

SERVICE ORDER STANDARD TERMS AND CONDITIONS

1. INTERPRETATION

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

'Act of Insolvency' is deemed to occur if the Supplier:

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

'Business Day' means any day which is not a Saturday or Sunday, a public holiday, nor a public holiday or 27, 28, 29, 30 or 31 December in any year at the Delivery Place;

'Code' means the *Building Code 2013* and the current version of any other State/Territory specific 'code' and each of their 'implementation guidelines' or similar applicable in the place where the Services are being performed;

'Contract' means:

- (a) these Standard Conditions;
- (b) the Purchase Order; and
- (c) any other documents referenced in (a) or (b),

and in the event of an inconsistency, the order of precedence above will apply;

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

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

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

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

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

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

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

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

'Legislative Requirements' includes:

- (d) acts, regulations, by-laws, ordinances, orders, awards, local laws and proclamations of the Commonwealth and the State or territory relating to the performance of Services; and

(e) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the performance of Services;

(f) fees and charges payable in connection with paragraphs (a) and (b);

'Party' or 'Parties' means Golding or/and the Supplier;

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

'Purchase Order' means the formal "Purchase Order" issued by Golding to the Supplier in relation to the Services;

'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;

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

'Supplier' means the person specified in the "Vendor Address" field of the Purchase Order;

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

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

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

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

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

2. ACCEPTANCE OF ORDER

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

2.2 If the Supplier is unable to or does not wish to fully comply with every aspect of the Contract, the Supplier must notify Golding's Representative in writing within 48 hours of receipt of the Purchase Order. Failure to notify within this time is deemed acceptance of the Contract by the Supplier.

2.3 Where the Parties have agreed upon and Golding has signed a negotiated contract in connection with the performance of the Services (whether before or after the Purchase Order is issued), the terms and conditions of that contract will apply.

2.4 Subject to clause 2.3, the Contract exclusively governs the relationship between the Parties in connection with the performance of the Services to the exclusion of any documentation, arrangement or terms and conditions, including those of the Supplier.

2.5 Upon acceptance of the Contract by the Supplier, the Supplier agrees to perform the Services for Golding by the Delivery Date and otherwise in accordance with this Contract.

3. PRICE

3.1 Subject to clause 3.2 and unless otherwise stated in the Purchase Order, the lump sum price or rates shown on the Purchase Order are firm in Australian Dollars and not subject to variation or rise and fall without Golding's prior written approval.

3.2 Unless stated otherwise on the Purchase Order, the lump sum price or rates shown in the Purchase Order are inclusive of everything required for or incidental to the performance of the Services by the Supplier, including but not limited to delivery, cartage and freight

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charges, wrapping and packaging costs, taxes (excluding GST), tariffs, duties, customs levies, excise, insurance, wharfage charges, storage charges and sales taxes, site visits, and any other statutory costs, personnel charges, impositions, charges or out-of-pocket or other expenses incurred in the performance of the Services for Golding.

4. VARIATIONS

4.1 Golding reserves the right at any time to vary the Contract by written direction. If a variation causes an increase or decrease in the lump sum price or rates shown on the Purchase Order (excluding loss of profits) or a change to the Delivery Place or Delivery Date, the Supplier must notify the Golding Representative within 5 Business Days of receipt of the variation.

4.2 If the Supplier does not notify Golding within the timeframe specified in clause 4.1, the Supplier will be obligated to perform the variation and will be barred from making any claim whatsoever against Golding in connection with the variation. If the Supplier notifies Golding under clause 4.1 within the required timeframe, the Supplier must not effect the variation until the Parties have negotiated an equitable adjustment to the lump sum price or rates shown on the Purchase Order or Delivery Date. If the Parties cannot agree on an equitable adjustment to the price or Delivery Date, Golding may exercise its rights under clause 16.2.

5. INVOICING & PAYMENT

5.1 Provided that the Services or the output of the Services have been accepted in writing by Golding, at any times specified in the Purchase Order (if any), or otherwise after the Services have been performed in full, the Supplier must send a valid Tax Invoice addressed to Golding to the following address:

*ACCOUNTS PAYABLE
GOLDING CONTRACTORS PTY LTD
PO BOX 1643
MILTON BC QLD 4064
Email: accounts@golding.com.au*

5.2 Golding is not obliged to pay any Tax Invoice that:

- (a) does not contain a valid Purchase Order number;
- (b) does not attach a copy of a delivery note/docket, timesheet or similar signed by Golding; and
- (c) is not for the price specified in the Purchase Order, and any such invoice will be returned to the Supplier unpaid.

5.3 Golding may deduct or set-off from any monies due or becoming due to the Supplier:

- (a) any and all costs, charges, damages and expenses which Golding may have suffered, paid or incurred in connection with or arising out of the subject of the Purchase Order for which the Supplier is or was liable but failed to pay plus a 10% mark up; and
- (b) all debts owing by the Supplier to Golding on any account whatsoever plus a 10% mark up,

5.4 If Golding notifies the Supplier of a deduction or set-off under clause 5.3 or that it does not agree with the amount of Tax Invoice issued by the Supplier, the Supplier must immediately retract its Tax Invoice and issue a replacement Tax Invoice which complies with clause 5.2 in the amount directed by Golding.

