

## TERMS AND CONDITIONS

### PURCHASE OF GOODS AND/OR SERVICES

#### PRELIMINARY

##### 1.1 Interpretation

**Business Day** is a day that is not a Saturday, Sunday or public holiday in Queensland.

**Claim** means any claim, action, proceeding or demand, however arising and present, future, fixed, unascertained, actual or contingent.

**Consequential Loss** means loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence), statute or otherwise.

**Contract** means a Purchase Order and these Terms and Conditions.

**Contract Price** means the price payable for the supply of the Goods and/or performance of the Services set out in the Purchase Order, as adjusted in accordance with clause 5.

**Goods** means the goods which Supplier is to supply to Multotec under the Contract and as specified in the Purchase Order.

**GST** means GST imposed by the GST law, applicable from time to time, as that term is defined in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* or a successor Act.

**Intellectual Property Rights** means all present and future rights conferred by law in or in relation to any copyright, trade-marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not registrable, registered or patentable.

**Loss** means any expense, cost or damage of any kind and includes Consequential Loss and a fine or penalty imposed by a statutory or other authority.

**Multotec** means Multotec Pty Ltd ACN 110 065 686 of 2-12 Sirett Street, Berrinba, 4117 in the State of Queensland.

**Purchase Order** means a purchase order provided by Multotec in respect of the Goods and/or Services.

**Services** means the services which Supplier is to supply to Multotec under the Contract, as specified in the Purchase Order.

**Site** means the location where the Goods are to be delivered and/or the Services are to be performed, as specified in the Purchase Order.

**Supplier** means the party to whom a Purchase Order is addressed and includes (where the context permits) the Supplier's officers, employees or agents.

1.2 The Contract includes these conditions, the Purchase Order form, attached or dispatched separately, and any other documents incorporated by reference and any amendments to any of those documents agreed in writing by Multotec.

1.3 No other conditions apply to the Contract unless agreed in writing by Multotec. To the extent the Supplier's terms and conditions are supplied with the Goods or Services, those terms and conditions will be of no legal effect and will not constitute part of the Purchase Order (even if a Multotec representative signs or annexes the terms and conditions to the Purchase Order).

1.4 This Contract supersedes all other discussions, representations and arrangements relating to the supply of the Goods and/or performance of the Services and constitutes the entire agreement between Supplier and Multotec with respect to the supply of the Goods and/or performance of the Services.

1.5 If there is any ambiguity, conflict or inconsistency between the provisions of these Terms and Conditions and the Purchase Order, the provisions of

these Terms and Conditions prevail to the extent of such ambiguity, conflict or inconsistency.

1.6 Unless the contrary intention appears:-

- (a) the singular includes the plural, and vice versa;
- (b) reference to a gender includes any gender;
- (c) other forms of defined words have corresponding meanings;
- (d) if an obligation is imposed on two or more parties, each is liable for the obligation individually and together with any other party;
- (e) a representation or warranty in favour of two or more persons is for the benefit of them jointly and separately;
- (f) a reference to a person includes any other entity or association;
- (g) reference to a party includes that party's person representatives, successors and assigns;
- (h) reference to a group of persons includes a reference to all of them collectively, any two or more of them collectively, and each of them individually;
- (i) a provision of these Terms and Conditions must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of these Terms and Conditions or the inclusion of any provision in it;
- (j) a party which is a trustee is bound both personally and in its capacity as a trustee;
- (k) headings are inserted for convenience and do not affect the interpretation;
- (l) "including" and similar are not words of limitation; and
- (m) A reference to legislation includes an amendment or substitution and a regulation or statutory instrument under it.

## 2 PERFORMANCE AND DELIVERY

2.1 The Supplier must:

- (a) deliver the Goods to the Site at the time and in the manner specified in the Purchase Order; and/or
- (b) perform the Services at the Site within the timeframe and in the manner specified in the Purchase Order.

2.2 Risk and title in the Goods passes from Supplier to Multotec upon delivery of the Goods.

2.3 Time is of the essence with regards to any delivery dates or timeframes set out in any Purchase Order.

2.4 The delivery of all Goods and the performance of all Services must be made at the time, place, and in the manner in the Purchase Order.

2.5 At any time prior to delivery of Goods or Services:-

- (a) Multotec may reasonably specify in writing to the Supplier another time, place or manner for delivery for performance, in which case that other time, place or manner applies in place of that stated in the Purchase Order; and
- (b) Multotec may add to, omit, reduce or vary the Goods and/or Services by issuing a notice in writing to Supplier specifying the required alterations to the Goods and/or Services and should this occur, any price in the Purchase Order will be adjusted to reflect such alterations.

