

### **1. PURCHASE ORDERS**

(a) A Purchase Order comprises:

- (i) a document titled "Purchase Order" issued by Durack Civil Pty Ltd (DC) to the Supplier, which bears a Purchase Order Number and includes a description of the Goods and/or Services and applicable prices;
- (ii) any special conditions stated in the "Purchase Order" document;
- (iii) any attachments to the "Purchase Order" document;
- (iv) these Terms; and
- (v) if applicable, the Quote submitted by the Supplier to DC pursuant to DC's RFQ Conditions of Tendering for the particular Goods and/or Services which are, in whole or in part, the subject of the document titled "Purchase Order" referred to in clause 1(a)(i).

(b) In the case of any ambiguity or discrepancy, the documents comprising the Purchase Order have the order of precedence in which they are listed in clause 1(a).

(c) Despite clause 1(b), any reference by the Supplier to the Supplier's own or any other terms and conditions in the Quote or any other documentation presented by it in connection with the Goods and/or Services the subject of a Purchase Order, or incorporated by reference with any Purchase Order, will have no effect on the Purchase Order (even if the documentation is signed by a DC representative or attached to the Purchase Order).

(d) Subject to clause 1(e), a Purchase Order constitutes the entire agreement between DC and the Supplier in connection with the Goods and/or Services the subject of a Purchase Order and supersedes all previous communications in relation to it.

(e) Despite any other provision of a Purchase Order, if DC and the Supplier have executed another contract for the particular Goods and/or Services the subject of a Purchase Order, the other contract will apply and the only function of the Purchase Order is to provide the Supplier with a Purchase Order Number to include on its invoices in accordance with clause 12.

### **2. ACCEPTANCE OF PURCHASE ORDER**

(a) The Supplier must notify DC of any errors or discrepancies in the Purchase Order immediately and in any event within 3 Business Days of receipt of the Purchase Order.

(b) Subject to clause 2(c), performance of the Purchase Order or any part thereof constitutes acceptance of the Purchase Order by the Supplier.

(c) Where the Supplier submits a Quote pursuant to DC's RFQ Conditions of Tendering:

- (i) a legally binding contract between DC and the Supplier will be formed each time DC issues a document titled "Purchase Order", referred to in clause 1(a)(i); and
- (ii) DC may issue one or more documents titled "Purchase Order", referred to in clause 1(a)(i), for all or part of the Goods and/or Services, at any time and from time to time prior to the expiration of the Quote's validity period.

### **3. SUPPLY OF GOODS AND/OR SERVICES**

#### **3.1. Supplier's main obligations**

(a) The Supplier must ensure and warrants that the Goods and/or Services (as applicable):

- A. are delivered in strict accordance with the Purchase Order;
- B. conform to the specifications, drawings, samples or other description furnished by DC or the Supplier in connection with the Goods and/or Services;
- C. are fit and suitable for their intended purpose as reasonably inferred from the Purchase Order;
- D. comply with all applicable Legislative Requirements;
- E. in the case of the Goods:
- F. are new unless otherwise agreed, of good material and workmanship and free from defects or faults of any kind;
- G. are free of encumbrances and that the Supplier has good title to them; and
- H. are accompanied by relevant manufacturer quality certificates;
- I. are clearly marked with the Purchase Order Number, contents, Delivery Place and method of dispatch;
- J. are safely and securely packed to prevent the ingress of dust and moisture and reasonable impact damage, and to comply with all Legislative Requirements;
- K. are accompanied by any relevant material safety data sheet, instruction manual and warranty;
- L. are prepared for collection and/or transportation so as to comply with all Legislative Requirements;

(b) in the case of Services, are executed in an efficient manner to standards of skill and care normally exercised by qualified and experienced professional or trade persons in the performance of similar services; and

(c) to the extent a Service is design Service, the works being designed will be fit for their intended purpose as described in the Purchase Order.

(d) The Supplier must have and maintain a quality management system.

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(e) The Supplier must ensure DC and the Principal have the full benefit of any manufacturer's warranties that may be applicable to the Goods and/or Services (and the Supplier must pursue any manufacturer's warranties on behalf of DC or the Principal if DC so requests).

### **3.2 Acknowledgements**

(a) The Supplier acknowledges and agrees:

- (i) unless otherwise agreed 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 in accordance with DC's specifications detailed in the Purchase Order;
- (ii) if no specifications are included in the Purchase Order, the Supplier must consult with DC as to its requirements for the Goods and comply with any directions (written and oral) by DC; and
- (iii) substitute Goods will not be accepted without DC's prior written approval.

