

TERMS AND CONDITIONS OF PURCHASE ORDER

1. Agreement

1.1 These are the terms and conditions (**Conditions**) referred to in the attached JCU purchase order (**Purchase Order**). The Conditions apply to any purchase order for Goods and/or Services placed by JCU with a supplier and are to be read in conjunction with any terms specified in the Purchase Order. No other terms and conditions will apply to a purchase order unless:

- (a) special conditions to the purchase order have been agreed to in writing by the supplier and JCU, in which those special conditions will apply in addition to these Conditions and/or will prevail to the extent of any inconsistency with these Conditions; or
- (b) JCU and the supplier have entered into a separate agreement in relation to the supply of Goods and/or services, in which case the terms of that agreement only will apply to the supply of the Goods and/or Services.

1.2 The Supplier is taken to have accepted a Purchase Order upon the earliest to occur of:

- (a) the Supplier gives written notification to JCU of acceptance of the Purchase Order; or
- (b) the Supplier delivering the goods and/or Services specified in the Purchase Order.

1.3 Upon acceptance or deemed acceptance of the Purchase Order by the Supplier, an agreement will be formed (**Agreement**) which will comprise, subject to clause 1.1, the Purchase Order and the Conditions.

2 Delivery

2.1 The Supplier must ensure that the delivery of the Goods and/or Services to JCU is made at the time, place and in the manner specified in the Purchase Order, and meets the requirements sets out in the Agreement. JCU may on reasonable notice to the Supplier, and prior to delivery of the Goods and/or Services, specify in writing a later time for delivery.

2.2 The Supplier must promptly notify JCU if it believes it cannot meet any delivery date or other timeframes specified in the Purchase Order. JCU reserves the right to withdraw the Purchase Order and/or terminate the Agreement if the Supplier cannot meet the delivery times or other timeframes specified in the Purchase Order.

3 Warranty

3.1 The Supplier warrants that the Goods supplied under the Purchase Order will be:

- (a) in accordance with the requirements set out in the Agreement;
- (b) labelled correctly and packed to ensure safe delivery to JCU;
- (c) unless otherwise specified by JCU, of

merchantable quality and in a new and unused condition;

- (d) free from all Encumbrances;
- (e) free from defects in materials and workmanship quality;
- (f) fit for purpose; and
- (g) comply in all respects with all Legislative Requirements.

3.2 The Supplier warrants that the Services supplied under the Purchase Order will:

- (a) match the Services and meet the requirements, set out in the Agreement;
- (b) be carried out with due care, skill and due diligence, and by appropriately qualified and trained Personnel;
- (c) be fit for purpose; and
- (d) comply in all respects with all Legislative Requirements.

4 Acceptance by JCU of Goods and/or Services

4.1 JCU may, within twenty-one (21) Business Days of delivery of the Goods and/or Services to JCU, either accept the Goods and/or Services or reject any Goods and/or Services where, in JCU's reasonable opinion, the Goods and/or Services are found not to be in accordance with the terms of the Agreement.

4.2 If JCU does not notify the Supplier within fourteen (14) days of delivery of the Goods and/or Services of its acceptance or rejection of the Goods and/or Services, JCU is deemed have accepted the Goods and/or Services.

4.3 If JCU rejects any Goods and/or Services, JCU may, at its option, require the Supplier to:

- (a) resupply the rejected Goods and or re-perform the relevant Services to the reasonable satisfaction of JCU and within the time period specified by JCU; or
- (b) remove, at the Supplier's expense, any rejected Goods, and refund to JCU any monies paid for those rejected Goods and/or Services.

4.4 Any Goods rejected by JCU may be held by JCU at the risk of the Supplier.

5 Passing of Property and Third Party Warranties

5.1 Property in the Goods passes to JCU upon acceptance of the Goods by JCU under Clause 4. The Supplier must ensure that all third party or manufacturer warranties in the Goods are assigned to JCU.