2.6 As soon as the Supplier is aware that it will be unable to fulfil an Order or meet the delivery date set out in an Order, despite using its best endeavours to do so, the Supplier must immediately notify Multotec in writing of the date that it will be able to fulfil the Purchase Order, deliver the Goods or complete the Services that are the subject of the Purchase Order.

2.7 Except where the delay in delivery is caused or contributed to by Multotec, if the new date for delivery is unacceptable to Multotec, then Multotec may, in its sole discretion:

- (a) terminate the Purchase Order;
- (b) claim liquidated damages from the Supplier for each day of delay at the rate set out in the Purchase Order, which the parties agree represents a genuine pre-estimate of the loss that will be suffered by Multotec as a result of delay in the delivery of the Goods and/or performance of the Services; and/or
- (c) purchase the Goods or Services set out in the Purchase Order from an alternate supplier and any reasonable expense incurred by



Multotec in the acquisition of such alternative Goods or Services which is in excess of the price payable under this Contract will be payable by the Supplier and may be set off against any cost owing to the Supplier or any costs of any future Purchase Orders or pursued as a liquidated debt.

2.8 Goods must be packed and labelled to ensure their safe delivery and safe handling by Multotec after delivery and comply with any specific requirements for same in the Purchase Order.

### **3 QUALITY, INSPECTIONS AND COMPLIANCE**

3.1 The Supplier must ensure that all Goods and/or Services:-

- (a) are provided in a timely, diligent and efficient manner with due care and skill;
- (b) are new unless otherwise set out in the Purchase Order;
- (c) are of merchantable quality;
- (d) are free from defects;
- (e) are fit for their intended purpose;
- (f) are of good material and first class workmanship;
- (g) comply with all relevant industry standards or codes and accepted performance criteria and practice, including, without limitation, those adopted by such bodies as the Australian Standards Association and with any requirements of the Commonwealth, State or Territory and local government authorities (including, all relevant professional, environmental and occupational health and safety legislation);
- (h) are supplied by suitably qualified and experienced workers;
- (i) meet the requirements, specifications and needs of Multotec as set out in any Purchase Order and this Contract.

3.2 Multotec may:-

- (a) inspect the Goods or Services at any time prior to payment and the Supplier must allow access at all reasonable times to Multotec, its employees, agents, contractors or representatives;
- (b) reject any Goods or Services which Multotec deems are not in accordance with the Contract;
- (c) following receipt of the Goods or Services and irrespective of any warranty periods, reject the Goods or Services for any non-conformity with the Contract which could not have been discovered by reasonable inspection before receipt;

3.3 If Multotec requires the Supplier to submit samples of the Goods, the Supplier must not proceed to bulk manufacture until Multotec has approved the samples.

3.4 If Multotec rejects any Goods, the Supplier must comply as soon as practicable with a written direction from Multotec to:

- (a) replace the rejected Goods with Goods that meet the requirements of the Contract;
- (b) refund any payment for the rejected Goods; or
- (c) repair the Goods to Multotec's satisfaction, at no extra cost.

3.5 Rejected Goods are at the Supplier's risk and must be promptly removed by the Supplier (at its expense).

3.6 Rejected Services must be re-performed, rectified or remedied as soon as practicable following the Supplier's receipt of a written direction from Multotec.

3.7 If the Supplier fails to attend to the above (or make arrangements to do so that are satisfactory to Multotec, in its discretion) in the relevant timeframe, then Multotec may engage another supplier to perform the Supplier's obligations under clause 3.3 or 3.4 (as applicable), at the Supplier's cost and set off any costs associated with doing so against any costs owing to the Supplier or pursue such costs as a liquidated debt.

### **4 PAYMENT**

4.1 Subject to clause 3.2 – 3.4, Multotec will pay for the Supplies 35 days from the end of the month that the following occurs:

- (a) Title in the Goods (if applicable) has passed and they have been accepted;
- (b) Satisfactory completion of the Services (if applicable); or
- (c) receipt of a correctly rendered invoice, whichever is the later.

4.2 An invoice will be correctly rendered if it:

- (a) Is addressed in accordance with the Purchase Order;

(b) identifies the Purchase Order number;

(c) is accompanied by documentation substantiating the amount claimed; and

(d) it is a valid Tax Invoice as per the GST Act.