(b) The Supplier confirms that it has requested from DC and is in possession of all drawings, specifications and other documentation necessary to ensure compliance with DC's requirements for the Goods.

### **3.3 Delivery and time for performance**

(a) The Supplier must:

- (i) to the extent the Purchase Order relates to Goods, deliver the Goods to the Delivery Place on the Due Date. Unless otherwise specified, the Supplier must unload the Goods as directed by DC; and
- (ii) to the extent the Purchase Order relates to Services, perform the Services at the Delivery Place by the Due Date.

(b) The quantity of Goods delivered must not be greater than the amount specified in the Purchase Order or as subsequently varied by DC may return excess quantities to the Supplier at the Supplier's expense and risk.

(c) Signing of the Supplier's delivery documentation or other approval documentation by DC's nominated carrier or other representative does not constitute acceptance of the Goods and/or Services by DC.

### **3.4 Defective or non-conforming Goods and/or Services**

(a) Without limiting DC's rights under the Purchase Order or otherwise, if at any time DC discovers that the Goods and/or Services or any part thereof are defective or are not in accordance with the Purchase Order, DC may:

- (i) direct the Supplier to, at its cost, perform any necessary redesign, repair or replacement of the defective parts of the Goods, re-perform the Services, or take any other steps necessary to ensure that the Goods and/or Services comply with the requirements of the Purchase Order, within the time specified; or
- (ii) reject the Goods and/or Services or part thereof, by giving written notice to the Supplier.

(b) The Supplier will bear all costs associated with the return, replacement and/or rectification of the Goods and/or Services.

(c) If the Supplier fails to comply with a direction under clause (a)(i) within the required timeframe:

- (i) DC may take the necessary steps to ensure that the Goods and/or Services comply with the requirements of the Purchase Order (including engaging third parties to undertake the necessary steps) and its costs incurred will be a debt due and owing by the Supplier;
- (ii) if DC has paid the Supplier for the defective or nonconforming Goods and/or Services, the Supplier must repay DC the price for the Goods and/or Services rejected under clause 3.4(a)(ii); or
- (iii) if DC has not paid the Supplier for the defective or non-conforming Goods and/or Services, DC is not liable to pay the Supplier for the Goods and/or Services rejected under clause 3.4(a)(ii).

### **3.5. Hire of Goods**

(a) If the document titled "Purchase Order" referred to in clause 1(a)(i) specifies that all or part of the Goods are to be hired to DC:

- (i) title in the Goods or relevant part thereof does not pass to DC;
- (ii) the Supplier warrants that:
  - A. it has the legal right to hire the Goods or relevant part thereof to DC;
  - B. it will not encumber, or cause an encumbrance to be created over, the Goods or relevant part thereof during the Hire Period without DC's prior written approval, which will not be unreasonably withheld;
  - C. prior to the Goods or relevant part thereof being delivered to DC, the Goods have been maintained to the original manufacturer's specification; and
  - D. DC will have sole possession of the Goods or relevant part thereof for the Hire Period as bailee;
- (iii) the Supplier acknowledges the purpose for which the Goods or relevant part thereof are being hired by DC and the environment in which the Goods or relevant part thereof will be used; and
- (iv) the Supplier assumes the risk of, and will have no Claim against DC in relation to, any fair wear and tear to the Goods or relevant part thereof.

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### **3.6. Inspections and audits**

- (a) DC or any person authorised by DC must have all reasonable and unrestricted access to the premises of the Supplier and its subcontractors, at all reasonable times and without the need to give prior notice. Inspection is not to be deemed acceptance of the Goods and/or Services nor does it detract from DC's right to reject the Goods and/or Services if they are not in accordance with the Purchase Order.
- (b) DC may at any time audit the Supplier's quality management system. The Supplier must take all reasonable steps to comply with any audit by DC, including allowing DC or any person authorised by DC access to any location where the Supplier is performing the Purchase Order and to rectify any deficiencies in the system identified by DC at the Supplier's cost.

### **4. RISK AND TITLE**

- (a) The Supplier bears the risk in the Goods until they have been accepted in writing by DC.
- (b) Subject to clause 3.5(a), title in the Goods or part thereof passes to DC on payment for the Goods or relevant part thereof.

