

Purchase Order Terms & Conditions

These Purchase Order Terms and Conditions "Contract" are issued by Aestec Services "the **Company**" to the supplier "Supplier" for the purchase of goods and/or services "**Services**". The Contract will be deemed to be accepted and apply from the earlier of the commencement of the Services, or issuance of a Purchase Order.

1. EVIDENCE OF CONTRACT

1.1. Entire Agreement

- This Purchase Order and terms and conditions within constitutes as a binding Contract between both parties.
- This Contract contains the entire agreement between the Company and the Supplier with respect to its subject matter and supersedes all prior communications and negotiations between the Company and the Supplier in this regard unless those communications expressly form part of the Contract.
- If during the provision of Services, the Supplier provides, refers to, submits, or otherwise uses terms and conditions other than those included in the Contract (including as part of the submission of an Invoice) such terms and conditions will not form part of, or be incorporated into, the Contract.

1.2. Amendment in Writing

- No amendment or variation of the Contract is valid or binding on a party unless made in writing and signed by the Supplier and the Company.

2. ACCURACY OF INFORMATION

2.1. No Representation by Company

- The Company has endeavoured and will continue to endeavour (without being obliged to do so) to ensure the accuracy of any information provided to, or obtained by, the Supplier or its personnel through a conducted site visit, a pre-bid conference or otherwise obtained by the Supplier or its personnel from the Company. However, the Company does not warrant or guarantee the accuracy, sufficiency or otherwise of such information and disclaims all responsibility for it. The parties acknowledge that any information so provided is for the convenience of the Supplier only and does not form part of the Contract unless otherwise expressly agreed by the parties in writing, and that any tender submitted by the Supplier and its subsequent execution and performance of the Contract is deemed to have been based on the Suppliers' own investigations and determinations.

2.2. Supplier Satisfied with Accuracy.

- The Supplier agrees that it has satisfied itself as to the accuracy of any information given to it at any time prior to the execution of the Contract and accepts full responsibility for any use by it of such information including, without limitation, responsibility for a conclusion drawn by it from such information.

2.3. Company Not Liable

- The Company is not liable for any liabilities incurred or suffered by the Supplier as a result of its reliance in any way upon any information given to it by the Company.

3. SUPPLIER'S WARRANTIES

In addition to any other warranties contained in this Contract, the Supplier warrants that:

- all of the Services will be provided in an efficient manner in accordance with all applicable legislation and laws or regulations.
- all of the Services will be of the highest standard and in accordance with the Company's specifications (where those specifications are made known to the Supplier) or in the absence of such specifications, in accordance with any applicable standards set by the Standards Association of Australia.
- in relation to the performance of the Services:

- the Supplier and its personnel will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of comparable work; and
 - any equipment used on-site by the Supplier will be in safe working condition, will comply with all legislation which is applicable to such equipment and will be operated by suitably qualified and competent personnel, to the satisfaction of the Company; and
- in relation to the provision of associated goods as part of the Services:
 - the associated goods will be of merchantable quality.
 - the associated goods will be free from defects in design, materials, and workmanship, and suitable for the relevant purpose of those associated goods.
 - it has good and marketable title to the associated goods and the Company will receive title to the associated goods free of any charge or encumbrance; and
 - it will obtain at its cost all usual trade warranties and any warranties specifically requested by the Company and that on completion of the Services it will assign the benefit of any such unexpired warranties to the Company including any warranties obtained from the Supplier's Subcontractors.
 - all information and materials forming part of the tender (if any) are true and correct in every respect and are not misleading or deceptive and the Supplier has not withheld from the Company any information concerning the Supplier, its experience or expertise which might reasonably be supposed to be material to the Company in determining whether or not to engage the Supplier at the Contract Price provided.

4. DEFECTS LIABILITY (12 MONTHS STANDARD)

4.1. Correction of Deficient Services

- Upon receipt of a notice from the Company during the provision of Services of any deficiency in the Services (except for a defect in any associated good, in respect of which Clauses 4.2, 4.3 and 4.4 apply), the Supplier must correct such deficiency (including by way of providing such additional services necessary to correct such deficiency) at no cost to the Company prior to the time specified in the notice.

4.2. Warranty

- The Supplier warrants each associated good against any defect which arises during the defect's liability period of 12 months.

4.3. Commencement of Defects Liability Period

- In respect of each associated good, the defects liability period of 12 months will commence on and from a date that associated good is accepted by the Company in writing.

4.4. Rectification of Defects

- Upon receipt of a notice from the Company of any defect in any associated good during the defect's liability period due to defective design, materials, workmanship, unmerchantable quality or unfitness for intended purpose, the affected items or parts must be redesigned, repaired, or replaced as appropriate by the Supplier at no cost to the Company prior to the expiration of the time specified in the notice.

