



TERMS AND CONDITIONS

1. DEFINITIONS

(a) In this *Purchase Order*, except where the context otherwise requires:

Client means WBHO-I-I Infrastructure Pty Ltd Pty Ltd ("WBHO-I-I") ACN 089 434 220 or such other party as is notified by WBHO-I-I to the *Supplier* as the *Client* under this *Purchase Order*;

Date for Delivery means the date specified in the *Purchase Order* as being the date for *Delivery* of the *Goods* or completion of the *Services*, as the case may be;

Delivery means the packaging, transporting and unloading of the *Goods* at the designated *Delivery Point*, in accordance with the delivery terms specified in the *Purchase Order*, and the *Supplier* has otherwise done everything required to be done under this *Purchase Order* before or on *Delivery*;

Delivery Point means to the location specified for the *Delivery* of the *Goods* in the *Purchase Order* or as otherwise advised by the *Client* to the *Supplier*;

Goods means the items to be provided by the *Supplier* to the *Client* as described in the *Purchase Order*;

Undertakings means:

In relation to *Goods*, that:

- (i) the *Goods* will comply strictly with the *Purchase Order*, including as to quantity, quality (state and condition) and description (and irrespective of any damage or deterioration in transit);
- (ii) the *Goods* are of a description which it is in the course of the *Supplier's* business to supply;
- (iii) the *Supplier* has the right to sell the *Goods*;
- (iv) the *Client* may have quiet possession of the *Goods*;
- (v) the *Goods* are and will be free from any lien, charge or encumbrance in favour of any person (including the *Supplier*);
- (vi) the *Goods* will be new, free of faults and of merchantable quality; and
- (vii) the *Goods* will be reasonably fit for the *Purpose*;

In relation to *Services*, that

- (viii) the *Supplier* shall perform the *Services* to that standard of care and skill to be expected of a supplier who regularly acts in the capacity in which the *Supplier* is engaged and who possesses the knowledge, skill and experience of a supplier qualified to act in that capacity.
- (ix) the *Services* are suitable, appropriate and adequate for the purpose stated in the *Purchase Order*;
- (x) the *Supplier* shall perform the *Services* with due expedition and without delay and in accordance with any program provided by the *Client* to the *Supplier*;
- (xi) the *Supplier* shall comply with all directions of the *Client* in relation to the *Services*, including pursuant to a provision of the *Purchase Order*;
- (xii) the *Supplier* shall remain fully responsible for the *Services* carried out by the *Supplier* notwithstanding any acceptance of those *Services* by the *Client*; and
- (xiii) the *Supplier* must comply with all laws in carrying out the *Services*;

PPS Act means the *Personal Properties Securities Act 2009* (Cth);

PPS Law means the *PPS Act* and any regulations made at any time under the *PPS Act*, as amended from time to time and any relevant amendment made at any time to any other legislation as a consequence;

Price means the total price to be paid by the *Client* to the *Supplier* as set out in the *Purchase Order*;

Purpose includes:

- (i) the purpose stated in the *Purchase Order*; and
- (ii) any other purpose made known to the *Supplier* before the date of the *Purchase Order*, or if no purpose is made known, the purpose for which the *Goods* or *Services* are most commonly used in projects such as the project in which the *Client* is engaged.

Services means the services to be provided by the *Supplier* to the *Client* as described in the *Purchase Order*; and

Supplier means the party named in the *Purchase Order* as the *Supplier*.

(b) The *Client's* rights and remedies are in addition to those it has elsewhere under the *Purchase Order* or otherwise at law (including under statute). No course of dealing or usage will negative these rights and remedies. A discretion given to the *Client* is unfettered and need not be exercised for the benefit of the *Supplier*. The *Supplier* agrees that a loss directly and naturally flowing from the *Supplier's* failure to comply with the *Goods Undertakings* includes any loss it incurs due to any liability of the *Client*

to its client in respect of such failure, and nothing in this *Purchase Order* will be interpreted to exclude or limit the *Supplier's* liability for such loss. The *Supplier* must bear all risks and costs (whether ascertainable at the date of this *Purchase Order* or not) arising out of or in connection with the provision of, or failure to provide, the *Goods*, except to the extent expressly made the responsibility of the *Client* under the *Purchase Order*.

