



PACIFIC INDUSTRIAL COMPANY

PURCHASE ORDER TERMS AND CONDITIONS (SERVICES AND ASSOCIATED GOODS)

PIC agrees to purchase Services from the Supplier and the Supplier agrees to sell Services to PIC on these Terms and Conditions.

1. CONTRACT DOCUMENTS

The following documents (in the following order of precedence) constitute a legally binding contract between PIC and the Supplier and set out the terms and conditions of the purchase of the Services:

- (a) the Purchase Order;
- (b) the Special Conditions attached as Attachment D to the Purchase Order;
- (c) the Conditions;
- (d) the scope of Services attached as Attachment A to the Purchase Order;
- (e) the invoicing schedule attached as Attachment B to the Purchase Order; and
- (f) the program attached as Attachment C to the Purchase Order.

2. PRECEDENCE

- 2.1 In the event of any inconsistency between any of the terms of the Contract documents referred to in clause 1 the terms of the Contract document which is higher in precedence shall prevail.
- 2.2 The documents forming the Contract are to be taken as mutually explanatory of one another.

3. CONTRACT

- 3.1 The Contract comes into existence on the issue of the Purchase Order or PIC instructing the Supplier to supply the Services, irrespective of whether the Supplier returns a signed copy of the Purchase Order to PIC or expressly confirms its agreement of these Conditions.
- 3.2 To the extent the Supplier's terms and conditions are supplied to PIC, including with Goods or as printed on consignment notes or other documents (including quotations), those terms and conditions will be of no legal effect and will not constitute part of the Contract even if any of PIC's personnel signs those terms and conditions or annexes the terms and conditions to the Contract.

4. THE SERVICES

- 4.1 The quantity, quality and description of the Services are as stated in the Contract documents.
- 4.2 The Supplier must supply the Services in accordance with, and as specified in, the Contract.

5. TIME FOR PERFORMANCE

- 5.1 Time is of the essence in respect of all obligations of the Supplier under the Contract.
- 5.2 The Supplier must supply the Services, and deliver any Goods to the Delivery Address by the relevant Delivery Dates,
- 5.3 The Supplier must supply the Services by the relevant Delivery Dates.
- 5.4 The Supplier must immediately report to PIC any actual or likely delay in supply of the Services and its cause. The Supplier must take all reasonable steps to prevent delay.
- 5.5 If the parties agree to change the scope or specifications of any of the Services, the Price and any potential delay in the Delivery Dates for the Services will also be varied as agreed.

6. PACKAGING OF GOODS

- 6.1 The Supplier must
 - (a) suitably pack any Goods to avoid damage during loading, transit, delivery, unloading or storage;
 - (b) pack and transport any Goods in accordance with any applicable regulations and industry codes; and
 - (c) clearly mark all packages of Goods for delivery and the delivery documents for the Goods with the Contract number and any Purchase Order number and ensure that the delivery documents accompany the Goods to the Delivery Address.

7. INSPECTION AND SAMPLING

- 7.1 The Supplier must conduct all inspections and tests in strict accordance with requirements of the Purchase Order.
- 7.2 The Supplier must ensure that PIC has the opportunity to inspect, test, and witness any test of the Services wherever they may be located. The Supplier must provide or ensure that its suppliers provide unrestricted access to reasonable facilities necessary for PIC to carry out such inspections or witness such tests.
- 7.3 The Supplier is not relieved of any of its obligations under the Contract because PIC has inspected the Goods or witnessed any testing prior to delivery of Goods or supply of Services.
- 7.4 PIC must be entitled to reject Services that do not comply with the Specifications or the requirements of the Contract.
- 7.5 PIC is entitled to request samples of Goods or components of the Goods in connection with the supply or use of Goods, which must be supplied by the Supplier at its cost.