### **5. SAFETY AND ENVIRONMENT**

- (a) If the Supplier is required to perform any Services on DC's premises or the Principal's site, the Supplier must:
- (i) follow all lawful directions of DC and the Principal;
  - (ii) comply with any site, safety and environmental requirements of DC and the Principal 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;
  - (iii) comply with DC's plans, policies and guidelines as provided to the Supplier; and
  - (iv) comply with all Legislative Requirements.
- (b) Only approved vehicles may enter DC's premises or a Principal's site to perform the Services.
- (c) The Supplier must not deliver any Goods or perform Services on DC's premises or a Principal's site until access is given by DC to the Supplier for that purpose, unless prior written approval is given by DC.
- (d) If so requested, the Supplier must provide evidence satisfactory to DC of its compliance with this clause.

### **6. HEAVY VEHICLES**

To the extent heavy vehicles (as defined in the COR Laws) are used in the performance of the Purchase Order, 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 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 proactively provide reasonable assistance to DC to enable DC to satisfy its duties and responsibilities under COR Laws;
- (d) must obtain and maintain, and ensure that each of its personnel and subcontractors 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 requested by DC to demonstrate compliance with this clause; and
- (f) warrants that it is familiar with and has the capability and resources to comply with COR Laws and ensure that its personnel and subcontractors comply with all COR Laws.

### **7. CODES**

- (a) If identified as applicable in the Purchase Order or requested by DC, the Supplier must, and must ensure that its employees, agents, suppliers, contractors and subcontractors, comply with any code in the performance of the Purchase Order.
- (b) Without limiting its obligations under this clause, the Supplier must allow any person appointed as, or taken to be appointed as, an inspector for the purposes of any code or a relevant Legislative Requirement, access to:
- (i) any place at which the Purchase Order is being performed;
  - (ii) any documents relating to the Purchase Order; and
  - (iii) any personnel engaged for the Purchase Order, to monitor compliance with any applicable code or Legislative Requirement.

### **8. BUSINESS INTEGRITY**

- (a) In the performance of its obligations under the Purchase Order, the Supplier must:
- (i) comply and ensure its personnel comply with:

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A. all applicable anti-slavery and anti-corruption Legislative Requirements, including the Modern Slavery Act 2018 (Cth); Modern Slavery Act 2018 (NSW); Chapter 4, Division 7 of the Criminal Code Act 1995 (Cth); the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997; the United Nations Convention against Corruption 2003 and any broadly equivalent legislation that has the objective of preventing corruption or modern slavery and is applicable where the Supplier is registered or conducts its business;

B. DC's Business Integrity Requirements as notified by DC to the Supplier and as amended from time to time;

(ii) maintain records relating to the performance of its obligations under the Purchase Order to enable DC to determine the Supplier's compliance with this clause;

(iii) if required by DC at any time, sign a statutory declaration confirming its compliance with this clause;

(iv) promptly notify DC if it discovers or suspects any event or circumstance within its supply chain or involving the Supplier, its personnel or a related party that could give rise to an audit or investigation relating to an alleged breach of a Business Integrity Requirement;

(v) provide all reasonable assistance to DC in connection with any:

A. reporting required for DC or a related entity to comply with all applicable anti-slavery and anticorruption Legislative Requirements; and

B. audit or investigation to determine compliance with this clause 8 or to investigate an alleged breach of a Business Integrity Requirement.

(b) In this clause, "Business Integrity Requirements" means all applicable anti-slavery and anti-corruption Legislative Requirements and DC's Business Integrity Requirements.

### **9. INSURANCE**

(a) The Supplier must effect the following insurance policies before commencing performance of the Purchase Order and maintain such policies until the Supplier's obligations under the Purchase Order are fully discharged or in the case of insurance required under clause 9(a)(v) for a further 7 years:

(i) public and products liability insurance with a limit of at least \$20,000,000 per occurrence and which covers DC as an insured in respect of DC's vicarious liability for the acts and omissions of the Supplier, and, if applicable to the Services, covers liability arising out of the Supplier's use of aerial devices (including drones);

(ii) workers' compensation insurance as required by law;

(iii) risks typically insured against in respect of plant, equipment, tools, appliances or other property owned, rented or hired by the Supplier and used in relation to this Purchase Order (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; and

(v) if the Services performed by the Supplier include professional services, professional indemnity insurance with a limit of at least \$5,000,000.

(b) Within 2 Business Days of a request from DC, the Supplier must provide DC with evidence satisfactory to DC that the insurance policies required by clause 9(a) have been effected and maintained.