4.3 Multotec will notify the Supplier if there is an error in the tax invoice, or if it disputes all or some of the charges. Notwithstanding this, Multotec may withhold payment of any disputed portion of the invoice pending resolution of the dispute, but will pay the remaining balance of the tax invoice on time in accordance with clause 4.1.

### **5 WARRANTY**

5.1 Unless a longer period is specified in the Purchase Order, the Goods are subject to a warranty period of 12 months commencing on the date of delivery of the Goods.

5.2 During this warranty period, the Supplier must repair or rectify any defect in the Goods, or replace and reinstall any defective part of the Goods, as notified by Multotec to the Supplier and within the period specified by Multotec (acting reasonably) in the notice, at no extra cost to Multotec.

5.3 Unless a longer period is specified in the Purchase Order, the Services are subject to a warranty period of 120 days commencing on the completion of the Services. During this warranty period, the Supplier must re-perform any part of a defective Service notified by Multotec to the Supplier, within the period specified in the notice and at no extra cost to Multotec.

5.4 These warranties shall survive inspection, test, delivery, acceptance, use and payment by Multotec and shall inure to the benefit of Multotec, its successors, assigns, customers and the users of Multotec's products.

5.5 Following rectification of a defect in the Goods and/or the Services, a further warranty period equal to the original warranty period will apply to the rectified Goods and/or Services, commencing on the date upon which the rectified Goods are returned to Multotec and/or the rectified Services are completed.

5.6 If the Supplier fails to rectify a defect within the timeframe specified by Multotec, then Multotec may engage a third party to rectify the defect and recover the cost from Supplier as a debt due or set off such cost against any amounts owed to the Supplier by Multotec.

5.7 The Supplier must use its best endeavours to ensure that Multotec receives the benefit of any third party warranty in relation to the Goods and/or Services and must not, during the course of performing the Services, do any act or omit from doing any act that voids any third party warranty, in whole or in part.

### **6 INCLUSIVE PRICE**

6.1 The price of the Supplies includes:

- (a) All taxes (including GST), levies, duties and other imposts for which the Supplier is liable and the Supplier warrants that it has an Australian Business Number and is registered for GST purposes and indemnifies Multotec for any Loss it suffers as a breach of this warranty;
- (b) All insurance, packaging and delivery costs;
- (c) All amounts payable for the use thereof (whether in the course of manufacture or use of the Intellectual Property Rights);
- (d) All charges to supply the Goods or perform the Services; and

6.2 No extra charges apply for testing, inspection, packing or delivery.

### **7 INTELLECTUAL PROPERTY**

7.1 All intellectual property created under the Contract and relating to the Supplies is from the time of creation, owned by Multotec.

7.2 The Supplier must not use, or allow any third party to use, any material protected by the Intellectual Property Rights of Multotec for any purpose other than the provision of the Goods and/or Services, unless it has obtained the prior written consent of Multotec.

7.3 The Supplier acknowledges it has no right, title or interest in the material protected by the Intellectual Property Rights of Multotec.

7.4 Supplier grants to Multotec a royalty free, non-exclusive, transferable, perpetual license to use all Intellectual Property Rights associated with the Goods and/or Services.

7.5 This license includes allowing Multotec or a third party engaged by Multotec to use the Goods and/or Services and any documentation provided with the Goods and/or Services to effect the installation, use, support, repair, maintenance or alteration of the Goods and/or Services or to otherwise enjoy the benefit of this Contract.



- 7.6 The Supplier indemnifies Multotec, its officers, employees and agents, from and against all loss, damage, costs (including legal costs and expenses on an indemnity basis), compensation and expenses arising out of the infringement or alleged infringement of any Intellectual Property Rights, by reason of the purchase, possession or use of the Goods or the outcomes of the Services.

## **8 INSURANCE**

- 8.1 The Supplier must take out and maintain with a reputable insurer insurance policies covering the Supplier and Multotec against any liability arising out of or in connection with this Contract, including:-
- (a) Public and Product Liability Insurance for an amount of not less than \$AUD 10 million dollars each and every occurrence;
  - (b) Workers Compensation cover as required by law;
  - (c) Property Insurance covering any loss or damage to any property used directly or indirectly in relation to the supply of Goods and/or Services; and
  - (d) Professional indemnity insurance for an amount not less than the amount set out in the Purchase Order for each claim and in the aggregate for all claims with one right of reinstatement.
- 8.2 The Supplier must give satisfactory evidence of insurance cover to Multotec on request and promptly notify Multotec of any:-
- (a) Material claims made under the insurance policy; and/or
  - (b) Any claims or potential claims that could involve Multotec.