2. BINDING ORDERS

This *Purchase Order* will be deemed to have been unconditionally accepted by the *Supplier* on commencement of performance of any of the *Supplier's* obligations under this *Purchase Order* (including *Delivery* of the *Goods*). This *Purchase Order* expressly supersedes any terms contained in the *Supplier's* quote, tender, order acceptance (whether provided before or after the date of this *Purchase Order*) or other standard conditions of supply, and any prior orders, instructions, acknowledgments or representations of the *Client*. This *Purchase Order* when properly signed and bearing an order number, is the only form which is recognised by the *Client* as authority for the *Supplier* to charge for the *Goods* stated to its account.

3. COMPLIANCE

The *Supplier* must:

- (a) comply with all laws, including all Acts, Ordinances, regulations, standards, by-laws, orders, awards, and proclamations;
- (b) comply with the requirements of persons acting in the exercise of statutory powers enabling them to give directions with respect to this *Purchase Order*; and
- (c) obtain all certificates, licences, consents, permits and approvals, that are applicable to the sale, supply and *Delivery* of the *Goods*, the performance of the *Services* or the carrying out of any activity by the *Supplier* in relation to the *Delivery* of the *Goods* or the performance of the *Services*, whether directly or indirectly; and
- (d) in performing any of its obligations under this *Purchase Order*, the *Supplier* must comply with any reasonable directions given by the *Client* (including regarding occupational, health and safety matters when on a site on which the *Client* is working).

4. DELIVERY of Goods

The *Supplier* must deliver the *Goods* to the *Delivery Point* by the *Date for Delivery*. The *Client* may accept delivery of the *Goods* before the *Date for Delivery*. The *Supplier* bears the risk and cost of delivery of the *Goods* before the *Date for Delivery*. If the *Client* accepts early delivery, it is not obliged to pay for the *Goods* early. Acceptance of *Delivery* by the *Client* will not be deemed to be an acceptance that the *Goods* comply with this *Purchase Order* or otherwise affect any other obligation of the *Supplier* under this *Purchase Order*.

5. TIME

Time is of the essence in the performance of this *Purchase Order* by the *Supplier*. If promptly after it becomes aware of a delay the *Supplier* gives written notice of a delay to *Delivery*, the *Client* must adjust the *Date for Delivery* to the extent such delay to the *Date for Delivery* is caused by an act or omission of the *Client*. The *Client* may adjust the *Date for Delivery* for any other reason. If the *Supplier* fails to perform any of its obligations under this *Purchase Order* on or before the time specified in this *Purchase Order* the *Client* may reject the *Goods* or require the *Supplier* to do whatever is necessary to expedite the *Delivery* of the *Goods* to arrive on or as close to the *Date for Delivery* as possible, at the *Supplier's* expense, including the payment of premium freight charges.

6. INSPECTION, ACCEPTANCE OR REJECTION OF GOODS

- (a) The *Client* may require the *Supplier* to provide evidence acceptable to the *Client* that the *Goods* are in accordance with this *Purchase Order* and the *Supplier* must provide such evidence within the time prescribed in the request. All *Goods* ordered are subject to inspection by the *Client* on arrival at the *Delivery Point*.
- (b) The *Client* or its representative may inspect the *Goods* and any work performed during their manufacture, engineering or installation, before *Delivery* of the *Goods* and the *Supplier* must give the *Client* access to its premises (or any premises at which the *Goods* are being manufactured or produced) to do so. Inspection or examination of the work or the *Goods* will not be deemed to be an acceptance of the *Goods* by the *Client* or affect any other obligation of the *Supplier* under this *Purchase Order*. All measurements are to be checked on site by the *Supplier* prior to commencement of any work under this *Purchase Order*, and the *Supplier* remains liable for any errors and the consequence of such errors and indemnifies the *Client* against any cost, claim, expense or other damage of whatsoever nature and kind arising from any error in measurements.

