

## SERVICE ORDER STANDARD TERMS AND CONDITIONS

### 1. INTERPRETATION

1.1 In these Standard Conditions, except to the extent that the context otherwise requires:

**'Act of Insolvency'** is deemed to occur if the Service Provider:

- (a) informs another Party in writing or creditors generally that it is insolvent;
- (b) commits an act of bankruptcy;
- (c) has a bankruptcy petition presented against it;
- (d) is made bankrupt;
- (e) a receiver, manager, receiver and manager, trustee, administrator, controller (as that term is defined in section 9 of the *Corporations Act 2001* (Cth)) is appointed in respect of the Service Provider or any asset of the Service Provider;
- (f) a liquidator or provisional liquidator is appointed in respect of the Service Provider;
- (g) an application is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
  - (A) appointing a person referred to in paragraph (e) or (f);
  - (B) winding up the Service Provider; or
  - (C) proposing or implementing a scheme or arrangement in respect of the Service Provider;
- (h) the Service Provider stops or suspends payment to creditors generally or enters into an arrangement, assignment or composition with or for the benefit of its creditors generally or any class of them or proposes to do so; or
- (i) anything analogous or having a similar effect to an event listed in paragraphs (a) to (i) occurs;

**'Business Day'** means any day which is not a weekend day or a public holiday at the place specified in the "Delivery Address" section of the Purchase Order;

**'Code'** means the National Code of Practice for the Construction Industry;

**'Code Monitoring Group'** has the same meaning as is given to that term in the Guidelines;

**'Delivery Place'** means the place specified in the "Delivery Address" section of the Purchase Order or the other place or places at which the majority of the Services are to be performed by the Service Provider;

**'Delivery Date'** means the times and/or dates for delivery for the Services specified in the Purchase Order. If no time/date is specified in the Purchase Order, it is the time/date which has been notified to the Service Provider by Golding or the time/date which an objective third party would consider reasonable having regard to the intended purpose of the Services;

**'Golding'** means Golding Contractors Pty Ltd ABN 88 009 734 794;

**'Golding's Representative'** means the person specified as Golding's contact person on the Purchase Order;

**'Goods'** means the products, goods, items or similar to be supplied by the Service Provider to Golding, as specified or referenced in the Purchase Order or as reasonably required for the Services;

**'GST'** has the same meaning as in the GST Law;

**'GST Law'** has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

**'Guidelines'** means the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry revised June 2006 and the Australian Government Industry Guidelines revised September 2005;

**'Intellectual Property'** means any invention, patent, trade mark, copyright, industrial design or process of manufacture or similar right;

**'Legislative Requirements'** includes:

- (a) acts, regulations, by-laws, ordinances, orders, awards, local laws and proclamations of the Commonwealth and the State or territory relating to the supply of Goods or the performance of Services; and
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the supply of Goods or the performance of Services;
- (c) fees and charges payable in connection with paragraphs (a) and (b);

**'Party'** or **'Parties'** means Golding or/and the Service Provider;

**'PPE'** means, at a minimum, a long sleeved shirt with reflective tape, long work trousers or work jeans, a hard hat, eye protection, steel cap boots, sunscreen, safety/rigging gloves and ear protection;

**'Purchase Order'** means the formal "Purchase Order" issued by Golding to the Service Provider for the Services which Golding requires;

**'Related Entity'** has the same meaning as given to that term in the Guidelines;

**'Services'** means any services which are to be performed by the Service Provider, as specified in, referenced in or reasonably implied from the Purchase Order, which may or may not include the supply of Goods and includes the delivery of all documents necessary to evidence the nature of the Services performed and that the Services have been performed;

**'Standard Conditions'** means these "Service Order Standard Terms and Conditions";

**'Standard Contract'** means the Purchase Order and these Standard Conditions;

**'Service Provider'** means the person specified in the "Vendor Address" field of the Purchase Order;

**'Tax Invoice'** has the same meaning as in the GST Law; and

**'Taxable Supply'** has the same meaning as in the GST Law.

1.2 In the Standard Contract, except to the extent that the context otherwise requires:

- (a) words importing the singular include the plural and vice versa unless the context otherwise requires;
- (b) references to 'A\$', 'dollar', '\$' or "AUD" and to any amount not otherwise designated is to be construed as a reference to Australian currency;
- (c) clause headings are for convenience of reference only and shall not effect the construction of this Contract;
- (d) a reference to a person includes a firm, body corporate or unincorporated association or authority;
- (e) 'includes' in any form is not a word of limitation; and
- (f) any reference to time is to the time at the place specified in the "Delivery Address" section of the Purchase Order.

