

# PURCHASE ORDER TERMS

## 1. ENTERING INTO PURCHASE ORDER AGREEMENT

- (a) Where Golding and the Supplier have a signed and current contract in place for the provision of the Goods and/or Services at the time the Purchase Order is issued to the Supplier (**Current Contract**), the Current Contract applies to the provision of the Goods and/or Services and the terms set out in the balance of these Terms have no legal effect.
- (b) If a Current Contract does not exist and the circumstances in clause 1(c) do not apply:
  - (i) by issuing the Purchase Order:
    - A. Golding makes an offer to the Supplier to procure the Goods and/or Services from it on the terms of this Purchase Order Agreement (**Offer**); and
    - B. without limiting clause 2(b), Golding rejects the terms and conditions (if any) contained or referred to in any tender, quote or other communication the Supplier has provided Golding in relation to the Goods and/or Services;
  - (ii) the Supplier may unconditionally accept the Offer by commencing of performance of this Purchase Order Agreement or by written confirmation to Golding;
  - (iii) the Supplier may request changes to the documents comprising this Purchase Order Agreement by written notice to Golding before accepting the Offer;
  - (iv) to the extent Golding agrees to any changes to the documents comprising this Purchase Order Agreement requested by the Supplier:
    - A. Golding will issue an updated Purchase Order that expressly documents the text of the agreed changes as Special Conditions that are expressly identified or referred to as “special conditions” in the Purchase Order or in a Special Conditions Schedule attached to the Purchase Order; and
    - B. the issuing of the updated Purchase Order constitutes a revised offer made to the Supplier by Golding, which the Supplier may accept by commencing performance of this Purchase Order Agreement or by written confirmation to Golding; and
  - (v) if Golding does not agree to the changes to the documents comprising this Purchase Order Agreement requested by the Supplier, Golding may cancel the Purchase Order.
- (c) If a Current Contract does not exist and the Supplier submits a Quote to Golding pursuant to Golding’s RFQ Conditions of Tendering, the relevant terms of Golding’s RFQ Conditions of Tendering govern the contract formation

process between Golding and the Supplier and clause 1(b) has no legal effect.

## 2. DISCREPANCIES IN PURCHASE ORDER AGREEMENT

- (a) On receipt of the Purchase Order from Golding, the Supplier must check the documents comprising this Purchase Order Agreement for any errors or discrepancies and must promptly notify Golding if it identifies any errors or discrepancies in or between the documents comprising this Purchase Order Agreement.
- (b) To the extent of any discrepancy, ambiguity, or inconsistency between the documents comprising this Purchase Order Agreement, the following order of precedence applies to resolve that discrepancy, ambiguity or inconsistency:
  - (i) the Purchase Order;
  - (ii) the Special Conditions (if any) that are expressly identified or referred to as “special conditions” in the Purchase Order or in a Special Conditions Schedule attached to the Purchase Order;
  - (iii) these Terms; and
  - (iv) any document(s) (including any drawings or scope of work) expressly referred to in the Purchase Order, but only to the limited extent those document(s) describe the specification(s), quality, quantity and/or technical standards applicable to the Goods and/or Services and, for clarity, excluding any Supplier proposed terms and conditions as may be referred to in any such documents.
- (c) The Supplier confirms it has access to, or has been provided with, any document incorporated by reference which forms part of this Purchase Order Agreement.

## 3. ENTIRE AGREEMENT

- (a) To the extent permitted by law, this Purchase Order Agreement constitutes the entire agreement between the parties in respect of its subject matter.
- (b) For clarity, the parties acknowledge and agree that signing of the Supplier’s delivery documentation or other approval documentation by Golding or Golding’s nominated carrier or other representative does not:
  - (i) in any way limit, waive, restrict, over-ride, amend or supplement the terms of this Purchase Order Agreement or constitute any collateral agreement or contract between the parties in relation to those Goods and/or Services; or
  - (ii) constitute acceptance of the Goods and/or Services by Golding.

## 4. SUPPLY OF GOODS AND/OR SERVICES

### 4.1. Supplier’s assurances

- (a) The Supplier must ensure that the Goods

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and/or Services (as applicable):

- (i) are delivered in strict accordance with this Purchase Order Agreement;
- (ii) conform to the specifications, drawings, samples or other description referred to in the Purchase Order or if no specifications, drawings, samples or other description are referred to in the Purchase Order, the Supplier has consulted with Golding to ascertain its requirements for the Goods and/or Services;
- (iii) are fit for the purpose as stated in the Purchase Order or, if no purpose is stated in the Purchase Order, are fit for the purposes that a qualified, experienced and skilled professional or trade persons (as applicable) would reasonably infer from this Purchase Order Agreement;
- (iv) comply with all applicable Legislative Requirements;
- (v) in the case of the Goods:
  - A. are new (unless otherwise agreed in writing or the Goods are hired to Golding) and of merchantable quality and free from Defects;
  - B. are, other than in relation to Goods that are hired to Golding, free of encumbrances and that the Supplier has good title to them;
  - C. are accompanied by relevant manufacturer quality certificates;
  - D. to the extent applicable, are clearly marked with the Purchase Order Number, contents, Delivery Place and method of dispatch;
  - E. are safely and securely packed to prevent the ingress of dust and moisture and reasonable impact damage, and to comply with all Legislative Requirements;
  - F. are accompanied by any relevant material safety data sheet, instruction manual and warranty; and
  - G. are prepared for collection and/or transportation so as to comply with all Legislative Requirements;
- (vi) in the case of Services, are free of Defects and executed in an efficient manner and to the standard of skill and care normally exercised by a qualified, experienced and skilled professional or trade persons (as applicable) in the performance of similar services; and
- (vii) to the extent a Service includes design services, the works being designed will be:
  - A. fit for the purposes stated in the Purchase Order; or

- B. if no purpose is stated in the Purchase Order, fit for the purpose that a qualified, experienced, skilled and professional designer would reasonably infer from this Purchase Order Agreement.
- (b) The Supplier must at its own cost comply with, discharge and obtain (as applicable):
  - (i) all applicable Legislative Requirements applicable to the performance of its obligations under this Purchase Order Agreement; and
  - (ii) the requirements of, and/or directions issued by, any Authority in connection with its obligations under this Purchase Order Agreement.
- (c) The Supplier must have and maintain a quality management system.
- (d) The Supplier must assign its rights to any manufacturer's warranties that may be applicable to the Goods (excluding any Goods that are hired to Golding) to Golding or the Principal (as nominated by Golding) or, if such assignment is not available to the Supplier, the Supplier must diligently pursue any manufacturer's warranties on behalf of Golding or the Principal if Golding so requests.

### 4.2. Acknowledgements

- (a) The Supplier acknowledges and agrees that:
  - (i) unless otherwise agreed by Golding's Representative in writing, the Supplier is fully responsible for the design, supply of materials, fabrication, testing, packaging, loading onto and off transport and delivery of the Goods; and
  - (ii) substitute Goods will not be accepted without Golding's prior written approval.
- (b) The parties acknowledge and agree that this Purchase Order Agreement does not create an exclusive relationship between the parties in connection with the supply of the Goods and/or Services, and a party may (at its absolute discretion) procure or supply (as applicable) the same or similar goods and/or services from or to any other person at any time.