- (c) The *Goods* will be deemed to be accepted by the *Client* (and the *Supplier* must submit an invoice in a form approved by the *Client* for an amount not exceeding the *Price*) on the earlier of:
- (i) the *Supplier* receiving a written notice of acceptance of the *Goods* from the *Client*; and
 - (ii) 30 days having elapsed from the *Date for Delivery* and *Delivery* (whichever is the later) and the *Supplier* having provided to the *Client* all documents of title, delivery dockets, operating manuals and manufacturers' warranties (with conditions at least equivalent to those prevailing in the industry, noting the *Client* as end user and allowing for assignment to the *Client*) required by this *Purchase Order* or reasonably required by the *Client*.
- (d) Even though acceptance and payment may have been made if, on inspection, the *Goods* fail to meet any requirements of this *Purchase Order* the *Client* may:
- (i) require the *Supplier* to make good the loss, damage or defect in the *Goods* to the *Client* within 5 business days;
 - (ii) reject the *Goods* (in whole or in part);
 - (iii) accept the *Goods* in whole or part and reduce or extinguish the *Price* to reflect the reduction in value of the *Goods* to the *Client* and/or require the *Supplier* to credit the *Client* for the amount of the deficiency; and/or
 - (iv) exercise any other right (including to claim damages).
- (e) The *Client* may return any *Goods* that have been incorrectly ordered by the *Client* and must pay all freight costs and handling charges associated with effecting the return of such *Goods* and such payment shall be in full satisfaction of the *Supplier's* entitlements and any liability of the *Client* under or in connection with this *Purchase Order*. In no circumstances will the *Supplier* be entitled to any indirect or consequential loss arising from such conduct, including for loss of profit or loss of opportunity.
- (f) The *Supplier* must, as part of the *Price*, provide all scaffolding and other ancillary work required to *Deliver* the *Goods* and / or complete the *Services* and arrange and be responsible for access for such *Delivery* and performance.
- (g) The *Client* reserves the right to complete or take over the *Supplier's* *Services* or any part of the *Services* at the *Supplier's* expense if in the *Client's* opinion the *Supplier* is not performing the *Services* in accordance with this *Purchase Order* or as otherwise required by the *Client*. Any materials on the site become the property of the *Client* and may be used to carry out any remaining works.
- 7. TITLE AND RISK**
- Title in the *Goods* passes to the *Client* on the earlier of acceptance of *Delivery* of the *Goods* and payment of the *Supplier*. Risk in the *Goods* does not pass to the *Client* until the later of acceptance of the *Goods* and payment of the *Supplier*.
- 8. PAYMENT AND INVOICING**
- (a) The *Price* is inclusive of all costs and expenses of the *Supplier* (whether foreseen or unforeseen) in complying with this *Purchase Order* and *Delivering* the *Goods*, including all costs of packaging, freight, insurance, duties and taxes (other than GST) (if any) which must be paid by the *Supplier*.
 - (b) On acceptance of the *Goods*, payment must be made on the of later than 15 days (or the next business day thereafter) from the later of:
 - (i) The end of the calendar month of delivery; and
 - (ii) the end of the calendar month in which an invoice (including a proper tax invoice) in accordance with clause 6(c) is received by the *Client*.
 - (c) Making a payment will not be construed as evidence or an admission that the *Goods* or *Services* have been supplied in accordance with this *Purchase Order* but is a payment on account only.
 - (d) The *Client* may deduct from moneys certified for payment or otherwise due to the *Supplier* any money due or payable or claimed by the *Client* to be due or payable from the *Supplier* to the *Client* under or for breach of the *Purchase Order*, or otherwise than under the *Purchase Order*.
- 9. RIGHT TO ALTERNATIVE SUPPLY**
- (a) If the *Supplier* fails to *Deliver* the *Goods* or perform the *Services* by the *Date for Delivery*, or *Delivers* any *Goods* or performs any part of the *Services* which do not comply with any requirements of this *Purchase Order*, the *Client* may, without prejudice to any other rights under this *Purchase Order*:
 - (i) cancel this *Purchase Order*;
 - (ii) purchase replacement goods or services from a third party and charge the *Supplier* with the difference (if any) between the cost of such replacement goods or services and the *Price* in this *Purchase Order*;
 - (iii) require the *Supplier* to make good the loss, damage or defect to the *Client* within 5 business days;
 - (iv) reject the *Goods* or the *Services* (in whole or in part);
 - (v) accept the *Goods* or the *Services* in whole or part and reduce or extinguish the *Price* to reflect the reduction in value of the *Goods* or the *Services* to the *Client* and/or require the *Supplier* to credit the *Client* for the amount of the deficiency; and/or
 - (vi) exercise any other right (including to claim damages).
 - (b) The *Client* may at any time call for proposals or tenders for, or acquire *Goods* or *Services* similar or identical to the *Goods* and *Services* in any other way from any person, and the *Client* will not be liable in any circumstances to make any payment to the *Supplier* in respect of loss of prospective profits or any other claim of the *Supplier*.
- 10. ALTERATION OF ORDER**
- (a) The *Supplier* must not vary the specification, quantity, quality or description of the *Goods* or *Services* without the written consent of the *Client* and must not supply substitute or equivalent *Goods* or *Services* without the written consent of the *Client*.
 - (b) By notice in writing to the *Supplier*, the *Client* may at any time prior to the *Date for Delivery* order:
 - (i) variations to description, specification, quality and quantity of the *Goods* or *Services*; or
 - (ii) the *Goods* or *Services* to be *Delivered* to a different *Delivery Point* or on a different *Date for Delivery*.
 - (c) The *Price* will be adjusted by the amount agreed by the parties or failing *Purchase Order*, a reasonable price determined by the *Client*, in respect of the variation.
- 11. PERFORMANCE**
- (a) The *Supplier* gives the *Undertakings*. The *Undertakings* are fundamental conditions of this *Purchase Order*.
 - (b) The *Supplier* warrants that the manufacture, sale or use of the *Goods* and / or provision of the *Services* does not and will not infringe any patent, copyright, trademark or trade secret or any other industrial or intellectual property right conferred on any person by a law of Australia or any other country.
- 12. INDEMNITY**
- The *Supplier* must indemnify and keep indemnified the *Client* for any loss, damage, expense, claim or liability suffered or incurred, by the *Client* as a result of the negligence of the *Supplier* or the breach by the *Supplier* of any other requirements (including any warranty or any of the *Undertakings*) of this *Purchase Order*.
- 13. INSURANCE**
- (a) The *Supplier* must effect and maintain adequate insurance satisfactory to the *Client* including, without limitation, public liability (of not less than \$20,000,000), workers' compensation (including common law liability); automotive / motor vehicle insurance; freight liability; and product damage insurance and any other insurances reasonably required by the *Client*, all on such terms and for such amount as are reasonable in the circumstances and approved by the *Client*.
 - (b) The *Supplier* must, if performing any *Services* which have a design element or if otherwise directed by the *Client*, effect and maintain adequate professional indemnity insurance (of not less than \$5,000,000 unless otherwise agreed by the *Client*) as part of the *Price*.
 - (c) The *Client* may require, and the *Supplier* must provide evidence of proof of such insurance prior to the *Client* making any payment under this *Purchase Order*.
- 14. TERMINATION**
- (a) The *Client* may terminate or suspend the *Purchase Order* or any unfulfilled part of the *Purchase Order*. The *Client* shall not be liable for any loss (including consequential or special loss), damages, costs or expenses howsoever arising from such cancellation or suspension. The liability of the *Client* to the *Supplier* is expressly limited to payment for *Goods Delivered* to the *Client* in accordance with this *Purchase Order*.
 - (b) If the *Supplier* has committed a wilful or substantial breach of any of the terms of this *Purchase Order* (including any of the *Undertakings*), or the *Client* is of the opinion that the *Supplier* is or may become insolvent, is financially incapable of performing, or is unwilling or unable to perform its obligations as required by this *Purchase Order*, the *Client* may reject any *Goods Delivered* and/or may cancel the *Purchase Order* by written notice to the *Supplier*, in which case the *Supplier* shall not be entitled to any further payment under this *Purchase Order* and the *Client* may