1.3 Nothing in the Standard Contract will be construed or interpreted against Golding or to Golding's disadvantage on the basis that Golding prepared or caused the Standard Contract to be prepared.

### 2. ACCEPTANCE OF ORDER

2.1 Notwithstanding clause 2.2, the performance of any Services by the Service Provider will constitute acceptance by the Service Provider of the Standard Contract.

2.2 If the Service Provider is unable to or does not wish to totally comply with every aspect of the Standard Contract, the Service

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Provider must notify Golding's Representative in writing within 48 hours of receipt of the Purchase Order. Failure to notify within this time is deemed acceptance of the Standard Contract by the Service Provider.

- 2.3 Where the Parties have agreed upon and Golding has signed a negotiated contract in connection with the performance of the Services (whether before or after the Purchase Order is issued), the terms and conditions of that contract will apply.
- 2.4 Subject to clause 2.3, the Standard Contract exclusively governs the relationship between the Parties in connection with the performance of the Services to the exclusion of any documentation, arrangement or terms and conditions, including those of the Service Provider.
- 2.5 Upon acceptance of the Standard Contract by the Service Provider, the Service Provider agrees to perform the Services for Golding by the Delivery Date and otherwise in accordance with this Standard Contract.

### 3. PRICE

- 3.1 Subject to clause 3.2 and unless otherwise stated in the Purchase Order, the lump sum price or rates shown on the Purchase Order are firm in Australian Dollars and not subject to variation or rise and fall without Golding's prior written approval.
- 3.2 Unless stated otherwise on the Purchase Order, the price is inclusive of everything required for or incidental to the performance of the Services by the Service Provider, including but not limited to delivery, cartage and freight charges, wrapping and packaging costs, taxes (excluding GST), tariffs, duties, customs levies, excise, insurance, wharfage charges, storage charges and sales taxes, site visits, and any other statutory costs, personnel charges, impositions, charges or out-of-pocket or other expenses incurred up to actual delivery of the Services to Golding.

### 4. VARIATIONS

- 4.1 Golding reserves the right at any time to vary the Standard Contract by written direction. If a variation causes an increase or decrease in the price (excluding loss of profits) or a change to the Delivery Date, the Service Provider must notify the Golding Representative within 5 Business Days of receipt of the variation.
- 4.2 If the Service Provider does not notify Golding within the timeframe specified in clause 4.1, the Service Provider will be obligated to perform the variation and will be barred from making any claim whatsoever against Golding in connection with the variation. If the Service Provider notifies Golding under clause 4.1 within the required timeframe, the Service Provider must not effect the variation until the Parties have negotiated an equitable adjustment to the price or Delivery Date. If the Parties cannot agree on an equitable adjustment to the price or Delivery Date, Golding may exercise its rights under clause 15.2.

### 5. INVOICING & PAYMENT

- 5.1 Provided that the Services have been accepted in writing by Golding, at any times specified in the Purchase Order (if any), or otherwise after the Delivery Date, the Service Provider must send a valid Tax Invoice for the price specified in the Purchase Order, clearly showing the Purchase Order number, addressed to Golding to the following address:

ACCOUNTS PAYABLE  
GOLDING CONTRACTORS PTY LTD  
PO BOX 1625  
GLADSTONE 4680.  
Email: [accounts@golding.com.au](mailto:accounts@golding.com.au)

- 5.2 Golding is not obliged to pay any Tax Invoice that does not contain a valid Purchase Order number or which is not for the price

specified in the Purchase Order and any such invoice will be returned to the Service Provider unpaid.