8. TECHNICAL MATERIAL

The Supplier must, without additional cost to PIC, supply all required plans, drawings, specifications, manuals, certificates, instructions, fabrication reports and the like in the form and at the times and in the numbers of copies specified in the Purchase Order or otherwise as reasonably required by PIC.

9. CANCELLATION

- 9.1 In addition to its rights under clause 16, PIC may cancel all or any part of the Contract at any time for any reason, in its sole and absolute discretion by written notice of cancellation to the Supplier.
- 9.2 Upon receipt of notice of cancellation the Supplier must:
 - (a) immediately cease performance of the Services to the extent specified in the cancellation notice;
 - (b) immediately take all possible action to mitigate any costs incurred by it as a result of the cancellation; and
 - (c) provide PIC with a detailed report in the form required by PIC in relation to the Services supplied prior to cancellation.
- 9.3 In the event of cancellation by PIC under this clause:
 - (a) the Supplier is entitled to payment for Services (not comprising Goods) supplied and Goods delivered to PIC prior to cancellation but not

already paid for;

- (b) if Goods have been shipped, but not delivered, at the time of cancellation PIC must either:
 - (i) accept those Goods when delivered, and pay the Price for them; or
 - (ii) return those Goods to the Supplier at PIC's expense;
- (c) if Goods have been manufactured or fabricated in accordance with the Specification (but not shipped) at the time of cancellation, PIC must pay costs reasonably incurred by the Supplier prior to the date of the cancellation which is directly attributable to the placing of the Purchase Order and which the Supplier is not able to recoup in some other way;
- (d) the Supplier is not entitled to the Price of Goods or to any compensation for that cancellation other than as specified in clauses 9.3(b) and (c);
- (e) the maximum compensation payable to the Supplier arising out of the cancellation must not exceed the Price of the relevant Services cancelled; and
- (f) the Supplier is not entitled to the Price or to any other compensation arising out of the cancellation other than as specified in this clause.

10. PRICE

- 10.1 The price for the Services is the price stated in the Purchase Order. Unless otherwise agreed and clearly stated in the Purchase Order the price stated on the Purchase Order excludes GST but includes any other applicable taxes, customs, excise and import duties, tariffs, fees, levies, charges, costs or expenses incurred by the Supplier, including transport, packing and insurance costs.
- 10.2 To the extent that PIC is required to reimburse the Supplier for costs incurred by the Supplier, those costs do not include any amount in respect of GST for which the Supplier is entitled to claim an Input Tax Credit under the GST Act.
- 10.3 To the extent that any Consideration (as defined in the GST Act) payable to the Supplier under the Contract is determined by reference to another amount, the GST exclusive amount of the other amount shall be used.
- 10.4 Unless otherwise agreed and clearly stated in the Purchase Order the Price is fixed and firm and not subject to adjustment due to currency fluctuation or any other reason.

11. PAYMENT

- 11.1 The Supplier must submit to PIC valid tax invoices in accordance with the invoicing schedule stated in the Purchase Order. Each such invoice must be correctly dated refer to the Purchase Order and, where relevant, the particular Services supplied.
- 11.2 Compliance by the Supplier with clause 11.1 is a condition precedent to the Supplier's entitlement to claim the amount stated in an invoice submitted by the Supplier to the Purchaser.
- 11.3 If the Supplier submits an invoice earlier than the time for submission of that invoice set out in the invoicing schedule, the Supplier agrees that the invoice shall not be taken to have been submitted until that time.
- 11.4 Save to the extent provided for in an invoicing schedule contained in the Purchase Order, PIC must not be liable to pay for the Services until the Services have been supplied in accordance with, and as specified in, the Contract.
- 11.5 If PIC requests, the Supplier must provide PIC with all relevant records to calculate and verify the amount set

out in any Supplier invoice.