5.5 If the Supplier does not issue a Tax Invoice to Golding in accordance with clause 5.4, Golding may issue a RCTI to the Supplier for the amount directed by it under clause 5.4. In this regard, Golding and the Supplier agree:

- (a) they are, and will remain, registered for GST until the discharge of all obligations under this clause;
- (b) the Services being performed under the Contract are of the type for which a RCTI can be issued;
- (c) where Golding issues a RCTI under this clause, the Supplier will not issue a Tax Invoice for those Services; and
- (d) the Supplier and Golding will immediately notify the other if and when they cease to be registered for GST.

5.6 Subject to the remainder of subclauses in this clause 5, if the Services are performed in:

(a) Queensland, the amount Tax Invoice or RCTI (as applicable) will be paid on or before the day which is one (1) month and 15 days of the end of the month in which the Tax Invoice for the correct amount was received by Golding or the RCTI was issued by Golding;

(b) the Northern Territory, the amount of Tax Invoice or RCTI will be paid on or before the day which is:

- (i) one (1) month and 15 days of the end of the month in which the Tax Invoice for the correct amount was received by Golding or the RCTI was issued by Golding; or
- (ii) 50 days from receipt by Golding of the original Tax Invoice issued under clause 5.1,

whichever is the earlier; or

(c) New South Wales, the amount of the Tax Invoice or RCTI will be paid on or before the day which is:

- (i) one (1) month and 15 days of the end of the month in which the Tax Invoice for the correct amount was received by Golding or the RCTI was issued by Golding; or
- (ii) 30 Business Days from receipt by Golding of the original Tax Invoice issued under clause 5.1,

whichever is the earlier.

5.7 At any time, and from time to time, Golding may, by a further assessment, correct any error that has been discovered by Golding in any previous payment.

5.8 All payments by Golding are made on account. No payment of money by Golding under this clause will be deemed evidence that any Services to which such payment relates have been performed in accordance with the Contract.

6. ACCEPTANCE OF SERVICES

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

7. REQUIREMENTS FOR THE SERVICES

7.1 Unless otherwise agreed in writing, the Supplier is fully responsible for the performance of the Services in accordance with any requirements specified in the Purchase Order. If no requirements are included in the Purchase Order, the Supplier must comply with the directions (written and oral, whether given prior to or after the date of this Contract) of Golding in relation to the requirements for the Services or any requirements which a reasonable person would consider necessary for the Services.

7.2 Substitute Services will not be accepted without Golding's prior written approval.

7.3 The Supplier confirms that it has requested from Golding and is in possession of all drawings, specifications and other documentation or instructions necessary to ensure compliance Golding's requirements for the Services.

8. RISK AND TITLE

8.1 The Supplier is responsible for and accepts risks in the output of the Services until the Services have been accepted by Golding.

8.2 Without prejudice to Golding's right to return the Goods to the Supplier, title to any Goods (free of encumbrances and all other adverse interests and risk in the Goods), will pass to Golding on delivery of the Services to Golding, irrespective of whether payment has been made by Golding or not.

9. TIME FOR PERFORMANCE

9.1 Time is of the essence and the Supplier will ensure the Services are performed for Golding by the Delivery Date.

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

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

10. SERVICE PROVIDER'S WARRANTIES

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

10.2 The Supplier warrants that all Services performed pursuant to the Contract:

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

10.3 If it is discovered at any time after Golding has accepted the Services that any Services supplied by the Supplier are defective or faulty or do not conform to the requirements of, or specifications of, the Purchase Order or other requirements or instructions of Golding or other reasonable requirements then Golding, at its sole discretion, may reject or accept the Services or output of the Services, or require that any such Services be re-performed or any Goods or other output of the Services repaired or replaced, as the case may be, by the Supplier at the Supplier's cost. For clarity, all additional testing, calibrations, reports or support documentation that may be required by Golding for Services rework, will be performed by the Supplier at its cost.

11. INTELLECTUAL PROPERTY

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

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

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

12. QUALITY

12.1 At all times during the performance of the Services, the Supplier must:

- (a) have quality management system which is certified by an appropriate third party; and

- (b) perform the Services in accordance with that quality management system.

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

12.3 The Supplier acknowledges that the purpose of the Supplier having a quality management system is to assist the Supplier comply with its obligations under this Contract. Accordingly, compliance by the Supplier with its quality management system will not relieve the Supplier from any of its obligations under this Contract.

13. SAFETY AND ENVIRONMENT

13.1 If the Supplier is required to perform any Services on Golding's premises or sites, the Supplier must:

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

13.2 At the request of Golding, the Supplier must provide evidence satisfactory to Golding of its compliance with this clause.

14. INSURANCE

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

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

14.2 Within 24 hours of a request from Golding, the Supplier must provide Golding with evidence satisfactory to Golding that the insurance required by clause 14.1 has been effected and maintained.