- 5.3 Subject to clause 5.4, payment of the Tax Invoice will be made by Golding in Australian currency on or before the date which is one (1) month and 15 days of the end of the month in which the Tax Invoice is received by Golding (unless this date is a Business Day, in which case payment will be made on the next Business Day).
- 5.4 Golding may deduct or set-off from any monies due or becoming due to the Service Provider:
- (a) any and all costs, charges, damages and expenses which Golding may have suffered, paid or incurred in connection with or arising out of the subject of the Purchase Order for which the Service Provider is or was liable but failed to pay plus a 10% mark up; and
  - (b) all debts owing by the Service Provider to Golding on any account whatsoever plus a 10% mark up.
- 5.5 Golding will pay the Service Provider by electronic funds transfer. Golding will e-mail a remittance advice to the Service Provider specifying the Tax Invoices for which payment is being made when payment is made by electronic funds transfer to the Service Provider's nominated account.

### 6. ACCEPTANCE OF SERVICES

- 6.1 Golding reserves the right to conduct a thorough inspection of the Services or output of the Services prior to acceptance of the Services. If the inspection reveals that the Services, output of the Services, or any part of them, do not comply with the description, conditions and warranties of the Standard Contract, Golding may reject the Services, output of the Services or any part of them, by giving written notice of rejection to the Service Provider. If the Services, output of the Services or any part of them are rejected, the Service Provider will bear all costs associated with the rectification of the Services, output of the Services or any part of them.

### 7. REQUIREMENTS FOR THE SERVICES

- 7.1 Unless otherwise agreed in writing, the Service Provider is totally responsible for the performance of the Services in accordance with any requirements specified in the Purchase Order. If no requirements are included in the Purchase Order, the Service Provider must comply with the directions (written and oral, whether given prior to or after the date of this Standard Contract) of Golding in relation to the requirements for the Services.
- 7.2 Substitute Services will not be accepted without Golding's prior written approval.
- 7.3 The Service Provider confirms that it has requested from Golding and is in possession of all drawings, specifications and other documentation or instructions necessary to ensure compliance Golding's requirements for the Services.

### 8. RISK AND TITLE

- 8.1 The Service Provider is responsible for and accepts risks in the Services until they have been accepted by Golding.
- 8.2 Without prejudice to Golding's right to return the Goods to the Service Provider, title to any Goods (free of encumbrances and all other adverse interests and risk in the Goods), will pass to Golding on delivery of the Services to Golding, irrespective of whether payment has been made by Golding or not.

### 9. TIME FOR PERFORMANCE

- 9.1 Time is of the essence and the Service Provider will ensure the Services are delivered to Golding by the Delivery Date.
- 9.2 If the Service Provider is delayed, or becomes aware of the likelihood of being delayed in the performance of the Services by

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circumstances which could not reasonably have been foreseen by the Service Provider and are beyond the Service Provider's control, the Service Provider must notify Golding within 24 hours of becoming aware of such circumstances. Golding may, upon notification by the Service Provider within the required time, but at the absolute discretion of Golding, extend the Delivery Date. However, in such circumstances, Golding reserves the right to source the Services through an alternative source.

- 9.3 If, owing to the failure of the Service Provider to perform its obligations by the Delivery Date, Golding finds it necessary to make alternative arrangements for the supply of the Services, the Service Provider will reimburse Golding to the full extent of the amount by which the cost of the alternative arrangements exceed the cost of the arrangements between the Service Provider and Golding.

### 10. SERVICE PROVIDER'S WARRANTIES

10.1 These provisions are in addition to and not a substitution for any warranties or conditions implied by the Competition and Consumer Act 2010 (Cth), any legislation relating to the sale of goods or services in any State or Territory or any similar legislation implying warranties or conditions in contracts for the sale of goods or services.

