier to IPL on the later of Delivery or Acceptance.

Ownership of, and unencumbered title in, the Deliverables or any part of it shall pass to IPL upon payment. Where payment is made in instalments ownership shall pass in proportion to the percentage paid.

Where IPL has supplied materials or equipment in connection with the Deliverables, the risk for loss of or damage to such supplied materials will transfer to the Supplier when delivered into the Supplier's care custody and control and remain therein until returned to IPL. The title in IPL supplied material or equipment remains vested in IPL at all times and the Supplier must not under any circumstances encumber or otherwise make such material or equipment the subject of any lien or charge. The Supplier must clearly label any supplied materials or equipment as property of IPL. The Supplier shall return such material or equipment to the Purchaser in the event of any termination under clause 14 or 15.

### 9. Intellectual Property

The Supplier:

- assigns to IPL immediately upon its creation, the rights in all Foreground IP created by the Supplier or any subcontractor in connection with the provision of the Deliverables under this Agreement;
- grants to IPL a perpetual, royalty free, irrevocable, world-wide, non-exclusive license in respect of all Background IP, including the right to sub-licence, to use, modify, support, develop and maintain the Deliverables for IPL's purposes; and
- shall use its best endeavours to ensure that IPL is granted a licence to exercise all Third Party IP on the best available commercial terms.

### 10. Confidentiality

The parties will keep confidential and secure, and not misuse, any Confidential Information. The parties shall obtain the prior written consent of the disclosing party where Confidential Information is to be disclosed for any reason other than where such disclosure is required

for the purposes of providing the Deliverables or by law. The parties shall return or certify as to the destruction of Confidential Information at the earlier of a request by the disclosing party or the expiration or termination of the Agreement.

### 11. Warranty

The Supplier warrants that:

- it is appropriately qualified and experienced to provide the Deliverables;
- it has, (together with its subcontractors) sufficient numbers of properly qualified and experienced personnel at its disposal to perform in accordance with this Agreement; and
- it is properly licensed, equipped, organised and financed to comply with all of its obligations under this Agreement.

The Supplier further warrants that no literary or other works (including computer programs, diagrams, flow charts or other work) employed or created by the Supplier in connection with the provision of the Deliverables (the Supplier's Intellectual Property) infringes any Intellectual Property right or other right or property belonging to or benefiting any third party.

The Supplier acknowledges that IPL enters into this Agreement in reliance on the Supplier's warranties in this Clause 11, and the Supplier's skill and judgement to perform in accordance with the provisions of this Agreement and provide the Deliverables.

The Supplier warrants the Deliverables shall:

- conform to the description, drawings, specifications and these Agreement terms and conditions (including any special conditions); and
- be fit for the intended use and purpose; and
- for the specified warranty periods, or if there is not a specified warranty period, then for 12 months from Acceptance, be free from any defect in design, materials and workmanship.

During the warranty period, the Supplier shall at its own expense (including the cost of repackaging and return transport) repair or replace any Deliverables that are in breach of this Clause 11.

### 12. Indemnity

The Supplier shall indemnify and hold harmless IPL, its officers, employees and agents against any liability, loss, damages, claim, suit, action, demand, expense or proceeding of any nature in respect of:

- loss of, or damage to, property (including IPL's property);
- personal injury, illness or death;
- claims by any third party, including in respect of Intellectual Property and Confidential Information; and
- costs and expenses including the costs of defending or settling any claim;

arising out of or as a consequence of any work under this Agreement by the Supplier, its employees, officers, agents, contractors and suppliers and/or its subcontractors.

### 13. Insurance

In addition to any insurance which the Supplier is by law obliged to effect, the Supplier shall procure and maintain at its own expense, with a reputable insurance company the following policies of insurance:

- workers compensation as required by law including a principal's indemnity extension where any work is to be undertaken in the Northern Territory or Western Australia; and
- public liability for an amount of not less than \$20,000,000; and

On written request by IPL, the Supplier must provide certificates of currency for insurance retained in accordance with this Agreement. If certificates of currency are not produced within 7 days of receipt of written request IPL may:

- withhold payment to the Supplier; or

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- b. procure the appropriate insurance policies on behalf of the Supplier, the cost of any such insurance shall be a debt due from the Supplier to IPL.