5. DELIVERY TITLE AND RISK

5.1. Title

- Full unencumbered title to each associated good will pass to the Company upon the earlier of:
 - the Company making payment in full to the Supplier for that associated good; or
 - the associated good being delivered to the specified delivery point and (if applicable) inspected in accordance with Clause 9 and accepted by the Company.

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5.2. Risk

- a) Risk in each associated good will remain with the Supplier until its delivery to, and acceptance by the Company.

6. CONTRACT PRICE

- a) The Contract Price means the aggregate amount payable (excluding GST payable) by the Company to the Supplier in relation to the Services as outlined on the Contract (Front of Purchase Order).
- b) The Contract Price includes insurance, packaging, freight, duties, and all costs necessary to deliver the Services to the nominated destination by the due date unless otherwise instructed by the Company.
- c) The Contract Prices includes all management, administration costs, employee allowances, statutory costs, insurances, overhead and margin to be paid once approved by the Company to the Supplier.

7. PAYMENTS

7.1. Invoices

- a) Notwithstanding any other provision of the Contract, the Company is not obliged to pay any amount to the Supplier unless and until the Supplier issues a Tax Invoice / Adjustment Note, if required, in respect of that amount.
- b) The Supplier must, unless otherwise agreed with the Company, render an invoice to the Company in relation to the provision of the Services at the end of each month during the period in which the Services are provided and calculated by reference to the prices, or amounts specified on the Purchase Order.
- c) Invoices must be in a form acceptable to the Company and must contain the following information:
 - i. the number of the Purchase Order to which the invoice relates.
 - ii. a brief description of the Services provided in the period covered by the invoice.
 - iii. any further verification or documentation in relation to the invoice as is reasonably required by the Company.
 - iv. Purchase Order numbers must be displayed on all delivery dockets.
 - v. Separate invoices should be issued by the Supplier in respect of each Purchase Order received.

7.2. Deductions

The Company may:

- a) Deduct from any moneys due or becoming due to the Supplier pursuant to Clause 7.1 the following amounts (plus any GST in respect of such deductions payable in accordance with Clause 7.3):
 - i. all debts and moneys due from the Supplier or its personnel to the Company.
 - ii. all liabilities which the Company may have paid, suffered, or incurred and which or for which the Supplier or its personnel is or are liable to bear, pay or reimburse to the Company (including pursuant to any indemnity contained in the Contract); and
 - iii. the cost of remedying any performance of the Services, or defective or damaged associated goods below a standard acceptable to the Company; or
- b) without prejudice to the Company's rights pursuant to any other provision of the Contract, if the Supplier fails to perform any of its obligations under the Contract, without notice withhold payment of all or part of any amount payable to the Supplier under the Contract, until the matter has been remedied.

7.3. Deductions and Withholdings By Law

- a) If the Company is required by law to withhold or deduct any amount (Deducted Amount) from an amount payable under the Contract, the Deducted Amount will be treated as having been paid to the Supplier when it is withheld or deducted, and the Company will not be liable to pay any amount on account of the Deducted Amount to the Supplier.

- b) If the Company fails to withhold or deduct a Deducted Amount, the Company may:
 - i. give notice to the Supplier demanding payment of an amount equal to the Deducted Amount and the Supplier will pay that amount to the Company within 30 days of receiving the notice deduct an amount equal to the Deducted Amount from any amounts payable by the Company to the Supplier and the amount so deducted will be treated as having been paid to the Supplier when it is deducted, and the Company will not be liable to pay any amount on account of the Deducted Amount to the Supplier; or
 - ii. recover an amount equal to the Deducted Amount by a combination of a demand under Clause 7.3(b)(i) and deducting an amount under Clause 7.3(b)(ii),
 - iii. and in each case where the failure to withhold or deduct the Deducted Amount arises as a result of any act, omission or oversight of the Supplier, the Deducted Amount will include any fines, penalties, or interest payable by the Company in respect of the Deducted Amount.

7.4. Payment Services

- a) The Company must pay to the Supplier the amount shown on the invoice within 30 days of End of Month of receipt of the invoice.

8. NO MINIMUM PURCHASE OR EXCLUSIVITY

8.1. No Minimum Payments

- a) Nothing in the Contract obliges the Company to request or acquire any minimum level of Services from the Supplier.

8.2. No Exclusivity

- a) The Contract is not evidence of, nor does it create an exclusive relationship between the Company and the Supplier in respect of the Services (or any aspect of it).

9. INSPECTION

- a) The Company has the right to inspect any of the associated goods at any time to determine whether the associated goods are in accordance with the Contract and are to the standard provided for in the Contract.

10. HEALTH, SAFETY AND ENVIRONMENT

10.1. Supplier Acknowledgement

- a) The Supplier acknowledges that there is a direct relationship between the Supplier's health, safety and environmental performance and the success of the Company's business.