### 4.3. Delivery, time for performance and acceptance

- (a) The Supplier must:
  - (i) to the extent the Purchase Order relates to Goods, deliver the Goods to the Delivery Place by the Due Date. Unless otherwise specified in the Purchase Order, the Supplier must unload the Goods as directed by Golding; and
  - (ii) to the extent the Purchase Order relates to Services, perform the Services at the Delivery Place by or until (as the case may be) the Due Date or (if applicable) during the Hire Period.
- (b) The quantity of Goods delivered to the Delivery

Place must not be greater than the quantity specified in the Purchase Order. The Supplier is responsible for collecting any excess quantities from the Delivery Place at the Supplier's expense and risk.

- (c) Golding accepting delivery of the Goods does not constitute any confirmation or acceptance by Golding that the Goods comply with this Purchase Order Agreement.
- (d) Golding accepting the results or outcome of the Services does not constitute any confirmation or acceptance by Golding that the Services comply with this Purchase Order Agreement.

**4.4. Defective or non-conforming Goods and/or Services**

(a) Without limiting Golding's rights under this Purchase Order Agreement or otherwise under the law, if during the Defects Liability Period, Golding discovers that the Goods and/or Services (in whole or in part) are Defective, Golding may:

(i) direct the Supplier, at the Supplier's cost, to:

- A. in the case of Goods, perform any necessary redesign or repair, or replace, the Defective Goods (or part thereof); or
- B. in the case of Services, re-perform the Defective Services (or part thereof),

within a time specified by Golding (acting reasonably); or

(ii) if:

- A. the Supplier fails to comply with a direction given by Golding under clause 4.4(a)(i); or
- B. Golding reasonably considers it necessary to protect its legitimate business interests, itself or by engaging another supplier, take such steps as are necessary to ensure that the Defective Goods and/or Services (or part thereof) comply with the requirements of this Purchase Order Agreement and the reasonable costs incurred by Golding will be a debt due and payable by the Supplier.

(b) Without limiting clause 4.4(a), if during the Defects Liability Period, Golding discovers the Goods and/or Services (or part thereof) have a major Defect or multiple Defects that Golding considers (acting reasonably) cannot be fixed or are uneconomic to fix, Golding may reject such Defective Goods and/or Services or part thereof, by giving written notice to the Supplier.

(c) If clause 4.4(b) applies and:

- (i) Golding has paid the Supplier for the Defective Goods and/or Services, the Supplier must repay Golding the price for the Goods and/or Services rejected under clause 4.4(b); or

(ii) Golding has not paid the Supplier for the Defective Goods and/or Services, Golding is not liable to pay the Supplier for the Goods and/or Services rejected under clause 4.4(b) and, if applicable, (unless otherwise agreed in writing by the parties) the Supplier must promptly collect the Defective Goods from the Delivery Place at the Supplier's cost and risk.

(d) Where Defective Goods and/or Services are redesigned, repaired, replaced or re-performed (as the case may be) in accordance with clause 4.4(a), the Defects Liability Period for that Good and/or Service is extended to the date being of 12 months after the date the redesign, repair, replacement or reperformance (as the case may be) was completed.

**4.5. Hire of Goods**

(a) To the extent that the Purchase Order specifies that the Goods are to be hired to Golding, the following additional terms apply to such hire:

- (i) title in the Goods remains with the Supplier and does not pass to Golding;
- (ii) without limiting any other provision of this Purchase Order Agreement, the Supplier warrants that:
  - A. it has the legal right to hire the Goods to Golding;
  - B. prior to the Goods being delivered to Golding, the Goods have been serviced and maintained in accordance with the original manufacturer's recommendations (if applicable);
  - C. unless Golding and the Supplier agree otherwise in writing, the Supplier is responsible for performing all repairs and/or maintenance required to the Goods in a timely manner;
  - D. prior to the commencement of the Hire Period for the Goods, the Goods have been in safe and good working order, free from any damage or fault that would materially affect or impede its operation and/or use; and
  - E. Golding will have sole use of the Goods or relevant part thereof for the Hire Period as bailee;
- (iii) except to the extent caused or contributed to by Golding's misuse of the Goods, Golding is not liable to pay any fee for any time that the Goods are unavailable for use due to breakdown or while the Goods are awaiting repair and/or maintenance by the Supplier;
- (iv) the Supplier acknowledges the purpose for which the Goods are being hired by Golding and the environment in which the Goods will be used; and
- (v) the Supplier assumes the risk of, and will have no Claim against Golding in relation to:

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- A. any fair wear and tear of the Goods; or
  - B. damage to or loss of the Goods caused by the Supplier or the Supplier's Personnel; and
- (vi) without limiting clause 4.5(a)(v), in the case of any motorised Goods that are to be operated by the Supplier or the Supplier's Personnel, the Supplier assumes the risk of any loss or damage (including a total loss) of such Goods (irrespective of whether the Supplier or the Supplier's Personnel are operating the Goods at the time of such loss or damage occurring):

- A. arising from an event that is not attributable to either party or, in the case of the Supplier, the Supplier's Personnel or in the case of Golding, Golding's employees or other contractors; or
- B. that is 'accidental' damage caused or contributed by Golding or Golding's employees or other contractors (other than the Supplier or the Supplier's Personnel),

and, subject to clause 11(g), the Supplier will have no Claim against Golding.

### 4.6. Inspections and audits

- (a) Golding or any person authorised by Golding may, upon reasonable notice to the Supplier, audit the Supplier's compliance with this Purchase Order Agreement.
- (b) The Supplier must:
  - (i) co-operate and comply with any such audit by Golding, including by:
    - A. within normal working hours, allowing Golding or any person authorised by Golding access to any location where the Supplier is performing its obligations under this Purchase Order Agreement; and/or
    - B. providing evidence satisfactory to Golding (acting reasonably) of the Supplier's compliance with the terms of this Purchase Order Agreement; and
  - (ii) rectify any deficiencies in the Supplier's compliance with this Purchase Order Agreement identified by Golding, at the Supplier's cost.
- (c) Any audit by Golding or its authorised person under clause 4.6(a) or rectification by the Supplier in accordance with clause 4.6(b)(ii) is not confirmation or acceptance by Golding that the Goods and/or Services will comply with this Purchase Order Agreement.

### 5. RISK AND TITLE FOR PURCHASED GOODS

- (a) The Supplier bears the risk in the Goods until they have been delivered and unloaded at the Delivery Place in accordance with this Purchase Order Agreement.

- (b) Title in the Goods or part thereof passes to Golding on payment for the Goods or relevant part thereof.
- (c) This clause 5 does not apply to the extent that the Purchase Order specifies that the Goods are to be hired to Golding.

### 6. SITE, SAFETY AND ENVIRONMENT

- (a) If the Supplier requires access to Golding's premises or the Principal's site in connection with this Purchase Order Agreement, the Supplier must, and must ensure the Supplier's Personnel:
  - (i) follow all lawful directions of Golding and the Principal while accessing, on or leaving the relevant premises or site (as applicable); and
  - (ii) to the extent applicable to the Supplier's obligations under this Purchase Order Agreement, comply with any site, safety and environmental requirements of Golding and the Principal that are notified to the Supplier from time to time in relation to any aspect of safety and environmental protection in relation to the premises or sites.
- (b) The Supplier must not deliver any Goods or perform Services on Golding's premises or the Principal's site (as the case may be) until access is given or approved by Golding to the Supplier for that purpose (which access must not be unreasonably withheld or delayed).