5.2 Subject to clause 4.4, risk of loss or damage to the Goods passes to JCU on delivery of the Goods to JCU.

6. Asbestos

- 6.1 If JCU believes, on reasonable grounds, that any Goods supplied by the Supplier under this Agreement contain asbestos, JCU may direct the Supplier to, at the Supplier's cost, submit the Goods for testing for asbestos with a laboratory that has National Association of Testing Authorities Australia (NATA) accreditation for Australia Standard 4964 Method for the qualitative identification of asbestos in bulk samples (**Asbestos Testing**).
- 6.2 If, as a result of the Asbestos Testing, any Goods have been identified as containing asbestos, JCU may, at its absolute discretion:
- (a) notify the Supplier that JCU rejects the Goods and the terms of clauses 4.3 and 4.4 apply; or
 - (b) require the Supplier to remove the asbestos containing material from the Goods, at the Supplier's expense, and provide a written clearance report to JCU from a licensed asbestos assessor (to be approved by JCU) confirming that all asbestos containing material has been successfully removed from the Goods and that the Goods are free from any asbestos containing material. The Supplier agrees that no fee, costs, damages or other claim will be payable to the Supplier by JCU for any work done to remove any asbestos containing material from the Goods.
- 6.3 This clause 6 does not limit JCU's rights under clause 4.

7 Price

- 7.1 The Price includes:
- (a) all costs, expenses, fees, taxes, custom duties which may be incurred by the Supplier;
 - (b) all amounts payable for the use (whether in the course of manufacture or usage of the Goods and or Services) of all Intellectual Property Rights in the Goods and/or Services; and
 - (c) all charges for supply of the Goods and or Services including charges for equipment, services, utilities, transport and labour.
- 7.2 The Supplier agrees that, other than the Price, no additional amounts will be payable to the Supplier by JCU unless otherwise agreed in writing.

8 Payment

- 8.1 In consideration for the provision of the Goods and/or Services in accordance with the Agreement, and subject to the remaining provisions of this clause 8, JCU agrees to pay the Supplier the Price, in accordance with the payment schedule (if any) specified in the Purchase Order.
- 8.2 The Supplier must submit to JCU an invoice for payment of the Price, which must include the calculations for substantiating the amount which the Supplier claims, and be in a form reasonably required by JCU. No money shall be paid by JCU unless an invoice is received in accordance with this clause.

- 8.3 Subject to clauses 8.4 and 8.5, JCU will pay the amount of the invoice within thirty (30) days' of receipt of the invoice.
- 8.4 JCU is not required to pay any disputed amounts until after the dispute has been resolved in accordance with clause 18, but will pay all amounts not in dispute. If the Supplier disputes any amount paid by JCU, the dispute will be resolved in accordance with clause 18.
- 8.5 If the Supplier owes JCU any amount in connection with the Agreement, JCU may offset that amount, or part of it, against its obligation to pay any invoice.
- 8.6 If an invoice has been found to be incorrectly lodged with JCU after payment, any underpayment or overpayment will be recovered by or from the Supplier by payment to or by the Supplier or offset against any subsequent invoice.

9 GST

- 9.1 Except under this clause, the consideration for a Supply made under or in connection with this Agreement does not include GST.
- 9.2 If a Supply made under or in connection with this Agreement is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:
- (c) the Supplier must give the Recipient a Tax Invoice for the Supply; and
 - (d) the Recipient must pay the Supplier an amount equal to the GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under this Agreement for that Supply; and
- 9.3 In this clause 9, the terms 'GST', 'Recipient', 'Supplier', 'Supply', 'Tax Invoice' and 'Taxable Supply' have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

10 Intellectual Property

- 10.1 Any Intellectual Property Rights and title to, or in relation to, the Contract Material will vest, upon creation, in JCU.
- 10.2 This clause 10 does not affect the ownership of any Intellectual Property in any Existing Material. The Supplier grants to JCU a perpetual, non-exclusive, royalty free licence to use all Existing Material for any purpose.
- 10.3 The Supplier warrants to JCU that:
- (a) The provision of the Goods and/or Services does not and will not infringe the rights (including, but not limited to the Intellectual Property Rights) of a third party; and
 - (b) The Supplier will, at no further cost to JCU, procure all licences and consents to use any Intellectual Property Rights of any third party which are necessary in the provision of the Goods and/or Services.