(c) If the Supplier fails to demonstrate to DC that it has complied with its insurance obligations under this clause 8, DC may, on behalf of the Supplier, take out the relevant insurance and pay the premiums for such insurance. Any costs incurred by DC in effecting and maintaining such insurance will be a debt due and owing from the Supplier to DC.

(d) Effecting or failing to effect the insurances required under this clause does not relieve the Supplier of its obligations or liabilities under these Terms.

### **10. VARIATIONS**

(a) DC may at any time increase, decrease or omit or change the character or quality of any part of the Goods and/or Services or part thereof, or vary the Delivery Place or Due Date by written direction (Variation).

(b) If the Supplier will incur additional costs to perform the Variation, the Supplier must notify DC's Representative within 5 Business Days of receipt of the Variation, failing which any Claim by the Supplier regarding the Variation will be barred. The Supplier must not proceed with the Variation unless and until any additional costs are approved in writing by DC.

(c) Variations will be valued according to the rates and prices in the Purchase Order, or if there is no applicable rate or price, according to reasonable rates and prices as determined by DC's Representative. The value of a Variation will be added to or deducted from the amount payable to the Supplier.

### **11. EXTENSION OF TIME AND SUSPENSION**

(a) If the Supplier is or may be delayed in performing the Purchase Order, by circumstances which could not



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reasonably have been foreseen by the Supplier and are beyond the Supplier's control, the Supplier must notify DC within 2 Business Days of becoming aware of such circumstances. DC may, on notification by the Supplier within the required time, but at DC's absolute discretion, extend the Due Date.

(b) If, owing to the failure of the Supplier to perform the Purchase Order by the Due Date, DC finds it necessary to make alternative arrangements for the supply of the Goods and/or Services, DC may immediately terminate the Purchase Order in whole or in part, in which case the Supplier will reimburse DC to the full extent of the amount by which the cost to DC of the alternative arrangements exceed the total cost to DC of the Purchase Order.

(c) DC may suspend the performance of the Purchase Order at any time on written notice to the Supplier.

(d) Except as provided in this clause, the Supplier will not be entitled to any Claim by reason of any delay or disruption to the performance of the Purchase Order.

### **12. PAYMENT**

(a) Unless otherwise stated in the Purchase Order, the prices and rates shown in the Purchase Order are firm and not subject to variation, rise and fall, escalation or review without DC's prior written approval.

(b) Unless stated otherwise in the 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 the Purchase Order.

(c) Subject to these Terms, DC 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 is to be paid by electronic funds transfer to the Supplier's nominated bank account.

(e) The Supplier may issue a Tax Invoice to DC for payment for the Goods and/or Services:

(i) provided that the Goods and/or Services have been accepted in writing by DC;

(ii) at the times specified in the Purchase Order (if any), or otherwise:

(iii) for Goods, after the Goods have been delivered to the Delivery Place; and

(iv) for Services, on the last Business Day of each month, for the Services performed to the 25th day of that month.

(f) A Tax Invoice will be valid only if it:

(i) is addressed to DC as follows:

ACCOUNTS PAYABLE

DURACK CIVIL PTY LTD

Level 1, 47 Watts Drive

VARSITY LAKES QLD 4227

Email: [accounts@durackcivil.com.au](mailto:accounts@durackcivil.com.au)

(ii) contains a valid Purchase Order Number;

(iii) contains a Tax Invoice number;

(iv) contains a Supplier name and ABN that matches the name of the Supplier and the ABN on the Purchase Order;

(v) includes a bank account, the bank account must match the bank account on DC's database;

(vi) identifies GST separately;

(vii) includes a description of the Goods and/or Services provided;

(viii) attaches a copy of DC's acceptance of the Goods and/or Services; and

(ix) is calculated using the rates and prices in the Purchase Order.

(g) DC may deduct or set-off from any monies due or becoming due to the Supplier:

(i) any and all costs, charges, damages and expenses which DC may have suffered, paid or incurred (or will be incurred) in connection with or arising out of the Goods and/or Services the subject of the Purchase Order for which the Supplier is or was liable; and

(ii) all debts owing by the Supplier to DC on any account whatsoever.

(h) If DC notifies the Supplier of a deduction or set-off under clause 12(g) or that it does not agree with the amount of a Tax Invoice issued by the Supplier, the Supplier must immediately retract its Tax Invoice and issue a replacement Tax Invoice which complies with clauses 12(c) and 12(f) in the amount directed by DC.