### 7. HEAVY VEHICLES

To the extent heavy vehicles (as defined in the COR Laws) are used in the performance of this Purchase Order Agreement, the Supplier:

- (a) acknowledges that it is a primary duty holder under the COR Laws with responsibility for developing COR Systems;
- (b) must ensure that any such heavy vehicles are appropriately maintained with loads that do not exceed vehicle mass or dimension limits, are appropriately secured, and operators carrying freight containers have a complying Container Weight Declaration (as defined in the COR Laws) and drivers do not exceed speed limits or regulated driving hours, do not drive while impaired by fatigue and observe minimum rest requirements;
- (c) must provide reasonable assistance to Golding to enable Golding to satisfy its duties and responsibilities under COR Laws;
- (d) must obtain and maintain, and ensure that each of the Supplier's Personnel obtains and maintains, all approvals required to enable the applicable activity, function or task to be undertaken lawfully;
- (e) must undertake any audits or monitoring as reasonably requested by Golding to demonstrate compliance with this clause 7; and
- (f) warrants that it is familiar with and has the capability and resources to comply with COR Laws and ensure that the Supplier's Personnel and subcontractors comply with all COR Laws.



**8. CODES**

- (a) If identified as applicable in the Purchase Order or requested by Golding in writing, the Supplier must, and must ensure that the Supplier's Personnel, comply with the applicable code in the performance of this Purchase Order Agreement.
- (b) Without limiting its obligations under clause 8(a), the Supplier must allow any person appointed as, or taken to be appointed as, an inspector for the purposes of any applicable code or Legislative Requirement, that requires access in accordance with that code or Legislative Requirement, access to:
  - (i) any place at which this Purchase Order Agreement is being performed by the Supplier;
  - (ii) any documents relating to this Purchase Order Agreement within its possession or control; and
  - (iii) any of the Supplier's Personnel for the purposes of or in connection with this Purchase Order Agreement,
 to monitor compliance with any applicable code or Legislative Requirement.

**9. BUSINESS INTEGRITY**

**9.1. Anti-slavery, anti-corruption and anti-competitive requirements**

- (a) In this clause 9.1:
  - (i) **'Anti-Competitive Behaviour'** means any conduct that is unlawful or otherwise restricted or prohibited under any applicable competition laws including the *Competition and Consumer Act 2010* (Cth); and
  - (ii) a reference to **'supply chain'** includes any third party engaged by the Supplier, whether directly or indirectly (unless otherwise stated).
- (b) The Supplier warrants that:
  - (i) neither it nor the Supplier's Personnel have been convicted of any offence related to modern slavery, corruption or Anti-Competitive Behaviour;
  - (ii) to the best of its knowledge and belief, no entity or person within its direct supply chains have been convicted of any offence related to modern slavery, corruption or Anti-Competitive Behaviour;
  - (iii) it has not knowingly and covenants that it will not knowingly engage a supplier or subcontractor which in any way engages in any form of modern slavery; and
  - (iv) neither it nor the Supplier's Personnel has breached any anti-corruption laws

or engaged in any Anti-Competitive Behaviour in connection with any pricing and/or quotes submitted by the Supplier to Golding in relation to the Goods and/or Services prior to entering this Purchase Order Agreement.

- (c) In the performance of its obligations under this Purchase Order Agreement, the Supplier must:
  - (i) comply, and ensure the Supplier's Personnel comply, with all applicable anti-competitive, anti-slavery and anti-corruption Legislative Requirements, including the *Modern Slavery Act 2018* (Cth); Chapter 4, Division 7 of the *Criminal Code Act 1995* (Cth); Part IV of the *Competition and Consumer Act 2010* (Cth) and any broadly equivalent legislation that applies to the Supplier that has the objective of preventing or prohibiting corruption, modern slavery or anti-competitive conduct;
  - (ii) use reasonable endeavours to ensure any contract it enters with any supplier or subcontractor in relation to this Purchase Order Agreement includes provisions substantially similar to this clause 9.1;
  - (iii) for a period of 7 years after termination or expiry of this Purchase Order Agreement, maintain records relating to the performance of its obligations under this Purchase Order Agreement to enable Golding to determine the Supplier's compliance with this clause 9.1;
  - (iv) if required by Golding at any time, sign a statutory declaration confirming its compliance with this clause 9.1;
  - (v) promptly notify Golding if it discovers or suspects any event or circumstance within its supply chain or involving the Supplier, the Supplier's Personnel or a related party that could give rise to an audit or investigation relating to an alleged breach of this clause 9.1; and
  - (vi) provide all reasonable assistance to Golding in connection with any:
    - A. reporting required for Golding or a related entity to comply with all applicable anti-slavery, anti-competitive and anti-corruption Legislative Requirements; and
    - B. audit or investigation to determine compliance with this clause 9.1 or to investigate an alleged breach of this clause 9.1.

**9.2. Conflicts of interest**

The Supplier must, and must ensure the Supplier's Personnel, declare to Golding any conflict of interest (whether actual or perceived) relevant to Golding and/or the Principal prior to entering into any agreements with Golding, and in any event, as soon as a conflict of interest (whether actual or



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perceived) relevant to Golding and/or the Principal comes to the attention of the Supplier.

### 10. LABOUR HIRE

- (a) This clause 10 applies if the Supplier is required by the LHL Act to hold a labour hire licence to provide the Services (if any).
- (b) The Supplier:
  - (i) warrants that it has and will maintain a labour hire licence in accordance with the LHL Act until the Supplier's obligations under this Purchase Order Agreement are fully discharged; and
  - (ii) must comply with the terms of its labour hire licence.
- (c) The Supplier must notify Golding immediately, and in any event within 1 Business Day, of expiry, suspension or cancellation (whether conditional, temporary or otherwise) of its labour hire licence.
- (d) If the Supplier's labour hire licence expires or is suspended or cancelled (whether conditionally, temporarily or otherwise), then without prejudice to any other rights or remedies available to Golding, Golding may by notice to the Supplier engage the Supplier's relevant labour (directly or indirectly through another labour hire provider), Golding's personnel or other third parties to perform any Services which the Supplier's relevant labour would reasonably have been expected to perform under this Purchase Order Agreement, and:
  - (i) Golding will not be in breach of the terms of this Purchase Order Agreement; and
  - (ii) the Supplier will not do anything that could hinder, delay or prevent such engagement by Golding.

### 11. INSURANCE

- (a) The Supplier must effect the following insurance policies before commencing performance of this Purchase Order Agreement and maintain such policies until the Supplier's obligations under this Purchase Order Agreement are fully discharged or, in the case of any professional indemnity insurance required under clause 11(a)(v), for a further 7 years:
  - (i) public and products liability insurance covering liability in respect of:
    - A. death, injury or illness (including mental or psychological harm or illness) suffered by or caused to any person;
    - B. damage of, or damage to, any property (including the property of Golding and the Principal),
 arising out of or in connection with this Purchase Order Agreement;

- C. if applicable, the use or enjoyment of the Goods by any person or entity; and
- D. if applicable to the Services (if any), the Supplier's use of aerial devices (including drones),

with a limit of at least \$20,000,000 per occurrence;

- (ii) workers' compensation insurance as required by law;
- (iii) plant and equipment insurance in respect of plant, equipment, tools, appliances or other property owned, rented or hired by the Supplier and used or supplied in relation to this Purchase Order Agreement (including the Supplier's plant and equipment);
- (iv) comprehensive motor vehicle insurance and compulsory third party insurance as required by law in respect of vehicles and plant used in the performance of the Services by the Supplier or the Supplier's Personnel;
- (v) if the Services include professional services, professional indemnity insurance with a limit of at least \$5,000,000; and
- (vi) if the Services include the transportation of plant, equipment, vehicles, goods or materials, transit insurance covering physical loss or damage to the relevant plant, equipment, vehicles, goods or materials while any of those items are in the course of ocean marine shipment or transit by air, road or rail anywhere in the world (including during any periods of loading, unloading, and incidental storage) for the full replacement value of each of those items.