without payment of compensation take possession of such material, equipment, plant and other things on or in the vicinity of the site as are owned by the *Supplier* and all documents, information, materials and the like produced by the *Supplier* which are reasonably required by the *Client* to facilitate delivery of the *Goods* or complete the *Services* under this *Purchase Order*.

15. PERSONAL PROPERTY SECURITIES ACT

- (a) Unless a contrary intention appears, words or expressions used in this clause 15 that are defined in the *PPS Act* have the same meaning as given to them in the *PPS Act*.
- (b) To the maximum extent permitted by law, the *Supplier* waives the right to any security interest pursuant to the *PPS Act* in respect of the *Goods*, irrespective of their nature and that the *Supplier* may have possession of the *Goods*.
- (c) If at any time, the *Client* determines that this *Purchase Order* (or any of the transactions contemplated by or under it) creates a security interest in its favour over any personal property, the *Client* may apply for any registration, or give any notification, in connection with that security interest and the *Supplier* must promptly, upon the *Client's* request, do anything (including, but without limitation, signing, completing and / or producing documents, obtaining consent and supplying information) to provide more effective security over the relevant personal property and ensure that any such security interest in favour of the *Client*:
 - (i) is at all times enforceable, perfected (including, where applicable, by control as well as by registration) and otherwise effective; and
 - (ii) ranks as a first priority security interest;
 - (iii) enables the *Client* to prepare and register a financing statement or a financing change statement or give any notification in connection with that security interest; and
 - (iv) enable the *Client* to exercise any of its rights or perform any of its obligations in connection with any such security interest or under the *PPS Act*.
- (d) If Chapter 4 of the *PPS Act* applies to the enforcement of the Security Interest, the *Supplier* agrees that sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 142 and 143 of the *PPS Act* will not apply to the enforcement of the security interest.

