



## 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 demand, proceeding, all manner of actions, suits, causes of action, arbitration, debts, dues, costs, claims, demands, interest verdicts, including (without limitation) any claim, demand, action, proceeding, arbitration or suit seeking the payment of money, relief from liquidated damages or any costs, expenses, Loss, compensation or damages on any ground whatsoever pursuant to the Contract and judgments whatsoever both at law, or in equity or arising under the provisions of statute, whether known or unknown and any claim for direct or consequential loss (including loss of profit, loss of production, loss of property or loss of income);

**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 2.6(b) or 6.7 as the case may be.

**Goods** means the goods which the 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 loss, cost, expense, damage, injury to person, death or liability (including any fine or penalty) whether direct or indirect or consequential (including Consequential Loss), present or future, fixed or unascertained, actual or contingent and whether arising under the Contract (including any breach of the Contract), in equity (including breach of an equitable duty, breach of confidentiality or breach of fiduciary duty), under statute (including breach of statutory duty to the maximum extent possible), in tort (including for negligence or negligent misrepresentation) or otherwise (including in restitution).

**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 the 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 or as advised by Multotec from time to time

**Site Services** means all means any service or item of infrastructure, whether located on or off the Site, including water, electricity, mechanical services, lifts, gas, fuel, telephone, existing drainage, sewerage, other hydraulic services, cables, pipes, conduits and other electronic communications services.

**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 Subject to clause 2.6, 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 The Supplier's failure to deliver any Goods under the Agreement will entitle the Purchaser to treat the Agreement as repudiated.
- 2.3 Multotec may recover any costs from the Supplier as a result of the Supplier's breach of this Agreement as a debt due.
- 2.4 The Supplier is liable for any Loss caused in accessing the Site and delivering the Goods or when performing the Services, without limitation, damage to buildings, pathways, driveways and concreted, paved or grassed areas.
- 2.5 Time is of the essence with regards to any delivery dates or timeframes set out in any Purchase Order.
- 2.6 At any time prior to delivery of the Goods or performance of the Services:-
  - (a) Multotec may reasonably specify in writing to the Supplier another time, place, or manner for delivery of the Goods or performance of the Services, 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 the 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.

- 2.7 As soon as the Supplier is aware that it will be unable to fulfil the Purchase Order or meet the delivery date set out in the Purchase 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.
- 2.8 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 absolute discretion:
  - (a) terminate the Contract;
  - (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.
- 2.9 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 RETENTION OF TITLE AND RISK**

- 3.1 Subject to clause 4, title in the Goods passes from the Supplier to Multotec upon delivery of the Goods.
- 3.2 All risk in the Goods remains with the Supplier until full payment of all invoices is made by Multotec and all defects have been rectified by the Supplier to Multotec's reasonable satisfaction.
- 3.3 The Contractor assumes the risk of the existence, location, condition, and availability of all Site Services.
- 3.4 The Contractor must at its own cost:
  - (a) undertake an assessment of the risks associated with the performance of the Services and identify and implement appropriate measures to eliminate or minimise, as much as reasonably practicable, all occupational health and safety risks throughout the performance of the Services; and
  - (b) comply with all Site directions given by Multotec or its agents, employees, authorised officers or subcontractors.

### **4 QUALITY, INSPECTIONS AND COMPLIANCE**

- 4.1 The Supplier warrants and 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 damage or defects;
  - (e) free from any encumbrance or claim of ownership by any third party;
  - (f) are fit for their intended purpose;
  - (g) are of good material and first class workmanship;
  - (h) 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);
  - (i) are supplied by suitably qualified and experienced workers; and
  - (j) meet the requirements, specifications and needs of Multotec as set out in any Purchase Order and this Contract.
- 4.2 Multotec assumes no responsibility for the adequacy of any design, drawing or document provided by Multotec in respect of any Purchase Order. No statement, recommendation or assistance given by Multotec

shall constitute a waiver of any provision hereof or subject Multotec to liability except as herein defined.

- 4.3 The delivery of the Goods or performance of the Services will not constitute acceptance of the Goods or Services.
- 4.4 Acceptance of the Goods or Services will occur when Multotec has inspected and confirmed with the Supplier the acceptance of the Goods or Services.
- 4.5 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; and
  - (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.
- 4.6 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.
- 4.7 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.
- 4.8 Rejected Goods are at the Supplier's risk and must be promptly removed by the Supplier (at its expense).
- 4.9 Rejected Services must be re-performed, rectified, or remedied as soon as practicable following the Supplier's receipt of a written direction from Multotec.
- 4.10 If the Supplier fails to comply with clauses 4.7 to 4.9 inclusive (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 4.7 to 4.9 inclusive (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.

### **5 PAYMENT**

- 5.1 Subject to clauses 5.2– 5.3 inclusive, Multotec will pay for the Goods or Services within 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.
- 5.2 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.
- 5.3 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 5.1.

### **6 WARRANTY**

- 6.1 The Supplier warrants that the warranty given under this clause 6 is unconditional as to the quality or suitability of the Goods or Services for the intended purpose.
- 6.2 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.
- 6.3 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.



- 6.4 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.
- 6.5 These warranties shall survive inspection, test, delivery, acceptance, use and payment by Multotec and operate for the benefit of Multotec, its successors, assigns, customers and the users of Multotec's products.
- 6.6 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.
- 6.7 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 the Supplier as a debt due or set off such cost against any amounts owed to the Supplier by Multotec.
- 6.8 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.