- (b) Unless prohibited by an applicable law or not available on the insurance market for the insurance policy in question, each insurance required under this clause 11 must:

- (i) be obtained from an insurer authorised by the Australian Prudential Regulation Authority, with a financial security rating of A- or better by 'Standard & Poors' (or the equivalent rating with another recognised rating agency);
- (ii) contain a 'principal's indemnity clause' extending cover and indemnity to each of Golding and the Principal (as if each were a separate insured) for the events and liability covered by that insurance;
- (iii) include a waiver by the insurer of any right subrogation, action or relief against Golding and the Principal;
- (iv) contain terms to the effect that the insurer agrees to treat each insured as a separate insured party as though a separate contract of insurance had been entered into with each of the insured parties without

- increasing the deductibles or increasing the overall limit of indemnity; and
- (v) contain terms such that non-disclosure, misrepresentation or a breach of a conditional term of the insurance by any insured will not adversely affect the cover provided under the policy to another insured.
- (c) The Supplier must:
  - (i) as soon as practicable and in writing, inform Golding of any occurrence that may give rise to a material claim under any insurance policy it is required to hold under this clause 11; and
  - (ii) keep Golding informed of subsequent developments concerning any such claim it makes against any of those policies.
- (d) Within 5 Business Days of a request from Golding, the Supplier must provide Golding with evidence satisfactory to Golding (acting reasonably) that the insurance policies required by clause 11(a) have been effected and maintained.
- (e) If the Supplier fails to demonstrate to Golding that it has complied with its insurance obligations under this clause 11(a) within the time required under clause 11(d), Golding may, on written notice to the Supplier, on behalf of the Supplier, take out the relevant insurance and pay the premiums for such insurance. Any reasonable costs incurred by Golding in effecting and maintaining such insurance will be a debt due and owing from the Supplier to Golding.
- (f) Effecting or failing to effect the insurances required under this clause 11 does not relieve the Supplier of its obligations or liabilities under this Purchase Order Agreement.
- (g) The Supplier must pay all excesses and deductibles payable under each insurance policy required to be effected under this Purchase Order Agreement, except to the extent the loss or damage to which the policy responds was directly caused by Golding.

**12. VARIATIONS**

The Supplier must not Vary the Goods and/or Services without Golding's prior written consent.

**13. FORCE MAJEURE**

- (a) If a party (**Affected Party**) is or may be prevented from performing some or all of its obligations under this Purchase Order Agreement (other than an obligation to pay money) by an event or circumstance which:
  - (i) could not reasonably have been foreseen by the Affected Party; and
  - (ii) is beyond the Affected Party's reasonable control,

**(Force Majeure Event)**, the Affected Party must provide written notice to the other party of all known details of the cause,

nature and likely duration of the Force Majeure Event, details of the obligations of the Affected Party under this Purchase Order Agreement that have been prevented by the Force Majeure Event and the steps the Affected Party will take to reduce or remove the effects of the Force Majeure Event (**Force Majeure Notice**).

- (b) Provided that:
  - (i) performance of the Affected Party obligations under this Purchase Order Agreement are actually prevented by the Force Majeure Event;
  - (ii) the Affected Party could not reduce or remove the effects of the Force Majeure Event; and
  - (iii) the Force Majeure Notice contains all of the details required by clause 13(a),

the obligations of the Affected Party under this Purchase Order Agreement that have been prevented by the Force Majeure Event are, subject to clause 13(d), suspended.
- (c) The Affected Party must:
  - (i) use its reasonable endeavours to reduce or remove the effects of the Force Majeure Event;
  - (ii) keep the other party regularly updated if the Force Majeure Event continues for longer than 10 Business Days; and
  - (iii) promptly notify the other party, and promptly recommence performance of its affected obligations under this Purchase Order Agreement, following the cessation of the Force Majeure Event.
- (d) If the Affected Party under this clause 13 is the Supplier, and the Supplier has complied with the requirements of this clause 13, Golding will extend the Due Date (acting reasonably). If Golding fails to notify the Supplier of its assessment of the extension to the Due Date (if any) within 10 Business Days of receipt of the Supplier's Force Majeure Notice, the Due Date will be extended by the number of days occurring from the date the Supplier's Force Majeure Notice is received by Golding, until the performance of the Supplier's affected obligations under this Purchase Order Agreement are no longer prevented by the Force Majeure Event.
- (e) Each party will bear its own costs and expenses suffered or incurred as a result of any Force Majeure Event.

**14. PAYMENT**

**14.1. Rates and prices**

- (a) Unless otherwise stated in this Purchase Order Agreement, the prices and rates shown in the Purchase Order are fixed and not subject to variation, rise and fall, escalation or review without



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- Golding's prior written approval.
- (b) Unless stated otherwise in this Purchase Order, the prices and rates shown in the Purchase Order are inclusive of all 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, and any other statutory costs, personnel charges, impositions, charges or out-of-pocket or other expenses incurred by the Supplier in performing this Purchase Order Agreement.
- (c) Subject to clause 14.3, Golding will pay the Supplier for Goods and/or Services according to the rates and prices in the Purchase Order, adjusted by any additions or deductions made under these Terms and less any applicable withholding taxes.
- (d) Any money payable under this Purchase Order Agreement is to be paid by electronic funds transfer to the Supplier's nominated bank account.

### 14.2. Tax Invoices

- (a) The Supplier must issue a Tax Invoice to Golding for payment for the Goods and/or Services:
  - (i) at the times specified in the Purchase Order (if any); or
  - (ii) otherwise:
    - A. for Goods, promptly after the Goods have been delivered to the Delivery Place; and
    - B. for Services and/or hire of Goods, on the last Business Day of each month, for the Services performed (or hiring provided) to the 25<sup>th</sup> day of that month (or to the date of expiry or any earlier termination, as applicable).
- (b) A Tax Invoice will be valid only if it:
  - (i) is addressed to Golding as follows:  
**GOLDING**  
**CONTRACTORS PTY**  
**LTD PO BOX 1643**  
**MILTON BC QLD 4064**  
 Email: [accounts@golding.com.au](mailto:accounts@golding.com.au)
  - (ii) contains a valid Purchase Order Number;
  - (iii) contains the date the Tax Invoice was issued;
  - (iv) contains a supplier name and ABN that match the details on the Purchase Order;
  - (v) includes bank account details;
  - (vi) identifies GST separately;
  - (vii) includes a description of the Goods and/or Services provided; and
  - (viii) is calculated using the rates and prices in the Purchase Order.

### 14.3. Golding's set-off, deduction and withholding rights

- (a) Golding may set-off, deduct or withhold from any claim for any monies made by the Supplier, or any payment due from Golding to the Supplier, under this Purchase Order Agreement:
  - (i) an amount that Golding reasonably considers reflects the value of the Goods and/or Services the Supplier has not actually delivered to the Delivery Place, or it has not actually performed, at the time the valid Tax Invoice is submitted;
  - (ii) any debt or other amount due, or which Golding reasonably considers is likely to be due, by the Supplier to Golding arising from or in connection with this Purchase Order Agreement;
  - (iii) amounts equal to Golding's reasonable estimate of the value of any bona fide claim(s) Golding reasonably believes it has against the Supplier (including under any indemnity given to Golding by the Supplier) arising from or in connection with this Purchase Order Agreement; and
  - (iv) any amounts Golding is required to withhold by force of law.

This clause 14.3(a) does not limit Golding's right to recover the above amounts in other ways.