### 14. Termination for Default

If the Supplier fails to comply with the provisions of the Purchase Order or commits a material breach of this Agreement and fails to remedy a material breach within 30 days of receiving written notice from IPL that it requires a material breach to be remedied, IPL may terminate this Agreement by providing 30 days written notice.

IPL may terminate this Agreement immediately by providing written notice to the Supplier where the Supplier becomes insolvent or bankrupt or a receiver of its business or assets is appointed, or goes into liquidation or takes or has instituted against it any action which may result in bankruptcy or liquidation.

If IPL terminates in accordance with this clause, the Supplier shall not be obliged to make any payment therefore or in respect of such termination, and shall recover from the Supplier, IPL's costs and damages.

### 15. Termination for Convenience

IPL, in addition to any other rights it may have under this Agreement, is entitled at any time and for any reason to terminate this Agreement, by notifying the Supplier in writing that this Agreement, or a specified part thereof, shall terminate on the date specified in such notice, and in that event, the Supplier will comply with such directions that IPL may give to the Supplier in relation to subsequent performance of this Agreement. Upon receipt of notice of termination in whole or part the Supplier shall:

- do everything possible to mitigate all losses, costs (including the costs of compliance with any such direction) and expenses arising in consequence of the termination of this Agreement or part thereof; and
- terminate all affected subcontracts or supply agreements.

If requested in writing by the Supplier within thirty (30) days after the service of a notice, IPL will pay to the Supplier all moneys due and not previously paid to the Supplier for the Deliverables completed in accordance with this Agreement and for work thereafter completed as specified in the notice. The total sum to be paid to the Supplier will not include any consideration for loss of anticipated profits for terminated Deliverables or work, and the Supplier hereby agrees to waive all claims in relation thereto. In no case shall the amount payable by IPL for the terminated work exceed the price that would have been payable if the work had been completed

### 16. Export Approvals

The Supplier shall be responsible for obtaining all necessary export licenses, permits or other authorities from the country of origin necessary and incidental to the delivery of the goods and services that are the subject of this Agreement.

Where applicable the Supplier shall, within a period of thirty (30) days of the Effective Date and in accordance with Clause 16, submit an application to the relevant government and other authorities for the export of the goods and services that are the subject of this Agreement.

The Supplier shall advise IPL in writing of the submission of the export application referred to in this Clause 16. The Supplier shall advise IPL immediately in writing on receipt of export approval or the rejection of the Supplier's export application by a government or other authority and shall provide IPL with copies of the export approval or rejection.

The Supplier shall advise IPL immediately in writing on first becoming aware of any actual, anticipated or suspect breach of any export approval, law or regulation.

In the event the Supplier is unable to obtain export approval for the goods and services that are the subject of this Agreement, IPL shall be entitled to terminate this Agreement for convenience in accordance with Clause 14 and at no cost to IPL.

### 17. Marking of Export Controlled Data

The Supplier shall mark all data that is subject to any export approval, caveat or condition, and regardless of the method of transmission to IPL, with the relevant export approval reference and in such a manner as to clearly indicate to IPL that the data is subject to an export approval, caveat or condition.

The Supplier shall mark all data that is not subject to any export approval, caveat or condition, with the relevant export approval reference and in such a manner as to clearly indicate to IPL that the data is "Administrative Data" and therefore not subject to any export approval, caveat or condition.

Data that is not clearly marked in accordance with the provisions of this Clause 17 shall, at IPL's option and the Supplier's cost, be returned to the Supplier for the appropriate marking. In the event that such data is returned to the Supplier or IPL is held to be in breach of any export approval, caveat or condition, any delays or damages incurred by IPL as a result shall be the subject of the indemnity referred to in Clause 12.

The failure of the Supplier to submit an application/s for export or other authority within the timescale shown above or the breach of any export approval, law or regulation shall be a material breach of the Agreement and IPL shall be entitled to termination for breach of this Agreement immediately in accordance with clause 14 and such termination shall not affect other rights and remedies available to IPL under this Agreement.