10.2 The Service Provider warrants that all Goods supplied or Services performed pursuant to the Standard Contract:

- (a) conform to the specifications, drawings, samples or other description furnished by Golding or the Service Provider in connection with the performance of the Services;
- (b) are fit and sufficient for the purposes intended;
- (c) in the case of Goods:
  - (A) are of good material and workmanship and free from defect or fault of any kind;
  - (B) are free of encumbrances and that the Service Provider has good title to them; and
  - (C) will be accompanied by the manufacturer quality certificates;
- (d) in the case of Services, are executed in an efficient manner to standards of skill and care normally exercised by qualified and experienced service provider in the performance of similar services; and
- (e) comply with all applicable Legislative Requirements.

10.3 If it is discovered at any time after Golding has accepted the Goods that any Goods supplied by the Service Provider are defective or faulty or do not conform to the requirements of, or specifications of, the Purchase Order or other requirements or instructions of Golding, do not include the manufacturer quality certificates of, or any fault or defect appears in the materials, manufacture, or performance of the Goods, then Golding, at its sole discretion, may reject or accept the Goods, or require that any such Goods be repaired or replaced, as the case may be, by the Service Provider at no additional cost to Golding. For clarity, if any Services performed by the Service Provider in connection with the Goods are not effected, supplied, or performed in a sound and workmanlike manner to the reasonable satisfaction of Golding, then the Service Provider must rework or effect the Services to the satisfaction of Golding, at no additional cost to Golding. All additional testing, calibrations, reports or support documentation that may be required by Golding for Services rework, will be performed by the Service Provider at no additional cost to Golding.

### 11. INTELLECTUAL PROPERTY

11.1 The Service Provider will grant, and must ensure that third parties grant, an irrevocable, royalty-free, perpetual, transferable, sub-licensable licence to use all Intellectual Property in and arising out of the performance of the Services and any other deliverables provided to Golding in connection with the performance of the Services for any purpose.

11.2 The Service Provider warrants that the Services, the deliverables provided to Golding in connection with the Services and their use or resale, alone or in combination, will not infringe any Intellectual Property.

11.3 The Service Provider agrees to indemnify, and keep indemnified, Golding against all judgments, liabilities, costs and expenses which arise or result from any actual or alleged infringement of Intellectual Property.

### 11A. QUALITY

11A.1 At all times during the performance of the Services, the Service Provider must:

- (a) have quality management system which is certified by an appropriate third party.
- (b) perform the Services in accordance with that quality management system.

11A.2 Upon request by Golding, the Service Provider must do all things necessary to allow Golding to audit the Service Provider's quality management system, including but not limited to, allowing Golding to access the Service Provider's premises or other place where the Services are being performed and providing copies of documentation to Golding. If the audit reveals what Golding considers to be deficiencies in the Service Provider's quality management system, the Service Provider must immediately rectify those deficiencies at its own cost.

11A.3 The Service Provider acknowledges that the purpose of the Service Provider having a quality management system is to assist the Service Provider comply with its obligations under this Standard Contract. Accordingly, compliance by the Service Provider with its quality management system will not relieve the Service Provider from any of its obligations under this Standard Contract.

### 12. SAFETY AND ENVIRONMENT

12.1 If the Service Provider is required to perform any Services on Golding's premises or sites, the Service Provider must:

- (a) comply with Golding's and its client's safety and environmental policies and all directions of Golding or Golding's client whilst at that premises or site;
- (b) ensure that its employees, agents and contractors have and wear PPE;
- (c) ensure that it is able to access the premises or site;
- (d) ensure that any vehicles or equipment it brings to Golding's premises or the site:
  - (i) are fit for their purpose;
  - (ii) meet any specific requirements for vehicles specified by the site operator, owner, Golding or its client;
  - (iii) are clean and free of materials, flora or fauna (eg. fire ants and noxious weeds). Without limiting this clause, the Service Provider must provide a "Weed Hygiene Declaration" for the purpose of section 45 of the *Land Protection (Pest and Stock Route Management) Act 2002* (Qld) for any Goods which are being delivered; and
- (e) are being operated by competent personnel,

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and all costs associated with this will be borne by the Service Provider.