- (b) If Golding notifies the Supplier of a deduction or set-off under clause 14.3(a) or that it considers that the amount of the Tax Invoice issued by the Supplier has not been calculated in accordance with the requirement of this Purchase Order Agreement, the Supplier must promptly issue a credit note to Golding in the amount directed by Golding. The provision of a credit note by the Supplier does not, of itself, amount to a waiver of any claims by the Supplier which are the subject of the credit note.

### 14.4. Recipient Created Tax Invoice

If the Supplier does not issue a Tax Invoice within 28 days of the date it is required to issue a Tax Invoice under clause 14.2(a), Golding may issue a RCTI to the Supplier for the amount payable for the Goods and/or Services calculated by Golding in accordance with the requirement of this Purchase Order Agreement. In this regard, Golding and the Supplier agree:

- (a) they are, and will remain, registered for GST until the discharge of all obligations under this clause 14.4;
- (b) the Goods and/Services under this Purchase Order Agreement are of the type for which a RCTI can be issued;
- (c) where Golding issues a RCTI under this clause 14.4, the Supplier will not issue a Tax Invoice for those Goods and/or Services; and
- (d) the Supplier and Golding will immediately notify the





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other if and when they cease to be registered for GST.

### 14.5. Payment

- (a) Golding must pay the amount specified in the valid Tax Invoice (as may be adjusted by any credit note contemplated in clause 14.3(b)) or RCTI (as applicable) on or before the day which is 1 month and 15 days of the end of the month in which the valid Tax Invoice for the correct amount was received by Golding or credit note contemplated in clause 14.3(b) was received by Golding or the RCTI was issued by Golding, except where Golding is required by law to pay within a shorter time frame or Golding agrees in writing to pay within a shorter time frame, then Golding must pay within that shorter time frame.
- (b) At any time, and from time to time, Golding may, by a further assessment, correct any error that has been discovered by Golding in any previous payment.
- (c) All payments by Golding are made on account. No payment of money by Golding under this clause 14 will be deemed evidence that any Goods and/or Services to which such payment relates are in accordance with this Purchase Order Agreement.

### 14.6. GST

- (a) Unless expressed to the contrary in the Purchase Order, all amounts payable in respect to this Purchase Order Agreement are exclusive of GST.
- (b) If any supply made under or in connection with this Purchase Order Agreement 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 this Purchase Order Agreement is the value of the Taxable Supply.

## 15. TERMINATION

### 15.1. Golding's 'no fault' termination right

- (a) Golding may at any time terminate this Purchase Order Agreement upon 10 Business Days' written notice to the Supplier if Golding reasonably considers termination is necessary to protect its legitimate business interests, including but not limited to, where the Goods and/or Services are no longer required, the relevant project (if any) is no longer viable, or a termination notice has been issued under the Head Contract (if any).
- (b) If Golding terminates this Purchase Order Agreement in accordance with clause 15.1(a), the Supplier may claim, and Golding must pay the Supplier, in accordance with clause 14:
  - (i) for Goods and/or Services supplied to Golding prior to the effective date of termination that have not been the subject of any Tax Invoice previously submitted to

Golding; and

- (ii) its reasonable, direct, mitigated and proven costs (excluding, for the avoidance of doubt, loss of profits) properly incurred by the Supplier as a direct result of such termination.
- (c) The Supplier agrees that the compensation payable to it in accordance with clause 15.1(b) is its sole remedy in connection with such termination of this Purchase Order Agreement. The Supplier hereby irrevocably releases Golding from liability for any other loss, damage, cost, liability or expense it may suffer of account of such a termination.

### 15.2. Termination by either party for breach or an Act of Insolvency

- (a) A party may terminate this Purchase Order Agreement with immediate effect by giving written notice to the other party if:
  - (i) the other party breaches a Material Term of this Purchase Order Agreement and either:
    - A. the breach is not capable of remedy; or
    - B. the breach is capable of remedy and the other party fails to remedy that breach within the period of time specified in a written breach notice requesting it to remedy the breach (which period must be a reasonable period of time given the circumstances, and must not, in any event, be less than 10 Business Days);
  - (ii) the other party repeatedly breaches any of the terms of this Purchase Order Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to comply with this Purchase Order Agreement; or
  - (iii) to the extent permitted by law, an Act of Insolvency occurs in relation to the other party.
- (d) For the purposes of clause 15.2(a)(i), a **Material Term** means a material term of this Purchase Order Agreement and includes:
  - (i) clause 4.1(a)(iv) (Goods and Services compliance with Legislative Requirements);
  - (ii) clause 4.1(b) (Supplier's compliance with Legislative Requirements);
  - (iii) clause 4.3(a) (delivery by the Due Date);
  - (iv) clause 4.5(a)(ii) (warranties associated with hired Goods);
  - (v) clause 6(a) (Safety and Environment);
  - (vi) clause 10(b) (labour hire);
  - (vii) clause 11 (Insurance); and
  - (viii) clause 14.5(a) (Golding's non-payment).

### 15.3. Consequences of termination

- (a) Upon any termination of this Purchase Order

Agreement, the Supplier must:

- (i) cease the delivery of any Goods that have not yet been delivered to the Delivery Place;
  - (ii) take all reasonable steps to mitigate any loss or damage it may suffer; and
  - (iii) comply with any reasonable directions issued by Golding for the safe and orderly hand-over of any:
    - A. Goods paid or to be paid for (other than hired Goods); and/or
    - B. Services it was performing prior to the termination.
- (b) Without limiting clause 15.3(a), if this Purchase Order Agreement includes hiring of Goods:
- (i) upon termination of this Purchase Order Agreement, Golding must, at its own cost, make the hired Goods available for pick-up and/or re-possession by the Supplier at the Delivery Place, unless the parties agree in writing to a different location; and
  - (ii) upon the later of the termination of this Purchase Order Agreement or the date Golding makes that Good available for pick-up and/or re-possession by the Supplier at the Delivery Place (or another location agreed by the parties), the Supplier assumes sole risk for any loss or damage to the hired Goods.
- (c) The termination of this Purchase Order Agreement does not affect any rights and entitlements that have accrued to a party prior to such termination.

**16. NOTIFICATION OF CLAIMS**

- (a) This clause 16 does not apply to any Claim which another clause of this Purchase Order Agreement specifies a time frame for giving notice to Golding.
- (b) If the Supplier considers it has any Claim against Golding under or in connection with this Purchase Order Agreement, the Supplier must provide Golding with a written Claim (including the legal basis for the Claim and the material facts upon which the Claim is based) within 20 Business Days of the first day on which it becomes or could have reasonably become aware of the material facts giving rise to that Claim.
- (c) The Supplier acknowledges that strict compliance with clause 16(b) is a condition precedent to the Supplier's entitlement to pursue the relevant Claim against Golding and, to the extent permitted by law, if the Supplier does not comply with clause 16, Golding will be released from the Claim.