- 10.4 The Supplier consents to, and warrants that it has consents from each of its Personnel, permitting JCU to infringe any Moral Rights that the Supplier or its Personnel may have, or become entitled to, in any Contract Material or Existing Material.
- 11 Assignment and Subcontracting**
- 11.1 The Supplier may, with the approval of JCU, subcontract part of the Goods and/or Services or assign the Agreement or any right, benefit or interest under the Agreement. JCU must not unreasonably withhold approval but may impose conditions on any such consent. No consent by JCU under this clause will relieve the Supplier of any of its obligations under the Agreement.
- 11.2 JCU may assign or novate the Agreement or assign a right under the Agreement by notice to the Supplier. The Supplier must execute any document reasonably required by JCU to affect its rights under this clause 11.2.
- 12 Conflict of Interest**
- The Supplier warrants that, to the best of its knowledge after making diligent enquiry, at the date of the Agreement that no Conflict exists or is likely to arise in the performance of its obligations under the Agreement. The Supplier must immediately notify JCU in writing of any actual or potential Conflict.
- 13 Licences**
- The Supplier warrants that it will hold and maintain all requisite licences, permits, permissions and/or authorities necessary for the provision of the Goods and/or Services to JCU.
- 14 Health, Safety and Environment**
- The Supplier agrees, in carrying out its obligations under the Agreement, to:
- (a) so far as is reasonably practicable, consult and cooperate with JCU to ensure the health and safety of itself (if the Supplier is an individual) and its' Personnel;
 - (b) comply with all applicable legislation, codes of practice and standards relating to workplace health and safety;
 - (c) comply with all lawful directions issued by JCU relating to health and safety and the protection of the environment; and
 - (d) comply with all Policies of JCU notified by JCU to the Supplier.
- 15 Indemnity and Insurance**
- 15.1 The Supplier indemnifies JCU, its Council members, and its Personnel ("the **Indemnified**") from and against all actions, losses, damage, claims, demands, costs and expenses (including the cost of defending or settling any action, claim or demand) made, sustained, brought or prosecuted against the Indemnified in any manner which may arise directly or indirectly in connection with:
- (a) any act, error or omission of the Supplier (or its Personnel) in the performance of the Supplier's obligations under the Agreement;
 - (b) a breach of the Supplier's warranties or obligations under the Agreement; or
 - (c) any infringement or alleged infringement of any third party rights (including Intellectual Property Rights or Moral Rights).
- 15.2 The Supplier's liability to indemnify the Indemnified under this clause shall be reduced proportionately to the extent that any negligent acts, errors or omissions of JCU (or its Personnel), caused or contributed to such claims, costs, expenses, losses or damages.
- 15.3 If, during this Agreement or at any time after its termination, the Supplier and/or the Key Personnel are held or deemed to be an employee of JCU under the general law, any statute or enterprise agreement, the Supplier must indemnify and keep indemnified JCU in respect of any:
- (a) additional tax, levy or other payment including any interest, penalty or late fee that may be payable in respect of the late or non-payment of such tax, levy or other payment; or
 - (b) remuneration, superannuation, worker's compensation, annual leave, long service leave, bereavement leave or other leave, other payment, entitlement or other monetary or non-monetary benefit to be paid or provided to the Supplier and/or the Key Personnel.
- 15.4 The Supplier must, at its own cost, take out and maintain through the term of this Agreement;
- (a) public and products liability insurance of at least \$20,000,000.00 for any one occurrence;
 - (b) worker's compensation insurance as required by law; and
 - (c) (where Services are being supplied) professional indemnity insurance of at least \$10,000,000.00 for any one occurrence.
- 15.5 The Supplier must, provide JCU with copies of certificates of currency of insurance upon written request.
- 16 Confidential Information and Personal Information**
- 16.1 Each party must ensure that Confidential Information belonging to the other party is kept confidential and is not used or disclosed to any person or for any purpose except when:
- (a) disclosure is needed for the performance of the Agreement;
 - (b) the other party consents under mutually agreeable terms; or
 - (c) disclosure is made to an advisor of the party under a professional relationship that is governed by an obligation of confidence.