In the event the Supplier is unable to obtain export approval for the Deliverables, IPL shall be entitled to terminate this Agreement for convenience in accordance with clause 15 and at no cost to IPL.

### 18. Workplace Health and Safety

The Supplier must:

- ensure all personnel complete a IPL safety induction prior to commencement of activities on IPL owned or controlled premises;
- comply with the statutory obligations placed upon it under any applicable workplace health and safety legislation in each State or Territory and any applicable regulations made under that legislation;
- comply with any applicable advisory standards, industry codes of practice or Australian Standards; and
- comply with any directions given by IPL with respect to workplace health and safety;

which apply to the provision of the Deliverables under this Agreement.

The Supplier must provide to IPL a report whenever required by IPL which:

- confirms the Supplier is compliant with workplace health and safety legislation as it applies in each State or Territory;
- Lists any hazards and risks associated with the activities to be conducted
- Lists specific control measures that will be used to mitigate any risks associated with the activities
- Details the proposed method for conducting the activity, including how safety controls will be implemented
- Details qualifications of persons conducting the activities
- Details the procedure for first aid and injury management while conducting the activities

Any incident which has the potential to cause, or actually causes, an accident, injury or illness to the Supplier or Supplier's personnel pursuant to work being performed under this Agreement must be reported to IPL within one (1) hour of the occurrence unless that is impracticable, in which case it must be reported as soon as practically possible.

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A written report detailing the events surrounding the accident and/or incident shall be submitted by the Supplier to IPL's Representative within twenty-four (24) hours. The Supplier shall provide any additional information which IPL may reasonably require.

The reporting obligations set out in this Clause 18 are in addition to any obligations to report provided for in applicable workplace health and safety legislation in any State or Territory.

### 19. Entire Agreement

Notwithstanding that the Supplier has provided IPL with the Supplier's terms and conditions, this Agreement constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or in writing, between the parties with respect to the subject matter of this Agreement.

No amendment or modification of this Agreement shall bind either party unless it is in writing and is signed by IPL's Representative and an authorized representative of the Supplier

### 20. Severability

If any part of the Purchase Order is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of the Purchase Order shall not be affected and the Purchase Order shall be read as if that part had been severed.

### 21. Governing Law

This Agreement is governed by and is construed in accordance with the laws of the State of Queensland, Australia.

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland and courts entitled to hear appeals from these courts.

The United Nations Convention on Contracts for the International Sale of Goods (or its successor) shall not apply to these Agreement Terms and Condition.

### 22. Set-Off

IPL may set-off any amount owing by IPL to the Supplier (whether liquidated or unliquidated) against any amount owing by the Supplier to IPL (whether liquidated or unliquidated). All rights, including implied rights, of the Supplier to set-off against any amounts owing by IPL are excluded.

### 23. Survivability

The clauses of the Purchase Order intended to survive, include, but are not limited to, confidentiality, intellectual property, warranties, indemnities, export approvals and any rights arising on termination or expiration, shall all survive the termination or expiration of the Purchase Order.

### 24. Waiver

Any failure of IPL to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by IPL to the Supplier will not be construed as a waiver of the IPL's rights under this Agreement.

The Delivery, receipt or Acceptance of any Deliverables shall not be deemed a waiver of any rights of IPL for any prior failure by the Supplier to comply with any of the provisions of this Agreement.

### 25. Notices Provided Pursuant to Purchase Order

All notices provided by either party pursuant to the terms of this Purchase Order shall be in writing and delivered promptly to the parties' nominated representatives set out in the Purchase Order and will be deemed to have been given:

- a. in the case of hand delivery, upon delivery;
- b. in the case of prepaid post, three days after dispatch; and
- c. in the case of facsimile, upon completion of the transmission.

Notices required pursuant to this Purchase Order may not be sent by electronic mail.

### 26. Assignment and Subcontracts

The Supplier must not, without the prior consent in writing of IPL, assign, novate or subcontract, in part or in whole, its rights or obligations under the Purchase Order.