**17. LIABILITY**

**17.1. Supplier's indemnities**

- (a) The Supplier indemnifies Golding from and against any cost, expense, loss, fine, penalty, damage, Claim (whether actual or threatened) or liability suffered or incurred by Golding, arising out of or in connection with:
  - (i) any personal injury, illness (including mental or psychological harm or illness) or death to any person; or
  - (ii) loss or damage to any property (regardless of who owns that property), caused by or contributed to by:
  - (iii) any breach of the Purchase Order Agreement by the Supplier; and/or
  - (iv) any act or omission, negligence, fraud, malicious or criminal act or omission of the Supplier or the Supplier's Personnel.
- (b) The indemnities in clause 17.1(a) are reduced proportionately to the extent that Golding's wrongful act or omission caused or contributed to the cost, expense, loss, fine, penalty, damage, Claim or liability.
- (c) In addition to the indemnities provided under clause 17.1(a), the Supplier indemnifies Golding from and against any cost, expense, loss, fine, penalty, damage, Claim (whether actual or threatened) or liability suffered or incurred by Golding, arising out of or in connection with:
  - (i) the Supplier's breach of clause 4.1 (Supplier's assurances);
  - (ii) the Supplier's breach of clause 11 (insurances);
  - (iii) if applicable, the Supplier's breach of clause 11 (labour hire);
  - (iv) the Supplier's breach of clause 19 (confidentiality);
  - (v) any actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with Golding's or the Principal's use of the Goods and/or Services in accordance with this Purchase Order Agreement or the exercise of Golding's or the Principal's rights under clause 18(a) in accordance with that clause;
  - (vi) any entitlements or benefits due and payable to the Supplier's Personnel associated with their employment or engagement by the Supplier (including but not limited to, claims for wages, salaries, any leave entitlements, superannuation, any monetary allowances and/or bonuses); and
  - (vii) any criminal act or fraud by the Supplier or the Supplier's Personnel.
- (d) Each indemnity given by the Supplier in this Purchase Order Agreement (whether in this clause 17 or elsewhere) is a continuing obligation, separate and independent from the other obligations of the Supplier and the other indemnities provided to Golding by the Supplier.



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### 17.2. Exclusion of certain consequential losses

- (a) Neither party will be liable to the other party for any:
- (i) loss of actual or anticipated profit, revenue or margin;
  - (ii) loss of any opportunity; and/or
  - (iii) damage to business reputation or credit rating,
- suffered or incurred by the other party under or in connection with this Purchase Order Agreement.

### 18. INTELLECTUAL PROPERTY RIGHTS

- (a) The Supplier grants, and must ensure that third parties grant, separately to each of Golding and the Principal, an irrevocable, royalty-free, non-exclusive, perpetual, transferable licence to use (and to sublicense as many times as each of Golding and the Principal may deem appropriate) all Intellectual Property Rights in any documents, designs, drawings, data, plans, manuals, reports or other deliverables supplied by the Supplier under this Purchase Order Agreement (**Deliverables**) for any purpose stated in the Purchase Order and/or related to Golding's or the Principal's business purposes (as applicable).
- (b) The Supplier warrants that:
- (i) Golding's and/or the Principal's use and/or resale of the Goods and/or Services, alone or in combination, according to the Supplier's specifications or recommendations, if any; and
  - (ii) Golding's and/or the Principal's use of the Deliverables in accordance with the licence granted under clause 18(a),
- will not infringe any Intellectual Property Rights, or moral rights arising under the *Copyright Act 1968* (Cth), of any person.

### 19. CONFIDENTIALITY

- (a) Each Recipient must:
- (i) keep the Discloser's Confidential Information confidential; and
  - (ii) not use or make a copy of the Discloser's Confidential Information, other than as contemplated by this Purchase Order Agreement.
- (b) Clause 19(a) does not apply to disclosures required by law (including listing rules of any applicable stock exchange), disclosures to suppliers, professional advisers, auditors, joint venture partners and related bodies corporate (provided that those parties are subject to duties of confidentiality) or, where Golding is the Recipient, disclosure to the Principal.
- (c) The Discloser may request that the Recipient take reasonable steps to destroy or erase the Discloser's Confidential Information that it holds, except the Recipient may retain copies of Confidential Information:

- (i) that are securely stored in archival or computer back-up systems;
- (ii) to meet legal or regulatory obligations, or
- (iii) in accordance with bona fide record retention policies,

subject to this clause 19.

- (d) Without limiting this clause 19, the Supplier must not make any announcement, take any photographs or disclose any information concerning this Purchase Order Agreement to any member of the public, press, business entity or official body without Golding's prior written approval.
- (e) Each Recipient must ensure its officers, employees, suppliers, subcontractors, consultants and agents comply with its obligations in this clause 19.

### 20. PRIVACY AND COMPUTER SYSTEMS

- (a) Where the Supplier collects, holds, uses or discloses Personal Information in connection with this Purchase Order Agreement, the Supplier must:
- (i) comply with Privacy Laws, including the Australian Privacy Principles and not collect, hold, use or disclose such Personal Information in a manner that will or is likely to result in Golding breaching its obligations under any Privacy Laws including any Australian Privacy Principle; and
  - (ii) handle all Personal Information in accordance with Golding's privacy policy (available at <https://www.golding.com.au/>) to the extent that policy is not inconsistent with the requirements of clause 20(a)(i).
- (b) In respect of any Personal Information the Supplier discloses to Golding, the Supplier warrants it has obtained the consent from each individual concerned to make the disclosure.
- (c) To the extent that the Supplier proposes to disclose any Personal Information provided to it by Golding to an any person that is based outside of Australia or carries on operations outside of Australia:
- (i) the Supplier acknowledges that Golding has not obtained any consent from persons to whom the Personal Information belongs for that disclosure to be made; and
  - (ii) the Supplier indemnifies, and must keep Golding indemnified against, any and all loss, damage, cost, expenses, fines and/or penalties that Golding suffers or incurs, in connection with any breach of the Privacy Laws (including Australian Privacy Principle 8) in relation to that disclosure by the Supplier.
- (d) To the extent the Supplier is given access to any computer systems used by Golding, the Supplier must have in place appropriate safeguards to prevent:



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- (i) any unauthorised access to those systems and databases;
  - (ii) the destruction, loss, corruption of any the systems (or the data on them); and
  - (iii) the introduction of any malicious code (including any virus, malware or trojan house) onto those systems.
- (e) The Supplier must notify Golding as soon as reasonably practicable if it becomes aware of a breach or a possible breach of any obligations under this clause 20, or of an 'eligible data breach' under the *Privacy Act 1988* (Cth) concerning information held by Golding and to which the Supplier has, or had, access to under this Purchase Order Agreement or otherwise.

### 21. TRUSTEE

- (a) If the Supplier has entered into this Purchase Order Agreement as trustee of a trust (**Trust**), the Supplier:
- (i) enters into this Purchase Order Agreement in its capacity as trustee;
  - (ii) warrants that:
    - A. the Trust is validly constituted and has not terminated, no action has been taken to wind up, terminate or resettle the trust, and no date or event has occurred for the vesting of the assets of the Trust;
    - B. it is the only trustee of the Trust and is not aware of any action to remove it as trustee of the Trust and will not take any action to resign as trustee before the completion of all obligations of the Supplier under this Purchase Order Agreement;
    - C. the trust deed of the Trust discloses all of the terms of the Trust;
    - D. it has power under the trust deed of the Trust to enter into and observe its obligations under this Purchase Order Agreement and has formed the view that it is prudent to enter into this Purchase Order Agreement;
    - E. it has in full force and effect the authorisations necessary to enter into this Purchase Order Agreement, perform obligations under this Purchase Order Agreement and allow this Purchase Order Agreement to be enforced;
    - F. it is not in material default under the trust deed of the Trust and is not aware of any action proposed to terminate the Trust;
    - G. the entry into and the performance of this Purchase Order Agreement is for the benefit of the beneficiaries of the Trust, whose consents (if necessary) have been obtained;

- H. it has a right to be indemnified fully out of the trust assets concerning all of the obligations and liabilities incurred by it under this Purchase Order Agreement, the assets of the Trust are sufficient to satisfy that right in full, and it has not released or disposed of its equitable lien over the assets of the Trust;
- I. it has disclosed to Golding full particulars of the Trust and of any other trust or fiduciary relationship affecting the assets of the Trust, and has given Golding a complete, up to date copy of the trust deed; and
- J. makes the warranties in this clause 21 on the date of this Purchase Order Agreement is formed and on the last Business Day of each month after that date.