- 11.6 Subject to clause 11.2, PIC shall pay the Supplier the amount claimed in an invoice within the time stated in the Purchase Order.
- 11.7 If PIC disputes any amount claimed in an invoice, PIC shall make a determination of the amount payable and provide a progress certificate to the Supplier:
 - (a) identifying the invoice to which the certificate relates;
 - (b) stating that determination, including, for each item of the invoice:
 - (i) the amount which is not disputed and therefore payable; and
 - (ii) if applicable, the amount which is disputed and the reason(s) it is disputed,
 within the time stated in the Purchase order; and
 - (c) pay the amounts not in disputed in accordance with clause 11.6.

11.8 Without limiting clause 11.7, PIC may issue a revised progress certificate at any time correcting any omission or error discovered in any previous progress certificate issued by it, including as a result of the provision of information under clause 11.5

11.9 PIC is not obliged to approve any invoice which is not submitted in accordance with the Contract, and may withhold approval and money due to the Supplier under the Contract if the Services do not comply with the Contract.

11.10 PIC may deduct from moneys due to the Supplier any money due from the Supplier to PIC otherwise than under the Contract.

11.11 Payment to the Supplier is on account only and does not constitute approval of the Services or any other matter or thing in respect of which payment is made.

12. DELIVERY

- 12.1 The Supplier must obtain all necessary permits and licenses which must be obtained in Supplier's name and are necessary for Supplier to perform its obligations under the Contract.
- 12.2 The Supplier must arrange for delivery of Goods to the Delivery Address.
- 12.3 The Supplier must, in providing the Services (including delivering Goods):
 - (a) not interfere with PIC's activities or the activities of any third party at the Delivery Address or at the Site; and
 - (b) comply with, and ensure that its Personnel comply with all lawful directions and orders given by or on behalf of PIC at the Delivery Address and/or at the Site.

13. TITLE AND RISK

- 13.1 Risk in Goods passes to PIC upon delivery to the Delivery Address.
- 13.2 Property in Goods passes to PIC upon delivery to the Delivery Address.

14. WARRANTIES

- 14.1 The Supplier represents and warrants that:
 - (a) the Services will be supplied in an efficient manner in accordance with all Legislative Requirements;
 - (b) the Services strictly comply with the Specifications;
 - (c) the Services are free from all Defects;