12.2 At the request of Golding, the Service Provider must provide evidence satisfactory to Golding of its compliance with this clause.

### 13. INSURANCE AND INDEMNITY

13.1 The Service Provider must effect and maintain the following insurance policies with reputable insurers from the date of the Purchase Order until the Goods are accepted by Golding:

- (a) public and products liability insurance with a limit of at least \$20,000,000.00 per occurrence; and
- (b) workers compensation insurance as required by law.

13.2 Within 24 hours of a request from Golding, the Service Provider must provide Golding with evidence satisfactory to Golding that the insurance required by clause 13.1 has been effected and maintained.

13.3 The Service Provider agrees to indemnify and keep indemnified and hold harmless Golding, its directors, officers and employees from and against all actions, proceedings, claims, suits, demands, costs and expenses that are or may be made upon, brought against or incurred by Golding by or in respect of:

- (a) any breach of this Standard Contract or a Legislative Requirement;
- (b) any personal injury, illness or death to any person or loss or damage to any property or any other loss or damage caused or contributed to by the Service Provider, the Services or the Service Provider's employees, agents and contractors;
- (c) any claim made against Golding by any person or entity arising out of the failure of or deficiencies in the Services performed by the Service Provider;
- (d) any fraud or wilful misconduct of the Service Provider, its employees, employees, agents and contractors; and
- (e) any penalty imposed on Golding for breach of any Legislative Requirement in connection with the Services performed by the Service Provider.

### 14. TERMINATION

14.1 Golding may immediately terminate, in whole or in part, the Standard Contract by giving written notice to the Service Provider:

- (a) in the opinion of Golding, the Service Provider has committed a serious safety breach or is performing the Services in an unsafe manner;
- (b) the Service Provider commits fraud or serious misconduct in the performance of the Services;
- (c) if the Service Provider fails or refuses to comply with any lawful directions given by Golding or any person duly authorised by Golding in connection with the performance of the Services;
- (d) if the Service Provider commits a serious or persistent breach of any of the provisions of the Standard Contract which is incapable of being remedied to the reasonable satisfaction of Golding; or
- (e) for an Act of Insolvency.

14.2 Golding may terminate in whole or in part the unexecuted portion of this Standard Contract by written notice at any time for reasons other than those listed in clause 14.1 provided that Golding pays the Service Provider for reasonable direct costs (excluding loss of profits) properly incurred by the Service Provider as a direct result of such termination.

14.3 If this Standard Contract is terminated under clause 14.1, Golding will only be liable to pay the Service Provider for the Services

which have been accepted in writing by Golding at the date of termination, subject to any right of set-off under this Standard Contract.

### 15. GST

15.1 Unless expressed to the contrary in the Purchase Order, all amounts payable under the Standard Contract are exclusive of GST.

15.2 If any supply made under in connection with the Standard Contract is a Taxable Supply then the recipient of that supply will pay the GST in respect of that supply to the supplier on the provision of a valid Tax Invoice, where the GST is calculated in accordance with the GST Law on the basis that the consideration otherwise payable under the Standard Contract is the value of the Taxable Supply.

### 16. ASSIGNMENT

16.1 The Service Provider must not sub-contract, assign or novate any of its rights or obligations under the Standard Contract without the prior written consent of Golding.

16.2 Golding may assign or novate, in whole or in part, its rights and obligations under the Standard Contract without the prior written consent of the Service Provider and the Service Provider agrees to execute any documentation to effect any assignment or novation.

### 17. NO WAIVER

17.1 The failure of a Party at any time to require full or partial performance of any provision of this Standard Contract does not affect in any way the full right of that Party to require that performance subsequently.

17.2 The waiver by any Party of a breach of a provision of this Standard Contract is not deemed a waiver of all or part of that provision or of any other provision or of the right of that Party to avail itself of its rights subsequently.

17.3 Any waiver of a breach of this Standard Contract must be in writing signed by the Party granting the waiver, and is effective only to the extent specifically set out in that waiver.