- (b) If the Supplier has entered into this Purchase Order Agreement as trustee of a Trust, the Supplier must give Golding promptly on request:
- (i) any information concerning the financial condition (including the financial accounts), business, assets and affairs of the Trust that Golding reasonably requests; and
  - (ii) a statement from the duly appointed auditors of the Trust attesting to the solvency and financial soundness of the Trust and the trustee of the Trust.

### 22. GENERAL

#### 22.1. Subcontracting, assignment and novation

- (a) The Supplier must not subcontract, assign its rights or delegate its obligations under this Purchase Order Agreement or novate this Purchase Order Agreement without Golding's prior written approval (such approval not to be unreasonably withheld or delayed).
- (b) Notwithstanding any approval that Golding may provide to the Supplier to subcontract any of its obligations:
  - (i) to the extent permitted by law, the Supplier remains liable to Golding for any act or omission of its subcontractor(s) as if those acts or omission were committed by the Supplier itself; and
  - (ii) the Supplier must pay all of its suppliers and/or subcontractors all amounts due and payable to them on time.
- (c) Golding may assign its rights or delegate any obligation in respect of this Purchase Order Agreement or novate the Purchase Order Agreement to the Principal where it is obliged to do so under a contract or at law or to any other person with the financial capacity to perform Golding's obligations and the Supplier must execute any documentation reasonably provided to it by Golding to effect any assignment or novation.

#### 22.2. Notices

A notice required or authorised to be given or



served by a party under this Purchase Order Agreement may be given or served by email (where Golding is the sender, to any email address that has been used by the Supplier to communicate with Golding in connection with this Purchase Order Agreement, and where the Supplier is the sender, to Golding's Representative's email) and, in the absence of proof to the contrary, such notice is deemed to have been given or served on the other party on the date it is transmitted:

- (a) unless that day is not a Business Day or if the time of receipt is after 5.00pm (in Brisbane) in which case it will be deemed to have been served on the next Business Day; and
- (b) if the sending party does not receive an automated message in response to the effect that the email has not been delivered, is undeliverable or similar.

**22.3. Waiver**

- (a) The failure of a party at any time to require full or partial performance of any provision of this Purchase Order Agreement does not affect in any way the full right of that party to require that performance subsequently.
- (b) The waiver by any party of a breach of a provision of this Purchase Order Agreement 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.
- (c) Any waiver of a breach of this Purchase Order Agreement must be in writing signed by the party granting the waiver and is effective only to the extent specifically set out in that waiver.

**22.4. Governing law**

This Purchase Order Agreement is governed by and construed in accordance with the laws of the jurisdiction of the Delivery Place.

**22.5. Financial capability of a party**

At any time on request by the other party, a party must provide relevant documentation and take any other steps reasonably necessary to satisfy the other party that it has the financial capability to perform all its obligations under this Purchase Order Agreement.

**22.6. Invalid or unenforceable terms**

If all or any part of any provision is judged invalid or unenforceable in all the circumstances, it may be construed (or deleted if necessary) so as to be valid and enforceable to the greatest extent possible and does not affect the validity or enforceability of the remaining provisions.

**22.7. Joint and several liability of the Supplier**

If the Supplier consists of more than one person, the provisions of this Purchase Order Agreement will bind such persons jointly and each of them severally and the persons comprising the Supplier will be jointly and severally liable for the obligations assumed by the Supplier under this

Purchase Order Agreement.

**22.8. Survival of clauses after expiry or termination**

The obligations of the Supplier under clauses 4, 9, 11(a)(v), 14, 15, 16, 17, 18, 19, 20, 22 and 23 survive termination or completion of this Purchase Order Agreement.

**22.9. Relationship of the parties**

The parties agree that this Purchase Order Agreement is not to be construed as creating a partnership, association, employment or trust or other fiduciary relationship between the parties.

**22.10. Amending this Purchase Order Agreement**

No amendment or variation of this Purchase Order Agreement is valid or binding on a party unless made in writing and signed by Golding and the Supplier.

**22.11. Personal Properties Security Act**

For the purposes of the *Personal Property Security Act 2009* (Cth) (**PPSA**), to the extent that a "security interest" arises in respect of the Goods:

- (a) each party recognises that this Purchase Order Agreement is a "Security Agreement" relating to those Goods;
- (b) each party may register their interests in those Goods (and the proceeds arising in respect of any dealing in the Goods in accordance with the PPSA); and
- (c) both parties waive the right to receive any notice under the PPSA (including a notice of a verification statement), unless the notice cannot be excluded.

**23. DISPUTE RESOLUTION**

- (a) Before court proceedings other than for urgent interlocutory relief may be commenced, the steps in clauses 23(b) and 23(c) must be taken to attempt to resolve any dispute or difference that arises under or in relation to this Purchase Order Agreement.
- (b) If a dispute or difference under or in relation to this Purchase Order Agreement arises between Golding and the Supplier and one party requires it to be resolved, that party must promptly give the other party written notice identifying, and giving details of, the dispute or difference (**Notice of Dispute**).
- (c) Upon receipt of the Notice of Dispute, the parties' authorised representatives must attempt to resolve the dispute or difference within 30 days of the Notice of Dispute being issued.
- (d) If the dispute or difference the subject of a Notice of Dispute is not resolved by the parties' authorised representatives in accordance with clause 23(c), either party may refer the dispute to the Resolution Institute for facilitation of a mediation in accordance with the Resolution Institute's Mediation Rules.
- (e) Where a dispute is referred to mediation:
  - (i) the mediator will be agreed by the parties. If a mediator has not been agreed within 10

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Business Days of the referral to mediation, the mediator will be nominated by the Chair of the Queensland Chapter of the Resolution Institute;

- (ii) the mediation will be convened in Brisbane, Queensland; and
  - (iii) the parties will bear the costs of the mediator and any room hire costs in equal shares.
- (f) Despite the existence of a dispute, each party must continue to perform its obligations under this Purchase Order Agreement.

### 24. DEFINITIONS AND INTERPRETATION

#### 24.1. Definitions

In these Terms, except to the extent that the context otherwise requires:

**'Act of Insolvency'** means, in respect of a party:

- (a) that party informs the other party or its creditors generally that it is insolvent or financially unable to proceed with this Purchase Order Agreement;
- (b) if that party is an individual or partnership, it commits an act of bankruptcy, has a bankruptcy petition presented against it, or is made bankrupt; or
- (c) if that party is a corporation:
  - (i) the making of any application to the court, or the convening of a meeting, or the commencing any negotiations, for the purpose of implementing or agreeing: a moratorium of any debts of that party; any other assignment, composition or arrangement (formal or informal) with that party's creditors; or any arrangement by which the assets of that party are subjected conditionally or unconditionally to the control of that party's creditors or a trustee;
  - (ii) the entry into any agreement or other arrangement of the type referred to in this paragraph (i) above including a deed of company arrangement;
  - (iii) a receiver, receiver and manager, liquidator or provisional liquidator, controller or administrator (as defined in section 9 of the *Corporations Act 2001* (Cth)) is appointed to that party or any of its assets;
  - (iv) an application made to a court for its winding up is not stayed within 14 days;
  - (v) a winding up order is made;
- (d) that party is unable to pay its debts when they are due; or
- (e) anything analogous to or having a similar effect to an event listed in paragraphs (a) to (d) occurs;

**'Australian Privacy Principal'** has the same meaning given in the *Privacy Act 1988* (Cth);

**'Business Day'** means any day which is not a Saturday, Sunday or a public holiday at the Delivery

Place;

**'Claim'** means any claim, action, suit or demand in any jurisdiction, including under or in relation to this Purchase Order Agreement, any Goods and/or Services (or part thereof) or either party's conduct before the commencement of this Purchase Order Agreement, at law, in tort (including negligence), under statute, in equity (including quantum meruit, restitution or unjust enrichment), for rectification, frustration, damages or any other legal or equitable remedy;

**'Confidential Information'** means the Purchase Order and all information, in any form or medium (including copies of it and information derived from it), made available or disclosed by or on behalf of a party (**Discloser**) in connection with this Purchase Order Agreement to the other party (**Recipient**), including information of a technical, financial or commercial nature and information that in any way relates to the business of the Discloser or the Principal. Confidential Information does not include information:

- (a) in the public domain not by breach of this Purchase Order Agreement;
- (b) lawfully obtained by the Recipient from a third party other than through a breach of confidence;
- (c) independently developed by the Recipient; or
- (d) expressly indicated by the Discloser as not confidential.