- (d) the Services do not infringe any IP Rights of third parties;
- (e) the Supplier will, and ensure its Personnel will, exercise the standards of diligence, due care and skill normally exercised by a prudent and similarly qualified and competent supplier supplying equivalent services;
- (f) the Services are fit for the purpose for which services of the same kind are commonly supplied and for any other purpose described in the Contract documents;
- (g) all Personnel are appropriately qualified, competent and skilled to perform the relevant part of the Services in respect of which they are engaged;
- (h) any equipment used on-Site by the Supplier will be in a safe working condition and comply with all Legislative Requirements and be operated by suitably qualified and competent Personnel;
- (i) all Goods match the description of the Goods in the Purchase Order and its attachments;
- (j) if the Supplier gave PIC a sample of Goods before PIC issued the Purchase Order, all Goods correspond with the sample;
- (k) all Goods are of new and of merchantable quality; and
- (l) all Goods are completely owned by the Supplier and will be supplied to PIC free of any third party interests, liens, charges or encumbrances.
- 14.2 The Supplier must immediately rectify or replace at PIC's option and at Supplier's sole cost any Defective Services discovered within 15 months after supply or 12 months after the Services are first used or enter into the service for which they are purchased, whichever occurs first.
- 14.3 If PIC reasonably considers that it is necessary to immediately rectify or replace Defective Services then PIC is not obliged to give the Supplier an opportunity to rectify or replace such Services before PIC does so or causes a third party to do so. The Supplier must reimburse PIC for the full cost of such replacement or rectification.
- 14.4 The Supplier's obligation to replace or rectify Defective Services is cumulative of other remedies available to PIC.
- 14.5 The Supplier must ensure that PIC has the full benefit of any manufacturer's warranties that may be applicable to the Services and the Supplier must pursue any manufacturer's warranties on PIC's behalf if PIC requests.
- 14.6 If the Supplier has replaced or rectified Defective Services, the rectified or replacement Services must be subject to the same warranty period as the original Services, from the date of rectification or replacement.
- 14.7 If PIC elects to accept Defective Services, such election does not bind PIC to accept any other Defective Services and does not affect any of PIC's other rights under the Contract in respect of those Replacement Services.
- 14.8 PIC may assign any or all of the above warranties to any of its clients or related companies and the Supplier consents to such assignment.
- 15. LIABILITY AND INDEMNITY**
- 15.1 The Supplier is liable for, indemnifies and will indemnify and keep PIC indemnified against all Loss, and hereby releases and will release PIC from any Action arising directly or indirectly from any breach of any warranty or obligation of the Supplier under the Contract, except to the extent caused or contributed to by any wrongful act or omission of PIC.
- 15.2 The rights and obligations under clauses 15, 16, 18 and 21 survive termination of the Contract.
- 16. DEFAULT AND TERMINATION**
- 16.1 The Contract may be terminated by PIC immediately on giving written notice of termination to the Supplier if the Supplier:
- (a) fails to remedy any breach of its obligations under the Contract within 7 days after receiving written notice from PIC requiring it to do so;
- (b) is unable to pay its debts when they fall due;
- (c) ceases to hold any licence, qualification, approval, authority or consent required to supply the Services;
- (d) threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvent administration;
- (e) enters into any negotiations for any arrangement or composition with its creditors;
- (f) being a company, goes into liquidation, whether voluntary or compulsory, or has a receiver or receiver and manager or administrator appointed, or an application is made for PIC to be wound up;
- (g) being an individual, has a trustee in bankruptcy appointed;
- (h) ceases or threatens to cease to carry on business; or
- (i) assigns or subcontracts the Contract or any part of the Supplier's obligations under the Contract without the prior written consent of PIC,
- in which case PIC's liability to the Supplier must be limited to payment of the Price for Services supplied prior to such termination.
- 16.2 Termination of the Contract does not affect or prejudice any rights of PIC which have accrued prior to the termination. PIC's exercise of its rights under this clause does not affect or limit its ability to exercise any other rights under the Contract, at law or in equity.
- 17. INSURANCE**
- 17.1 The Supplier must for as long as it has obligations outstanding in connection with the supply of the Services, effect and maintain:
- (a) all insurances specified in the Purchase Order; and
- (b) if no insurances are specified, appropriate insurance cover for all risks arising out of the performance of its obligations under the Contract.
- 17.2 The Supplier must, upon request, provide to PIC evidence satisfactory to PIC of such insurance. Compliance by the Supplier with this clause is a condition precedent to the Supplier being entitled to:
- (a) access to the Site;
- (b) make a claim for payment for the supply of the Services; or
- (c) payment for the supply of the Services.
- 18. PERSONNEL**
- PIC may object to any Personnel who, in PIC's reasonable opinion, does not have the appropriate qualifications, competency or skill to perform the relevant part of the Services in respect of which they are engaged or who engages in misconduct. The Supplier must remove and immediately replace such

Personnel with a suitable replacement upon being directed to do so by PIC.

19. SITE

19.1 This clause 19 applies to the extent the Supplier or Personnel are required to be on or in the vicinity of the Site.

19.2 The Supplier must:

- (a) comply, and ensure its Personnel comply, with all Legislative Requirements and all policies, standards, rules and procedures in force from time to time, including in relation to HSE;
- (b) submit and amend any HSE management plan(s) as reasonably required by PIC;
- (c) attend all induction courses as reasonably required by PIC;
- (d) permit PIC to have access to the Supplier's premises, documentation, data and Personnel as necessary to enable PIC to verify, monitor and audit the Supplier's compliance with this clause 19; and
- (e) give PIC not less than 7 days prior written notice before commencing Services on the Site.