## 7 INCLUSIVE PRICE

- 7.1 The price of the Supplies includes:
- 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;
  - All insurance, packaging and delivery costs;
  - All amounts payable for the use thereof (whether in the course of manufacture or use of the Intellectual Property Rights);
  - All charges, duties, or taxes to supply the Goods or perform the Services; and
- 7.2 No extra charges apply for testing, inspection, packing or delivery.

## 8 INTELLECTUAL PROPERTY AND PATENT PROTECTION

- 8.1 All intellectual property created under the Contract and relating to the Supplies is from the time of creation, owned by Multotec.
- 8.2 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.
- 8.3 The Supplier acknowledges it has no right, title or interest in the material protected by the Intellectual Property Rights of Multotec.
- 8.4 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.
- 8.5 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.
- 8.6 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.
- 8.7 The Supplier must defend, protect, and hold harmless Multotec, its successors, assigns, customers and the users of its products by reason of the use of the Goods or Services hereby ordered, against all actions, or suits, at law or in equity and from all damages, claims and demands for actual or alleged infringement of any letters patent or trade-marks.

## 9 INSURANCE

- 9.1 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:-
- Public and Product Liability Insurance for an amount of not less than \$AUD 10 million dollars each and every occurrence;
  - Workers Compensation cover as required by law;
  - 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
  - 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.
- 9.2 The Supplier must give satisfactory evidence of insurance cover to Multotec on request and promptly notify Multotec of any:-
- Material claims made under the insurance policy; and/or
  - Any claims or potential claims that could involve Multotec.

## 10 DISCLAIMER

- 10.1 Multotec hereby claims any right to rescind or cancel any contract with the Supplier or to sue for damages or to Claim restitution arising out of any misrepresentation made to Multotec by the Supplier and the Supplier acknowledges that the Goods are bought relying solely upon the Supplier's skill and judgment that the goods are fit for Multotec's intended purpose.

## 11 INDEMNITY

- 11.1 The Supplier irrevocably indemnifies and will keep indemnified Multotec, its officers, employees, and agents ("**those indemnified**") from and against any Loss, suffered by any of those indemnified arising from any Claim by any person against any of those indemnified where such Loss was caused by any willful, unlawful, reckless, 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.
- 11.2 Every exemption, limitation, defence, immunity or other benefit contained in this Contract to which Multotec is entitled will also be held by Multotec for the benefit of, and will extend to protect, each of Multotec's employees, agents, contractors and sub-contractors (excluding the Supplier, the Supplier's employees, agents, contractors and sub-contractors) and Multotec's related bodies corporate (as defined in the Corporations Act) and their employees, agents, contractors and subcontractors (excluding the Supplier and the Supplier's employees, agents, contractors and subcontractors).
- 11.3 Each indemnity in this Contract is a continuing obligation separate and independent from the Supplier's other obligations and survives termination of this Contract.
- 11.4 It is not necessary for Multotec to incur expense or make payment before enforcing a right of indemnity conferred by this Contract.
- 11.5 Except to the extent it is recoverable pursuant to a policy of insurance required under this Contract or arises out of fraud or wilful default or misconduct, Multotec will not be liable to the Supplier in any circumstances for Consequential Loss.

## 12 DEFAULT AND TERMINATION

- 12.1 If the Supplier:
- is in breach of this Contract; or
  - 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.
- 12.2 Multotec may, at any time and for any reason, terminate this Contract by giving at least 7 days' written notice to Supplier.
- 12.3 Where this Contract is terminated in accordance with this clause 12, Multotec will only be liable to pay the Supplier the value of the Goods supplied and/or Services performed in accordance with this Contract up to and including to the date of termination.
- 12.4 Multotec will not be liable to pay any compensation for Consequential Loss for termination of the Contract under this clause 12.
- 12.5 Clauses 1 - 4, 6 and 8 - 19 and any other obligations which are expressed to, or by their nature, survive expiry or termination of this Contract, survive completion, expiry or termination of this Contract.

## 13 ASSIGNMENT AND SUBCONTRACTING



13.1 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.

13.2 Multotec may at any time assign its rights under the Contract.

#### **14 APPLICABLE LAW**

14.1 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.

14.2 The Supplier must comply with all relevant laws and any requirements of relevant authorities in Queensland.

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

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

15.2 Multotec may at any time and in its absolute discretion remove from Site any person employed or subcontracted by the Supplier to deliver the Goods or perform the Services who refuse or fail to comply with the reasonable directions of Multotec, its authorised officers, employees, agents, subcontractors or the safety requirements or guidelines pertaining to the Site.

#### **16 CONFIDENTIALITY**

16.1 The 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.

16.2 The Supplier acknowledges that damages may not be an adequate remedy for any breach of its obligations under this clause 16.

16.3 Clause 16.1 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.

#### **17 NOTICES**

17.1 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).

17.2 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.

#### **18 DISPUTE RESOLUTION**

18.1 In the event of a dispute, the parties must confer to resolve the dispute.

18.2 If the parties are unable to resolve the dispute then a notice of dispute must be issued to the other party within 10 business days of the dispute arising. Senior representatives of the parties must meet in attempt to resolve the dispute.

18.3 If the dispute has not be resolved within a further 10 business days, then the dispute must be resolved through either expert determination or arbitration under the rules of Arbitrators and Mediators Australia.

#### **19 GENERAL**

19.1 This Contract does not create or evidence a partnership, joint venture, agency or relationship of employer and employee between the parties.

19.2 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.

19.3 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.

19.4 The liability of a party is not affected by the failure by any person to execute this Contract.

19.5 This Contract may be executed in counterparts exchanged electronically.

All executed counterparts constitute one document.

19.6 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.

19.7 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.

19.8 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.

19.9 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.