**'COR Laws'** means laws relating to fatigue management, speed and mass, dimension and load restraint compliance requirements generally referred to as "Chain of Responsibility" laws or "Heavy Vehicle" laws;

**'COR Systems'** means policies, procedures, standards, training and systems designed to ensure, so far as is reasonably practicable, compliance in COR Laws;

**'Defect'** means any aspect of the Goods and/or Services that is not in accordance with this Purchase Order Agreement including any defect or fault, excluding any non-compliance of the Goods and/or Services with this Purchase Order Agreement that is not caused or contributed to by the Supplier or the Supplier's Personnel and **'Defective'** has a corresponding meaning;

**'Defects Liability Period'** means (as applicable):

- (a) in the case of Goods, 12 months from delivery of the Goods to the Delivery Place in accordance with this Purchase Order Agreement; and
- (b) in the case of Services, 12 months from date on which a Service is last performed;

**'Delivery Place'** means the place specified in the Purchase Order;

**'Discloser'** has the meaning given to that term in the definition of 'Confidential Information';

**'Due Date'** means the date specified in the Purchase Order, as may be extended in accordance with clause 13;

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

**'Golding's Representative'** means the person specified

as Golding's contact person in the Purchase Order;

**'Goods'** means the products, goods, items or similar to be delivered by the Supplier to Golding, as specified or referenced in the Purchase Order, including any services which are incidental to, or required for, the supply of the Goods by the Supplier, including fabrication, testing, customs arrangements and transportation, whether or not specified in the Purchase Order;

**'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);

**'Head Contract'** means, if applicable, the separate head contract or subcontract between Golding and the Principal under which Golding is required to perform certain work and for which the Goods and/or Services contribute either directly or indirectly to Golding's performance of such work;

**'Hire Period'** means, if the Purchase Order specifies that it pertains to 'hire' or 'hiring' of Goods, the period for which Golding's hire will commence and/or end as specified in the Purchase Order, or as otherwise agreed between the parties in writing;

**'Intellectual Property Rights'** 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 jurisdiction in which this Purchase Order Agreement will be performed;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations, bodies, authorities or similar having jurisdiction in connection with this Purchase Order Agreement;
- (c) fees and charges payable in connection with paragraphs (a) and (b); and
- (d) any Australian Standards applicable to the Goods and/or Services or any part thereof;

**'LHL Act'** means the *Labour Hire Licensing Act 2017* (Qld) or equivalent legislation in the jurisdiction of the Delivery Place if the Delivery Place is not in Queensland;

**'Personal Information'** means 'personal information' as defined in the Privacy Laws, and includes 'sensitive information' as defined in the Privacy Laws;

**'Principal'** means Golding's client in respect of a Golding project site;

**'Privacy Laws'** means the *Privacy Act 1988* (Cth) and all other laws, rules and regulations in Australia which relate to the privacy, protection, use or disclosure of Personal Information;

**'Purchase Order'** means a document titled "Purchase Order" issued by Golding to the Supplier, which bears a Purchase Order Number and includes a description of the Goods and/or Services, the Due Date and applicable rates or prices;

**'Purchase Order Agreement'** means the contract between Golding and the Supplier for the supply of the Goods and/or Services, comprising of the documents

referred to in clause 2(b);

**'Quote'** means the Quote submitted by the Supplier to Golding pursuant to Golding's RFQ Conditions of Tendering for the particular goods and/or services which are, in whole or in part, the subject of the Purchase Order;

**'RCTI'** means recipient created tax invoice as defined by the GST Law;

**'Recipient'** has the meaning given to that term in the definition of 'Confidential Information';

**'Related Bodies'** means, in respect of an entity, its 'related bodies corporate' as defined in the *Corporations Act 2001* (Cth);

**'RFQ Conditions of Tendering'** means the document entitled 'RFQ Conditions of Tendering' for the procurement of goods and/or services that are of a kind specified in the Purchase Order, issued by Golding to tenderers including the Supplier;

**'Services'** means any services which are to be performed by the Supplier, as specified or referred to in the Purchase Order, which may or may not include the supply of Goods, provision of the Supplier's Personnel to operate any Goods hired to Golding under this Purchase Order Agreement, repair and maintenance of any Goods hired to Golding under this Purchase Order Agreement and includes the delivery of all documents necessary to evidence the nature of the Services performed and that the Services have been performed and the carrying out of all things reasonably necessary to be carried out in order to perform the Services;

**'Special Conditions'** means any additional or amended terms and conditions applicable to the provision of the Goods and/or Services;

**'Special Condition Schedule'** means the document prepared by Golding that sets out the agreed Special Conditions;

**'Supplier'** means the party (other than Golding) specified in the Purchase Order;

**'Supplier's Personnel'** means the:

- (a) officers, employees, agents; and
- (b) suppliers, contractors and subcontractors (and their respective officers, employees and agents), engaged (directly or indirectly) by or on behalf of the Supplier to perform any part of the Supplier's obligations under this Purchase Order Agreement;

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

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

**'Terms'** means these 'Purchase Order Terms'; and

**'Variation'** means any change in the specification, quantity, quality or description of the Goods and/or Services (and includes the supply of substitute or equivalent goods or services in place of the Goods and/or Services) and **Vary** has a corresponding meaning. For the avoidance of doubt, any activity the Supplier is required to undertake pursuant to clause 4.1(b)(ii), clause

## PURCHASE ORDER TERMS

4.4 or clause 6(a)(i) does not constitute a Variation.

### 24.2. Interpretation

- (a) In this Purchase Order Agreement, except to the extent that the context otherwise requires:
- (i) a reference to a party includes the party's executors, administrators, successors and permitted assigns;
  - (ii) words importing the singular include the plural and vice versa unless the context otherwise requires;
  - (iii) references to 'A\$', 'dollar', '\$' or 'AUD' and to any amount not otherwise designated is to be construed as a reference to Australian currency;
  - (iv) clause headings are for convenience of reference only and do not affect the construction of this Purchase Order Agreement;
  - (v) a reference to a person includes a firm, body corporate or unincorporated association or authority;
  - (vi) 'includes' in any form is not a word of limitation;
  - (vii) the meaning ordinarily applied and understood in the industry relevant to the Goods and/or Services apply to any detail presented in a truncated or colloquial manner; and
  - (viii) any reference to time is to the time at the Delivery Place.
- (b) Nothing in this Purchase Order Agreement will be construed or interpreted against Golding or to Golding's disadvantage on the basis that Golding prepared or caused this Purchase Order Agreement to be prepared.