## **9 INDEMNITY**

- 9.1 The Supplier must at all times indemnify Multotec, its officers, employees, and agents ("**those indemnified**") from and against any Loss, (including legal costs and expenses on a solicitor / own client basis), suffered by any of those indemnified arising from any Claim by any person against any of those indemnified where such loss or liability was caused by any willful, unlawful, reckless, wilful or negligent act or omission of the Supplier, its officers, employees, agents, or subcontractors in connection with the Contract or any breach by the Supplier of any obligations under it.

## **10 DEFAULT AND TERMINATION**

- 10.1 If the Supplier:
- (a) is in breach of this Contract; or
  - (b) has become insolvent or bankrupt or has had an administrator, receiver or liquidator appointed,
- then Multotec may immediately terminate this Contract by giving written notice to Supplier.
- 10.2 Multotec may, at any time and for any reason, terminate this Contract by at least 7 days' written notice to Supplier.
- 10.3 Where this Contract is terminated in accordance with this clause 10, Multotec will only be liable to pay Supplier the Contract Price in respect of Goods supplied and/or Services performed in accordance with this Contract prior to the date of termination.
- 10.4 Multotec will not be liable to pay any compensation for Consequential Loss for a termination under this clause 10.
- 10.5 Clauses 1 - 3, 5 and 7 - 16 and any other obligations which are expressed to, or by their nature, survive expiry or termination of this Contract, survive expiry or termination of this Contract.

## **11 ASSIGNMENT AND SUBCONTRACTING**

- 11.1 the Supplier must not, without the consent in writing of Multotec, assign its rights under the Contract or subcontract any part of the performance of the Contract.

## **12 APPLICABLE LAW**

- 12.1 This Contract shall be construed and take effect in accordance with the laws in force in the State of Queensland and the parties submit to the jurisdiction of the Courts and Tribunals in that State.
- 12.2 The Supplier must comply with all relevant laws and any requirements of relevant authorities in Queensland.

## **13 COMPLIANCE WITH MULTOTEC'S POLICIES**

- 13.1 The Supplier must, when accessing Multotec's premises or facilities, comply with all reasonable directions of Multotec and all procedures and policies of Multotec.

## **14 CONFIDENTIALITY**

- 14.1 Supplier acknowledges that the information contained in this Contract and all data and information provided by Multotec during or in connection with the negotiation or performance of this Contract is confidential and must not be disclosed to any third party without the prior written consent of Multotec.
- 14.2 The Supplier acknowledges that damages may not be an adequate remedy for any breach of its obligations under this clause 14.
- 14.3 Clause 14.1 does not apply to confidential information required to be disclosed by law or disclosed to legal or financial advisers, auditors, agents or employees of each party or its related bodies corporate in connection with this Contract.

## **15 NOTICES**

- 15.1 A notice, in connection with this Contract:
- (a) must be in writing;
  - (b) must be marked for the attention of the person described in the Purchase Order; and
  - (c) must be addressed to the receiving party using the details set out in the Purchase Order (or any alternative details specified by the receiving party by notice to the sending party).
- 15.2 A notice is regarded as given and received:
- (a) if delivered by hand – upon delivery to the relevant address;
  - (b) if sent by post – upon delivery to the relevant address; or
  - (c) if transmitted electronically – upon the message entering the addressee's information system.

## **16 GENERAL**

- 16.1 This Contract does not create or evidence a partnership, joint venture, agency or relationship of employer and employee between the parties.
- 16.2 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing.
- 16.3 Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Contract.
- 16.4 The liability of a party is not affected by the failure by any person to execute this Contract.
- 16.5 This Contract may be executed in counterparts exchanged electronically. All executed counterparts constitute one document.
- 16.6 The Supplier is liable to pay all duty, interest and penalties in connection with this Contract and hereby releases and indemnifies Multotec in connection with same or any payments or receipts hereunder.
- 16.7 If any of the terms and conditions of this Contract are found to be void, voidable or unenforceable, then that part shall be severed from, and will not affect or derogate from, the validity and enforceability of the remaining provisions of, this Contract.
- 16.8 No amendment or variation of this Contract is valid or binding on a party unless made in writing and executed by the parties or consented to in writing by the party.
- 16.9 Unless Multotec has given the Supplier written notice of the termination of the relevant Contract in accordance with these Terms and Conditions, a delay or failure does not relieve Customer of the obligation to complete any Purchase Order when due.