10.2. Compliance with Health, Safety and Environmental Laws, Policies, and Standards

The Supplier agrees to comply, and to ensure that its personnel comply, with:

- a) the Company's / site's health, safety and environmental policies and associated standards applicable from time to time (a copy can be provided on request to the Supplier) (HSE Policies and Standards).
- b) without limiting Clause 11, all relevant health, safety and environmental legislation and laws in force from time to time; and
- c) the health, safety and environmental conditions contained in this Clause 10.

11. LAWS

11.1. Compliance with laws

- a) During the provision of the Services, the Supplier must:

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- b) comply with all applicable legislation, laws and Government Agency requirements relating to its obligations under the Contract and ensure that each of its personnel does the same; and
 - i. in relation to the provision of the Services, at its cost;
 - ii. obtain all necessary notices;
 - iii. give all necessary notices;
 - iv. pay all necessary fees, deposits, and taxes, and, if requested by the Company, must provide evidence of the matters referred to in this Clause 11.1(b).

11.2. Modern Slavery

- a) The Supplier warrants to the Company that, to the best of its knowledge and following reasonable enquiries, it is not aware of any risks present in its operations and supply chains that may amount to Modern Slavery, or if it is so aware, it has taken appropriate action to mitigate, remediate and reduce those risks.
- b) The Supplier must:
 - i. ensure that in performing its obligations in connection with this Contract, the Supplier and its officers, employees, agents, and contractors comply with any policies or procedures of the Company relating to Modern Slavery;
 - ii. ensure that it does all things required or necessary to mitigate or reduce Modern Slavery risks in its operations and supply chains;
 - iii. promptly and accurately notify the Company if it becomes aware of any possible, potential, suspected or actual Modern Slavery occurring in the Supplier's organisation or supply chain; and
 - iv. cooperate in good faith with the Company in investigating any possible, potential, suspected or actual Modern Slavery within the Supplier's organisation or supply chain.

11.3. Consequences of Breach

Notwithstanding any other Clause of this Contract, in the event of any breach of this Clause 11, the Company may:

- a) require the Supplier, the Supplier's personnel, and/or any other person to leave the site immediately; and
- b) require the Supplier and/or any of its personnel to remove any material or substance from the site at the Supplier's cost,
- c) and the Supplier must, at its cost, ensure such request is immediately complied with and take all possible action to ensure the safety of all personnel.

12. FORCE MAJEURE

- a) A party will not be liable for any delay or failure to perform any of its obligations under the Contract (other than an obligation to pay money) if as soon as possible after the beginning of the Force Majeure affecting the ability of the Party to perform any of its obligations under the Contract, it gives a notice to the other party in writing.
- b) Force Majeure Event means: an industrial dispute of general application which are not particular to the affected party or its personnel and which are not limited to the site; cyclone, hurricane, flood, fire, or earthquake; or war, revolution, embargo, riot, act of terrorism, or civil disturbance, provided that the event or circumstance.
- c) is beyond the control of the party affected by that event or circumstance; prevents the performance by the affected party of any of its obligations under this Contract; and cannot be prevented, overcome, or remedied by the exercise by the affected party of a reasonable standard of care and diligence or the expenditure of a reasonable sum of money.

13. INSURANCES

13.1. Supplier Insurances

- a) The Supplier is required, at its cost, to effect and maintain through the term and any additional period specific in the Contract, each of the insurances described in Clauses 13.2, 13.3 and 13.4 in relation to risks or occurrences arising, or which may arise, out of the performance of the Contract.

13.2. General and Product Liability

- a) Insurance covering all Liabilities in respect of any injury to, or death of, any person not being a person who at the time of the occurrence is engaged in or upon the service of the insured under a contract of service or apprenticeship, or any loss, damage or destruction to any property not belonging to nor in the care, custody, or control of the insured, however caused. Such insurance must provide cover to an amount of not less than A\$20,000,000 for each and every claim.
- b) The insurance outlined in Clause 13.2(a) must, unless prohibited by law, be endorsed to:
 - i. ensure the Company and its personnel for their respective rights and interests arising out of the performance of the Contract.
 - ii. waive all express or implied rights of subrogation against the Company and its personnel arising out of the performance of the Contract.
 - iii. cover "goods in the physical and legal control of the Supplier" for an amount not less than the value of the "goods or service" performed, and.