(i) If the Supplier does not issue a Tax Invoice to DC in accordance with clause 12(h), DC may issue a RCTI to the Supplier for the amount directed by it under clause 12(h). In this regard, DC and the Supplier agree:

(i) they are, and will remain, registered for GST until the discharge of all obligations under this clause;

(ii) the Goods and/Services under the Purchase Order are of the type for which a RCTI can be issued;

(iii) where DC issues a RCTI under this clause, the Supplier will not issue a Tax Invoice for those Goods and/or

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Services; and

(iv) the Supplier and DC will immediately notify the other if and when they cease to be registered for GST.

(j) Subject to the remainder of sub-clauses in this clause 12, if the Purchase Order is performed in:

(i) Queensland, the amount Tax Invoice or RCTI (as applicable) will be paid on or before the day which is 30 days of the end of the month in which a valid Tax Invoice for the correct amount was received by DC or the RCTI was issued by DC;

(ii) New South Wales, the amount of the Tax Invoice or RCTI (as applicable) will be paid on or before the day which is 30 days of the end of the month in which a valid Tax Invoice for the correct amount was received by DC or the RCTI was issued by DC;

(k) At any time, and from time to time, DC may, by a further assessment, correct any error that has been discovered by DC in any previous payment.

(l) All payments by DC are made on account. No payment of money by DC under this clause will be deemed evidence that any Goods and/or Services to which such payment relates have been delivered in accordance with the Purchase Order.

(m) Unless expressed to the contrary in the Purchase Order, all amounts payable in respect to the Purchase Order are exclusive of GST.

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

### **13. TERMINATION**

(a) DC may immediately terminate the Purchase Order, in whole or in part, by giving written notice to the Supplier if:

(i) DC has previously notified the Supplier of its breach of the Purchase Order and the Supplier has failed to rectify that breach;

(ii) in DC's opinion, the Supplier has committed a serious safety breach or is performing the Purchase Order in an unsafe manner;

(iii) the Supplier commits fraud or serious misconduct in the performance of the Purchase Order;

(iv) the Supplier fails or refuses to comply with any lawful directions given by DC or any person duly authorised by DC in connection with the Purchase Order;

(v) the Supplier commits a serious or persistent breach of any provision of the Purchase Order which is incapable

of being remedied to DC's reasonable satisfaction; or

(vi) for an Act of Insolvency.

(b) DC may terminate in whole or in part the unexecuted portion of this Purchase Order by written notice at any time for reasons other than those listed in clause 13(a) provided that DC pays the Supplier its reasonable, direct, mitigated and proven costs (excluding loss of profits) properly incurred by the Supplier as a result of such termination.

(c) If the Purchase Order is terminated under clause 13(a), DC will only be liable to pay the Supplier for any Goods and/or Services which have been accepted in writing by DC at the date of termination, subject to any right of set-off.

### **14. NOTIFICATION OF CLAIMS**

Subject to any other provision of these Terms which specifies a precondition to the Supplier making a Claim, DC will not be liable upon any Claim by the Supplier in respect of any matter arising under or in connection with the Purchase Order unless the Supplier gives DC written notice of the Claim, within 10 Business Days of when the Supplier should reasonably have become aware of the Claim.

### **15. LIABILITY**

(a) The Supplier agrees to indemnify and keep indemnified and hold harmless DC, its directors, officers and employees from and against all actions, proceedings, claims, suits, demands, costs and expenses, including fines and penalties, whatsoever in any way arising out of or in connection with the Purchase Order, howsoever caused, whether arising under contract, any statute or common law or in tort, incurred or suffered by DC relating to any of the following:

(i) any breach of the Purchase Order or a Legislative Requirement by the Supplier, its employees, agents, suppliers, contractors or subcontractors or any negligent act or omission of the Supplier, its employees, agents, suppliers, contractors or subcontractors;

(ii) any personal injury, illness or death to any person or loss or damage to any property or any other loss or damage caused or contributed to by the Supplier, its employees, agents, suppliers, contractors or

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subcontractors;

(iii) any Claim made against DC by any person or entity arising out of the use, misuse, malfunctioning or failure of the Goods supplied by the Supplier;

(iv) any fraud or wilful misconduct of the Supplier, its employees, agents, suppliers, contractors and subcontractors; and

(v) any fine or penalty imposed on DC for breach of any Legislative Requirement in connection with the Goods supplied by the Supplier.