- 16.2 Each party must:
- (a) immediately notify the other party if it becomes aware of any breach of this clause 16;
 - (b) immediately notify the other party if it is required to disclose Confidential Information under any law;
 - (c) upon receiving a request from the disclosing party (either during the term of the Agreement or upon its earlier termination or expiry) deliver or destroy all documents or files in its possession or control which contain Confidential Information in accordance with the disclosing party's instructions.
- 16.3 The Supplier agrees to comply and ensure that the Supplier and its Personnel comply with the provisions of the *Information Privacy Act 2009 (Qld)* ("**Privacy Act**") and do anything which is reasonably required to enable JCU to comply with its obligations under the Privacy Act. The Supplier must advise JCU immediately if the Supplier becomes aware of a breach of its obligations under this clause 16.3.
- 17 Termination**
- 17.1 JCU may, at any time, terminate this Agreement for any reason by giving the Supplier notice in writing.
- 17.2 Either party may terminate the Agreement by giving notice in writing to the other party if:
- (a) the other party is in breach of a material term of the Agreement and fails to remedy that breach within ten (10) Business Days of being directed in writing to do so; or
 - (b) the other party is subject to an Insolvency Event.
- 17.3 If JCU terminates this Agreement under clause 17.1, JCU will pay the Supplier for the Goods and/or Services supplied up to the date of termination and any reasonably and properly incurred demobilization costs and otherwise the Supplier will have no claim against JCU as a result of the termination.
- 17.4 If JCU terminates the Agreement under clause 17.2, JCU will only be liable for any reasonable costs (excluding, without limitation, loss of prospective income or profits) unavoidably incurred by the Supplier, which are directly attributable to the termination.
- 18 Dispute Resolution**
- 18.1 Subject to clause 18.3, the parties agree not to commence any legal proceedings in respect to any dispute arising under this Agreement, which has not been resolved by informal discussion, until the procedure provided by this clause has been followed.
- 18.2 The parties agree that any dispute arising during the course of this Agreement will be dealt with as follows:
- (a) The party claiming the dispute will send the other party a written notice (**Notice of Dispute**) setting out the nature of the dispute, and the parties will try to resolve the dispute through direct negotiation by persons who they have given authority to resolve the dispute.
 - (b) The parties have ten (10) Business Days from the receipt of the Notice of Dispute to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure.
 - (c) If:
 - (i) there is no resolution of the dispute within the ten (10) Business Days;
 - (ii) there is no agreement, within ten (10) Business Days, on submission of the dispute to mediation or some alternative dispute resolution procedure; or
 - (iii) there is submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within fifteen (15) Business Days of the submission, or such extended time as the parties may agree in writing before the expiration of the fifteen (15) Business Days,
 then, either party may commence legal proceedings.
- 18.3 This clause 18 does not apply to the following circumstances:
- (a) Where either party commences legal proceedings for urgent interlocutory relief; or
 - (b) Where an authority of the Commonwealth, or a State or Territory is investigating a breach or suspected breach of the law by JCU or the Supplier.
- 18.4 Despite the existence of a dispute, both parties must (unless requested to do so in writing by the other party not to do so) continue to perform its obligations under the Agreement.
- 19 General Provisions**
- 19.1 The Agreement may only be amended by written agreement between the parties.
- 19.2 The Agreement may be executed in any number of counterparts including by exchange of electronic copy. All counterparts together make one instrument.
- 19.3 The Agreement supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties. To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion has no effect except to the extent expressly set out or incorporated by reference in the Agreement.
- 19.4 Any notice or communication under the Agreement, will be effective if it is in writing, and delivered to a party at the postal address or email address for that party set out in the Purchase Order.
- 19.5 Each party must do all things reasonably necessary to give effect to the Agreement and the transactions contemplated by it.
- 19.6 A right under the Agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

- 19.7 The obligations and/or warranties contained in clauses 3, 10, 12, 15, 16 and 17 survive the termination of the Agreement.
- 19.8 Queensland law governs the Agreement. Each party irrevocably submits to the exclusive jurisdiction of the courts of Queensland and courts competent to hear appeals from those courts.
- 19.9 Each party is responsible for its own costs (including legal costs) in relation to the preparation, negotiation and execution of the Agreement.
- 19.10 Any provision of the Agreement which is illegal, void or unenforceable is ineffective to the extent only of such illegality, voidness or unenforceability without invalidating any of the remaining provisions of the Agreement.
- 19.11 Termination of the Agreement will not affect or prejudice the rights or liabilities of the parties prior to termination.
- 19.12 The parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership.
- 19.13 None of the terms of the Agreement, nor any act, matter or thing done under the Agreement operates as a merger of any of the rights and remedies of the parties under the Agreement. Those rights and remedies continue in full force and effect until the rights and obligations of the parties under the Agreement have been fully satisfied and performed.