### 18. THE CODE AND GUIDELINES

18.1 If the Code applies to Golding's contract with its client, the Service Provider must, and must ensure that its employees, contractors and agents, with the Code and the Guidelines in the performance of the Services.

18.2 The Service Provider acknowledges that it has obtained its own copy of the Code and Guidelines.

18.3 The Service Provider agrees that that information concerning compliance with the Code, including details of whether or not a sanction has been imposed, may be used by the Commonwealth, its agents and ministers, and disclosed to others for the purposes of facilitating compliance with the Code and the exercise of their statutory and portfolio responsibilities. The Service Provider must ensure that its contractors are also aware of, and agree to comply with, these rights of use and disclosure.

18.4 The Service Provider must not engage a contractor in relation to the Services unless they are compliant with the Code and Guidelines or where the appointment would breach a sanction imposed by the Code Monitoring Group.

18.5 When requested by Golding, the Service Provider must provide all information reasonably necessary to satisfy Golding of its compliance with this clause.

### 19. GENERAL

19.1 The Standard Contract is to be governed by and construed in accordance with the laws of the State of Queensland.

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- 19.2 The Service Provider authorises Golding to access any of its sites, offices and documents at any time, whether prior to or after the Services have been accepted by Golding and will cooperate fully with Golding in this regard.
- 19.3 At any time during the performance of the Services, Golding may require the Service Provider to demonstrate to Golding that it has the financial capacity to perform its obligations under the Standard Contract. To this end, the Service Provider will allow Golding or a another person appointed by it to audit the financial capacity of the Service Provider. In this regard, the Service Provider must:
- comply with all reasonable requests of Golding or its appointee;
  - provide Golding or its appointee with the Service Provider's financial records; and
  - allow Golding or its appointee to inspect any financial data kept by the Service Provider.
- 19.4 Any term or condition being a whole clause or part of a clause which is invalid, unlawful, void or unenforceable and capable of severance without effecting any other term or condition in the Standard Contract shall be severed or read down to whatever is reasonable in the circumstances.
- 19.5 Subject to clause 5, any notice, Tax Invoice or document given under the Standard Contract shall be deemed to be sufficiently served, if it is posted by ordinary pre-paid post addressed to a Party at the address for that Party specified in the Purchase Order and shall be deemed to have been received by that Party on the second Business Day following the date on which it was posted. Any notice, Tax Invoice or document given under the Standard Contract is deemed sufficiently served if it is faxed to the facsimile number for that Party specified in the Purchase Order. If served by facsimile transmission and transmitted by facsimile out of normal business hours (being 8:30am-5:00pm on a Business Day) then such notice, Tax Invoice or document shall be deemed to have been given on the Business Day which next follows the day of transmission. Otherwise, any notice, Tax Invoice or document will be deemed to be received at the time of actual receipt.
- 19.6 If the Service Provider consists of more than one person, the provisions of the Standard Contract will bind such persons jointly and each of them severally and the persons comprising the Service Provider will be jointly and severally liable for the obligations assumed by the Service Provider under the Standard Contract.
- 19.7 The obligations of the Service Provider under clauses 10, 11 and 13.3 will survive termination or completion of this Standard Contract.
- 19.8 The Parties agree that the terms of the Standard Contract are not to be construed as creating a partnership, association, employment or trust or other fiduciary relationship between the Parties.
- 19.9 No amendment or variation of this Standard Contract is valid or binding on a Party unless made in writing and signed by all Parties.
- 19.10 Subject to anything else in this Standard Contract and any prior communications between the Parties in relation to the requirements for the Services, the Parties agree that the Standard Contract constitutes the entire agreement between the Parties in relation to the performance of the Services.
- 19.11 For the purposes of the *Personal Property Security Act 2009* (Cth), to the extent that a "security interest" arises in respect of the Goods, the Service Provider recognises that this is a "Security Agreement" relating to those Goods and that Golding may register its interest in those Goods.
- 19.12 Subject to the remainder of the terms of this Standard Contract, the terms of this Standard Contract contain the entire agreement between the parties in connection with the performance of the Services, including any terms and conditions of, or proposed by, the Service Provider.