(b) From the last date on which the Purchase Order is performed, the Supplier releases and discharges DC from all Claims the existence of which the Supplier should reasonably have known of, arising out of or in connection with the Purchase Order, except for any Claims notified by the Supplier in accordance with these Terms.

### **16. INTELLECTUAL PROPERTY**

(a) The Supplier will grant, and must ensure that third parties grant, an irrevocable, royalty-free, perpetual, transferable, sub-licensable licence to use all Intellectual Property in and arising out of the Goods and/or Services and any other deliverables provided to DC in connection with the Purchase Order for any purpose.

(b) The Supplier warrants that the Goods and/or Services, the deliverables provided to DC in connection with the Goods and/or Services and their use or resale, alone or in combination, according to the Supplier's specifications or recommendations, if any, will not infringe any Intellectual Property.

(c) The Supplier agrees to indemnify, and keep indemnified, DC against all Claims, judgments, liabilities, costs and expenses which result from or arise in connection with any actual or alleged infringement of Intellectual Property, or with a breach by the Supplier of its obligations under this clause.

### **17. CONFIDENTIALITY**

(a) The Supplier must keep Confidential Information confidential.

(b) Clause 17(a) does not apply to disclosures required by law, disclosures to suppliers, professional advisers, auditors, joint venture partners and related bodies corporate (provided that those parties are subject to duties of confidentiality) or disclosure of information already in the public domain through no breach of this clause.

(c) Without limiting this clause, the Supplier must not make any announcement, take any photographs or disclose any information concerning the Purchase Order to any member of the public, press, business entity or official body without DC's prior written approval.

(d) The Supplier must notify DC as soon as reasonably practicable if it becomes aware of a breach or a possible breach of any obligations under this clause 17, or of an 'eligible data breach' under the Privacy Act 1988 (Cth) concerning information held by DC and to which the Supplier has, or had, access to under this Purchase Order or otherwise.

(e) The Supplier must ensure its employees, agents, suppliers, contractors and subcontractors comply with the Supplier's obligations in this clause.

### **18. TRUSTEE**

(a) If the Supplier has entered into this Purchase Order as trustee of a trust (Trust), the Supplier:

(i) enters into this Purchase Order personally and in its capacity as trustee;

(ii) warrants that:

(iii) the Trust is validly constituted and has not terminated, no action has been taken to wind up, terminate or settle the trust, and no date or event has occurred for the vesting of the assets of the Trust;

(iv) 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;

(v) the trust deed of the Trust discloses all of the terms of the Trust;

(vi) it has power under the trust deed of the Trust to enter into and observe its obligations under this Purchase Order and has formed the view that it is prudent to enter into this Purchase Order;

(vii) it has in full force and effect the authorisations necessary to enter into this Purchase Order, perform obligations under this Purchase Order and allow this Purchase Order to be enforced;

(viii) 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;

(ix) the entry into and the performance of this Purchase Order is for the benefit of the beneficiaries of the Trust, whose consents (if necessary) have been obtained;

(x) 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, 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;

(xi) it has disclosed to DC full particulars of the Trust and of any other trust or fiduciary relationship affecting the assets of the Trust, and has given DC a complete, up to date copy of the Trust Deed; and

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- (xii) makes the warranties in this clause on the date of this Purchase Order is formed and on the last Business Day of each month after that date.
- (b) If the Supplier has entered into this Purchase Order as trustee of a Trust, the Supplier must give DC promptly on request:
- (i) any information concerning the financial condition (including the financial accounts), business, assets and affairs of the Trust that DC 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.