19.3 The Supplier acknowledges that it must not have exclusive possession of any part of the Site and must only be granted access to the Site to the extent necessary for the performance of the Services. The Supplier must cooperate with other contractors and persons on the Site and coordinate its work with them.

20. INTELLECTUAL PROPERTY

20.1 The Supplier warrants that any design, equipment, methods of working and documentation including but not limited to specifications, drawings, reports and publications used or produced by the Supplier in connection with the Services must not infringe any IP Right.

20.2 PIC acknowledges that ownership of all IP Rights used or created under the Contract or in the provision of the Services is retained by the Supplier. The Supplier grants to PIC a non-exclusive, transferable, royalty free, irrevocable and perpetual licence to use such IP Rights for the purpose of PIC having the benefit of the Services.

20.3 The Supplier indemnifies PIC for all loss and expense incurred as a result of a breach of this clause.

21. APPORTIONMENT LEGISLATION

21.1 For the purposes of this clause:

- (a) "Apportionment Legislation" means any legislation under which an apportionment may be made, including but not limited to the *Civil Liability Act 2002 (WA)*; and
- (b) "apportionment" includes an apportionment of liability for damages, a limit on the amount of damages that may be awarded against a party or a determination of or judgment for the proportion of any damages which should be borne by a party.

21.2 The Parties agree that, to the extent not prohibited by law, the Supplier indemnifies PIC against any claim, demand, loss, expense or liability whatsoever arising out of or in connection with the Contract which is caused or contributed to by any Personnel of the Supplier and for which the Supplier would have been liable to PIC but for, or which PIC is not able to recover from the Supplier because of, any apportionment under any Apportionment Legislation.

22. SECURITY OF PAYMENT

22.1 The parties agree that for the purposes of any

adjudication under the Security of Payment Act in relation to the Contract or the Services:

- (a) the prescribed appointer shall be the Chairperson from time to time of the Institute of Arbitrators and Mediators in the State or Territory in which the Services are performed;
- (b) the amount set out in a certificate given by PIC under clause 11.7 is the amount of the 'progress payment' calculated in accordance with the terms of the Contract to which the Supplier is entitled; and
- (c) the date under clause 11.1 on which the Supplier must claim payment is the 'reference date'.

23. GENERAL

23.1

Entire Agreement: The Contract comprises the entire agreement between the Parties in respect of its subject matter and supersedes all prior agreements, quotation requests, understandings, representations, warranties, promises, statements, negotiations, letters and documents in respect of its subject matter. The Parties agree that there have been no representations made by or on behalf of PIC or conduct by or on behalf of PIC, whether made orally or in writing, which are not expressly included or referred to in the Contract documents which the Supplier has relied on in agreeing the Price.

23.2

Severance: If any provision of the Contract is determined to be void by any court then that determination does not affect any other provision of the Contract which otherwise remains in full force and effect.

23.3

Waiver: Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power, or remedy under any law or under the Contract by a Party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any law or under the Contract. A waiver given by a Party under the Contract is only effective and binding on that Party if it is given or confirmed in writing by that Party. No course of dealings between the Parties removes the requirement under this clause that a waiver must be in writing to be effective and binding upon the Parties. No waiver of a breach of a term of the Contract operates as a waiver of any other breach of that term or of a breach of any other term of the Contract. Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power, or remedy under any law or under the Contract by PIC does not preclude, or operate as an estoppel of any form of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any law or under the Contract.

23.4

Variations: An amendment or variation to the Contract is not effective unless it is in writing and signed by the Parties.

23.5

Assignment: The Supplier must not assign the Contract or any part of the Supplier's obligations under the Contract without the prior written consent of PIC, which must not be unreasonably withheld.

23.6

Subcontracting: The Supplier must not subcontract all or any of its obligations under the Contract without the prior written consent of PIC, which must not be unreasonably withheld.