13.3. Workers' Compensation and Employers' Liability Insurances

- a) Workers' compensation and employers' liability insurances covering all liabilities, whether arising under statute, common law, or civil law, in relation to the death of, or injury to, any employee of the Supplier or any person deemed to be an employee of the Supplier.
- b) The insurance outlined in Clause 13.3(a) must, unless prohibited by law, be endorsed to:
 - i. indemnify the Company against any liability which it may incur to the Supplier's employees, arising by virtue of the applicable workers' compensation statute or regulations or at common law.
 - ii. extend to include employees underground if any of the work under the Contract is to be performed underground; and
 - iii. provide cover in respect of each and every claim for an amount not less than the minimum statutory requirements.
- c) The insurance outlined in Clause 13.3(a) must, unless prohibited by law, waive all express or implied rights of subrogation against the Company and its personnel.

13.4. Supplier's Plant and Equipment

- a) If the performance of the Contract requires the Supplier to use or provide for use plant and equipment that will be used at the site in connection with the Contract, the Supplier must maintain or require the owner of such plant and equipment (except where the owner of such plant or equipment is the Company) to maintain insurance covering all loss and damage to the Supplier's plant and equipment, for its replacement value. The insurance must, unless prohibited by law, waive all express or implied rights of subrogation against the Company and its directors, officers, and employees.

13.5. Insurances Claims and Payment of Insurance Excess

- a) The Supplier will be responsible for the payment of any excess or deductible relating to the insurances effected by the Supplier and the Supplier will not be entitled to recover from the Company any excess or deductible so paid by the Supplier.
- b) The Supplier will be responsible for the payment of any excess or deductible relating to the insurances effected by the Supplier where the Company makes a claim under such policy, to the extent that the Company determines that the Supplier or any of its personnel were responsible for the loss or damage.

14. SUPPLIER DEFAULT

14.1. Supplier Default Notice

- a) If the Supplier breaches any term of the Contract, the Company may serve a notice of default (Supplier Default Notice) on the Supplier containing the information specified in Clause 14.2.

14.2. Supplier Default Notice Requirements

A Supplier Default Notice must:

- a) either require that the breach be remedied within a specified period of not less than 30 days after service of the Supplier Default Notice on the Supplier or state that the breach is incapable of remedy; and
- b) state that if the breach is not remedied within the period specified in the Supplier Default Notice or is incapable of remedy, then the Company may by further notice to the Supplier do one or more of the following:
 - i. elect wholly or partly to suspend payment under the Contract until the breach has been remedied by the Supplier.
 - ii. take such action as the Company deems necessary to cure the breach (the cost of such action so taken by the Company being recoverable from the Supplier as a debt due to the Company by the Supplier); or
- c) terminate the Contract or any part of it with effect from a specified date.

15. CONFIDENTIALITY

15.1. Obligation of Confidentiality

The Supplier undertakes and agrees:

- a) to hold in strict confidence all Confidential Information and not to disclose or permit or cause the Confidential Information to be disclosed to any person other than any of its personnel who require the Confidential Information for the purposes of providing the Services; and
- b) not to make use of the Confidential Information (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from the Confidential Information), except and solely to the extent necessary for the performance of the Services unless the Supplier has obtained the prior written consent of the Company to do so (which consent may be withheld by the Company in its discretion or given on such terms as it sees fit).

Confidential Information means:

- a) the terms of this Purchase Order; all information (in any form) relating to the Company made available to the Supplier at any time in connection with this Purchase Order or Contract; any information that concerns the business, operations, finances, plans, personnel or customers of the Company, which is disclosed to, or acquired by, the Supplier (including any information that is derived from such information); and includes the Company Data,

15.2. Breach of Consent

- a) The breach of any of the conditions contained in a consent granted pursuant to Clause 15.1 will be deemed to be a breach of the Contract.

15.3. Supplier Acknowledgment

- a) The supplier acknowledges that this Clause 15 is for the benefit of not only the Company but also any End User that has any interest in any Confidential Information.

16. COSTS

16.1. Each Party Bare Its Own Costs.

Each Party must bear its own costs arising out of:

- a) the negotiation, preparation, and execution of the Contract; and
- b) except as expressly provided otherwise in the Contract, any transaction contemplated by the Contract.

17. ASSIGNMENT AND SUBCONTRACTING

17.1. Consent Required

- a) The Supplier is not permitted to assign or sub-contract all or any part of the Contract without the prior written consent of the Company, such permission being at the Company's discretion and on whatever terms and conditions the Company may think appropriate, including requiring the proposed assignee or sub-contractor to be bound by any or all of the provisions of the Contract.

17.2. Obligations Survive Assignment or Sub-Contract.

- a) The Supplier acknowledges that no permitted assignment or sub-contract in any way relieves the Supplier from the performance of any of its obligations under the Contract.

17.3. Status of Subcontractor

- a) As between the Supplier and the Company, the Sub-contractor will be considered the agent and employee of the Supplier. For the purposes of the Contract, the acts and omissions of each subcontractor and its personnel will be deemed to be the acts and omissions of the Supplier.