16. GOODS AND SERVICES TAX

- (a) The *Price* payable for *Goods* under this *Purchase Order* is inclusive of GST unless specifically described as 'GST Exclusive'. If the *Supplier* makes a taxable supply to the *Client* under or in connection with this *Purchase Order*, and the consideration for that supply has been specifically described as 'GST Exclusive', upon the receipt of a tax invoice the *Client* must pay the *Supplier* an additional amount equal to the GST payable on that supply at the same time as the GST exclusive consideration is paid.
- (b) The *Client* need not make a payment in respect of a taxable supply made under or in connection with this *Purchase Order* until the *Supplier* has given the *Client* a tax invoice in respect of that taxable supply.
- (c) Amounts payable under this *Purchase Order* shall be adjusted to reflect the benefit of any reduction in the *Supplier's* costs relating to that supply resulting from the abolition or reduction of any existing taxes. Any such adjustment will be effective as of the date of the relevant reduction in the *Supplier's* costs.
- (d) In compliance with the relevant withholding tax legislation or any ATO Public Ruling, the *Client* will withhold an amount of tax from any payment it makes to the *Supplier* if the payment is for a supply unless

the *Supplier* provides to the *Client*, an invoice or other document in relation to the supply for which the payment is consideration that quotes the *Supplier's* Australian Business Number (ABN), or the *Supplier* meets the criteria for exemption from the Pay as You Go Withholding (PAYG) requirement as contained in section 12-190 of schedule 1 of the *Taxation Administration Act 1953* (Cth).

17. SUBCONTRACTING AND ASSIGNMENT

- (a) The *Supplier* must not assign or subcontract its rights or obligations under this *Purchase Order* without the prior written consent of the *Client*. To the maximum extent permitted by law, *Supplier* is entirely responsible (legally and factually) for any act or omission of a subcontractor.
- (b) The *Client* may assign all or part of this *Purchase Order* without the consent of the *Supplier*. The *Client* may assign, novate, transfer or otherwise dispose of or deal with all or any part of its rights or obligations under this *Purchase Order* to any related corporation (as that term is defined in the *Corporations Act 2001* (Cth)) of the *Client*.

18. JURISDICTION

- (a) This *Purchase Order* shall be read and construed according to the laws of the State in which the *Goods* are *Delivered*, or *Services* are performed, and the *Supplier* shall submit to the jurisdiction of any competent Court in that State

19. NATIONAL CODE

The *Supplier* must comply with the Building Code 2016 (Building Code) and its Supporting Guidelines. Copies of the Building Code are available at <https://www.abcc.gov.au/building-code>. Compliance with the Building Code shall not relieve the *Supplier* from responsibility to perform the *Purchase Order* or from liability for any defect in the *Goods* or the *Services* arising from compliance with the Building Code.

20. STATE CODES

Where applicable and determined by the location of the work under the *Purchase Order*, the State specific Government's Code of Practice or equivalent for the Building and Construction Industry and the State specific Government's Implementation Guidelines to the Code of Practice for the Building and Construction Industry apply to the *Services*. By accepting this *Purchase Order*, the *Supplier* warrants it is not precluded from accepting the work under the *Purchase Order* and agrees that it will be deemed to have read and understood, and that it will comply with the State specific Code and State specific Guidelines.

21. OCCUPATIONAL HEALTH AND SAFETY

The *Supplier* must, so far as is reasonably practicable, provide and maintain a working environment that is safe and without risks to health and meet all requirements of the *Client* approved OHS Plan, Safe Work Method Statement(s) and other OHS documentation.

The *Supplier* shall ensure that prior to commencing the *Services*, the *Supplier's* employees, subcontractors, consultants and any of their employees commencing work related to this *Purchase Order* has completed the *Client's* site induction, including providing individual licences and certifications that are required to undertake the *Services* in accordance with Legislative and Industrial Relations requirements.