23.7

Non-merger: The warranties, undertakings and indemnities in the Contract will continue in full force and effect until the respective rights and obligations of the Parties have been fully performed and satisfied.

23.8

Further Assurance: Each Party must do all things and execute all further documents necessary to give full effect to the Contract and the transactions provided for

by the Contract.

23.9 **Exclusion:** The operation of the Convention is expressly excluded.

23.10 **Governing Law:** The Contract is governed by, and is to be interpreted in accordance with the laws in force in the State or Territory in which the Services are performed and the Parties submit exclusively to the jurisdiction of the courts in that State or Territory.

24. DEFINITIONS

In these Conditions:

Action means any claim, action, suit, proceeding or demand.

Conditions means these terms and conditions of purchase including any additional Special Conditions.

Contract means the Purchase Order and the Conditions.

Convention means the United Nations Convention on Contracts for the International Sale of Goods, adopted at Vienna, Austria on 10 April 1980.

Defect means any aspect of the Services not in accordance with this Contract, or which is damaged, deficient, faulty, inadequate or incomplete in design, performance, workmanship, quality or makeup and **Defective** has an equivalent meaning.

Delivery Address means the address for delivery stated in the Purchase Order.

Delivery Dates means the dates for delivery of Services (including Goods) stated in the Purchase Order.

Goods means the goods specified in the Purchase Order including, without limitation, manuals, operating instructions, reports and drawings.

GST has the meaning given to that expressions in the *A New Tax System (Goods and Services Tax) Act 1999*.

HSE means health, safety and environment.

IP Rights means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and similar rights which may subsist or may hereafter subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registrable), rights in relation to registered or unregistered trademarks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers.

Legislative Requirements means any applicable statutes, regulations, by-laws, orders, awards, proclamations of the Commonwealth, certificates, licences, consents, permits, approvals, codes, standards and requirements of organisations.

Loss means any loss, damage, expense, payment or liability, whether direct or indirect, and includes consequential loss, damage or expense (including but not limited to loss of profit or revenue, loss of market or loss of contracts or damage to commercial reputation).

Party means PIC or the Supplier, and a reference to Parties is a reference to both of them.

Personnel means any person, consultant or subcontractor engaged by the Supplier to provide all or any part of the Services on behalf of the Supplier.

PIC means Pacific Industrial Company (WA) Pty Ltd ACN 008 895 154 as trustee for the Steelfab Unit Trust ABN 35 813 081 087.

Price has the meaning given in clause 10.1.

Purchase Order means the written order signed by or on behalf of PIC and accepted by the Supplier for the supply of the Services.

Security of Payment Act means:

- (a) if the law governing the Contract is the law of Western Australia, then the *Construction Contracts Act 2004* (WA);
- (b) if the law governing the Contract is the law of New South Wales, then the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (c) if the law governing the Contract is the law of Queensland, then the *Building and Construction Industry Payments Act 2004* (Qld);
- (d) if the law governing the Contract is the law of Tasmania, then the *Building and Construction Industry Security of Payment Act 2009* (Tas);
- (e) if the law governing the Contract is the law of the Northern Territory, then the *Construction Contracts (Security of Payments) Act 2004* (NT);
- (f) if the law governing the Contract is the law of Victoria, then the *Building and Construction Industry Security of Payment Act 2002* (Vic); or
- (g) if the law governing the Contract is the law of South Australia, then the *Building and Construction Industry Security of Payment Act 2009* (SA).

Services means the services specified in the Purchase Order and includes any associated Goods.

Site means the premises specified in the Purchase Order.

Special Conditions means the special terms and conditions set out in Appendix D to the Purchase Order.

Specifications means all codes, standards, drawings and specifications applicable to the Contract, referred to in the Contract documents or otherwise incorporated into the Contract by reference and to be complied with by the Supplier.

Supplier means the supplier of the Services specified in the Purchase Order.