20 Definitions

In the Agreement, unless the context otherwise requires:

"Bankruptcy Act" means the *Bankruptcy Act 1966* (Cth).

"Business Day" means, in relation to the doing of any action in a place, any day other than a Saturday, Sunday, or public holiday in that place.

"Confidential Information" means information that:

- (a) is by its nature confidential;
- (b) is designated by a party as being confidential; or
- (c) a party knows or ought to know is confidential;

but does not include information that:

- (a) is or becomes public knowledge, other than by breach of the Agreement or by any other unlawful means;
- (b) is in the possession of a party without restriction in relation to disclosure before the information is received from the other party;
- (c) has been independently developed or acquired by a party; or
- (d) is required to be disclosed by Legislative Requirements, but only to the extent that the information is required to be disclosed.

"Conflict" includes any conflict of interest, any risk of

a conflict of interest and any apparent conflict of interest arising through the Supplier (or its Personnel) engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Supplier in supplying the Goods and/or Services fairly and independently.

"Contract Material" means all Material created in the course of performance of the Services or provision of the Goods.

"Encumbrances" means a security interest as defined in section 12 of the *Personal Property Securities Act 2009* (Cth).

"Existing Material" means all Material in existence prior to the commencement of this Agreement;

- (a) incorporated in;
- (b) supplied with, or as part of; or
- (c) required to be supplied with, or as part of;

the Contract Material.

"Goods" means the goods to be supplied by the Supplier to JCU as specified in the Purchase Order.

"Insolvency Event" means any of the following events concerning a party:

- (a) an administrator, liquidator, receiver, receiver and manager or other controller (as defined in the *Corporations Act 2001* (Cth)) is appointed to, or over, any of the property or undertaking of the party;
- (b) the party becomes bankrupt;
- (c) a controlling trustee is appointed to, or over, any of the property or undertaking of the party;
- (d) the party or the party's property or undertaking becomes subject to a personal insolvency arrangement under part X Bankruptcy Act or a debt agreement under part IX Bankruptcy Act;
- (e) the party is unable to pay its debts when they become due and payable or is presumed to be insolvent under the *Corporations Act 2001* (Cth) or Bankruptcy Act;
- (f) the party ceases to carry on business; or
- (g) any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition.

"Intellectual Property Rights" includes all copyright (including rights in relation to phonogram and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), trade secrets and know how, registered and unregistered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

"Legislative Requirement" includes:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory applicable to the Services;
- (b) certificates, licences, consents, permits, approvals, codes, standards and requirements of organisations having jurisdiction in connection with the Services;
- (c) Australian Standards and any other relevant standards applicable to the Services; and
- (d) fees and charges payable in connection with the foregoing.

"Material" includes documents, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same.

"Moral Rights" means the right of attribution of authorship of work, the right to not have authorship of work falsely attributed and the right of integrity of authorship as defined in the *Copyright Act 1988* (Cth).

"Personnel" means the employees, agents, subcontractors, suppliers and consultants of a party.

"Policy" means any policy or procedure of JCU notified to the Supplier from time to time.

"Price" means the amount or amounts specified in the Purchase Order.

"Services" means the services to be supplied by the Supplier to JCU as specified in the Purchase Order and includes provision of Contract Material.

"Supplier" means the person or entity names as the Supplier in the Purchase Order.

- (h) where a party consists of more than one person the covenants on the part of the party bind each two or more persons jointly and each person severally. The release of one of the persons from an obligation does not release any other person who may be jointly liable;
- (i) any undertaking by a party not to do any act or thing is taken to include an undertaking not to permit or suffer the doing of the act or thing;
- (j) where under this Agreement the day on or by which any act or thing is to be done is not a Business Day, that act or thing must be done on the next Business Day following the due day; and
- (k) all annexures, schedules and other attachments (if any) form part of this Agreement.

21 Interpretation

In the interpretation of the Agreement:

- (a) singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) references to a person include a corporation, association, partnership, Government Authority, or any legal entity;
- (d) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders in council, rules, by-laws and ordinances made under those statutes;
- (e) headings and the table of contents (if any) are used for convenience only and are to be disregarded in interpretation;
- (f) where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning;
- (g) covenants by each party include an obligation to procure compliance by each of the parties' employees and all other persons under the control of that party;