### **19. GENERAL**

- (a) The Supplier must not subcontract, assign its rights or delegate its obligations under the Purchase Order or novate this Purchase Order without DC's prior written approval.
- (b) DC may assign its rights or delegate any obligation in respect of this Purchase Order or novate the Purchase Order to the Principal or any other person without the Supplier's prior written approval and the Supplier agrees to execute any documentation to effect any assignment or novation at its own cost.
- (c) A notice required or authorised to be given or served by DC under the Purchase Order may be given or served by email (to any email address that has been used by the Supplier to communicate with DC) and, in the absence of proof to the contrary, such notice is deemed to have been given or served on the Supplier on the date it is transmitted:
- (i) 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
  - (ii) if DC does not receive an automated message in response to the effect that the email has not been delivered or that the intended recipient is "out of office" or similar.
- (d) The failure of a party at any time to require full or partial performance of any provision of the Purchase Order does not affect in any way the full right of that party to require that performance subsequently.
- (e) The waiver by any party of a breach of a provision of the Purchase Order 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.
- (f) Any waiver of a breach of the Purchase Order must be in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.
- (g) Purchase Orders are to be governed by and construed in accordance with the laws of the jurisdiction of the Delivery Place.
- (h) At any time on request by DC, the Supplier must provide relevant documentation and take any other steps reasonably necessary to satisfy DC that it has the financial capability to perform all its obligations under the Purchase Order.
- (i) 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.
- (j) If the Supplier consists of more than one person, the provisions of the Purchase Order 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 the Purchase Order.
- (k) The obligations of the Supplier under clauses 3, 8, 12, 13, 14, 15, 16, 17, 19 and 20 survive termination or completion of the Purchase Order.
- (l) The parties agree that the Purchase Order is not to be construed as creating a partnership, association, employment or trust or other fiduciary relationship between the parties.
- (m) No amendment or variation of the Purchase Order is valid or binding on a party unless made in writing and signed by all parties.
- (n) For the purposes of the Personal Property Security Act 2009 (Cth), to the extent that a "security interest" arises in respect of the Goods, the Supplier recognises that this is a "Security Agreement" relating to those Goods and that DC may register its interest in those Goods (and the proceeds arising in respect of any dealing in the Goods in accordance with the PPSA) and the Supplier waives the right to receive any notice under the PPSA (including a notice of a verification statement) unless the notice cannot be excluded.

### **20. DISPUTE RESOLUTION**

- (a) Before court proceedings other than for urgent interlocutory relief may be commenced, the steps in clauses 20(b) and 20(c) must be taken to attempt to resolve any dispute or difference that arises under or in relation to the Purchase Order.
- (b) If a dispute or difference under or in relation to the Purchase Order arises between DC 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' authorized representatives must attempt to resolve the



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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 20(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 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, the Supplier must continue to perform its obligations under this Purchase Order.

## 21. DEFINITIONS AND INTERPRETATION

### 21.1. Definitions

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

**'Act of Insolvency'** means, in respect to the Supplier:

(a) it informs DC or its creditors generally that it is insolvent or financially unable to proceed with the Purchase Order;

(b) if it is an individual or partnership, it commits an act of bankruptcy, has a bankruptcy petition presented against it, or is made bankrupt;

(c) if it is a corporation:

(i) a meeting of its creditors is called with a view to it entering a deed of company arrangement,

(ii) it enters into a deed of company arrangement with creditors;

(iii) a controller or administrator is appointed;

(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) it 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.

**'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 the Purchase Order, any Goods and/or Services (or part thereof) or either party's conduct before the Purchase Order, 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 DC in connection with the Purchase Order, including information of a technical, financial or commercial nature and information that in any way relates to DC's business;

**'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;

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

**'DC'** means Durack Civil Pty Ltd (ABN 33 154 911 609);

**'DC's Representative'** means the person specified as DC's contact person in the Purchase Order;

**'Goods'** means the products, goods, items or similar to be delivered by the Supplier to DC, 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);

**'Hire Period'** means the period for which the Goods will be hired to DC as specified in the document titled "Purchase Order" referred to in clause 1(a)(i);

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

**'Legislative Requirements'** includes:

(a) acts, regulations, by-laws, ordinances, orders, awards, local laws and proclamations of the jurisdiction in which the Purchase Order will be performed;

(b) certificates, licences, consents, permits, approvals and requirements of organisations, bodies, authorities or

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similar having jurisdiction in connection with the Purchase Order;

(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;

'**Purchase Order**' has the meaning in clause 1(a);

'**Principal**' means DC's client in respect of a DC project site.

'**Quote**' means the Quote submitted by the Supplier to DC pursuant to DC's RFQ Conditions of Tendering for the particular Goods and/or Services which are, in whole or in part, the subject of the document titled "Purchase Order" referred to in clause 1(a)(i).

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

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

'**Supplier**' means the party specified in the Purchase Order;

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

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

'**Terms**' means these 'Purchase Order Terms'.

### **21.2. Interpretation**

(a) In the Purchase Order, 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 the Purchase Order;

(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 the Purchase Order will be construed or interpreted against DC or to DC's disadvantage on the basis that DC prepared or caused the Purchase Order to be prepared.