15. INDEMNITY

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

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

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16. TERMINATION

- 16.1 Golding may immediately terminate, in whole or in part, the Contract by giving written notice to the Supplier:
- Golding has previously notified the Supplier its breach of Contract and the Supplier has failed to rectify that breach;
 - in the opinion of Golding, the Supplier has committed a serious safety breach or is performing the Services in an unsafe manner;
 - the Supplier commits fraud or serious misconduct in the performance of the Services;
 - if the Supplier fails or refuses to comply with any lawful directions given by Golding or any person duly authorised by Golding in connection with the performance of the Services;
 - if the Supplier commits a serious or persistent breach of any of the provisions of the Contract which is incapable of being remedied to the reasonable satisfaction of Golding; or
 - for an Act of Insolvency.
- 16.2 Golding may terminate in whole or in part the unexecuted portion of this Contract by written notice at any time for reasons other than those listed in clause 16.1 provided that Golding pays the Supplier for reasonable, direct, mitigated, proven costs (excluding loss of profits) properly incurred by the Supplier as a result of such termination.
- 16.3 If this Contract is terminated under clause 16.1, Golding will only be liable to pay the Supplier for the Services which have been accepted in writing by Golding at the date of termination, subject to any right of set-off under this Contract.

17. GST

- 17.1 Unless expressed to the contrary in the Purchase Order, all amounts payable under the Contract are exclusive of GST.
- 17.2 If any supply made under in connection with the Contract is a Taxable Supply then the recipient of that supply will pay the GST in respect of that supply to the supplier on the provision of a valid Tax Invoice, where the GST is calculated in accordance with the GST Law on the basis that the consideration otherwise payable under the Contract is the value of the Taxable Supply.

18. SUBCONTRACTING, ASSIGNMENT & NOVATION

- 18.1 The Supplier must not sub-contract, assign or novate any of its rights or obligations under the Contract without the prior written consent of Golding.
- 18.2 Golding may assign or novate, in whole or in part, its rights and obligations under the Contract without the prior written consent of the Supplier and the Supplier agrees to execute any documentation to effect any assignment or novation at its own cost.

19. NO WAIVER

- 19.1 The failure of a Party at any time to require full or partial performance of any provision of this Contract does not affect in any way the full right of that Party to require that performance subsequently.
- 19.2 The waiver by any Party of a breach of a provision of this Contract is not deemed a waiver of all or part of that provision or of any other provision or of the right of that Party to avail itself of its rights subsequently.
- 19.3 Any waiver of a breach of this Contract must be in writing signed by the Party granting the waiver, and is effective only to the extent specifically set out in that waiver.

20. THE CODE

- 20.1 If requested by Golding, the Supplier must, and must ensure that its employees, contractors and agents, comply with the Code in the performance of the Services.
- 20.2 The Supplier acknowledges that it has obtained its own copy of the Code.
- 20.3 The Supplier must not engage a contractor in relation to the performance of the Services unless they are compliant with the Code.
- 20.4 When requested by Golding, the Supplier must provide all information reasonably necessary to satisfy Golding of its compliance with this clause.

21. GENERAL

- 21.1 The Contract is to be governed by and construed in accordance with the laws of the State of Queensland.
- 21.2 The Supplier authorises Golding to access any of its sites, offices and documents at any time, whether prior to or after the Services have been accepted by Golding and will cooperate fully with Golding in this regard.
- 21.3 At any time during the performance of the Services, Golding may require the Supplier to demonstrate to Golding that it has the financial capacity to perform its obligations under the Contract. To this end, the Supplier will allow Golding or another person appointed by it to audit the financial capacity of the Supplier. In this regard, the Supplier must:
- comply with all reasonable requests of Golding or its appointee;
 - provide Golding or its appointee with the Supplier's financial records; and
 - allow Golding or its appointee to inspect any financial data kept by the Supplier.
- 21.4 Any term or condition being a whole clause or part of a clause which is invalid, unlawful, void or unenforceable and capable of severance without effecting any other term or condition in the Contract shall be severed or read down to whatever is reasonable in the circumstances.
- 21.5 Subject to clause 5, any notice, Tax Invoice or document given under the Contract shall be deemed to be sufficiently served, if it is posted by ordinary pre-paid post addressed to a Party at address for that Party specified in the Purchase Order and shall be deemed to have been received by that Party on the second Business Day following the date on which it was posted. Any notice, Tax Invoice or document given under the Contract is deemed sufficiently served if it is faxed or emailed to the facsimile number or email address for that Party specified in the Purchase Order. If served by facsimile or email transmission and transmitted by facsimile out of normal business hours (being 8:30am-5:00pm on a Business Day) then such notice, Tax Invoice or document shall be deemed to have been given on the Business Day which next follows the day of transmission. Otherwise, any notice, Tax Invoice or document will be deemed to be received at the time of actual receipt.
- 21.6 If the Supplier consists of more than one person, the provisions of the Contract 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 Contract.
- 21.7 This Contract expires once payment has been made in accordance with clause 5. The obligations of the Supplier under clauses 10, 11, 12, 14, 15, 16.2, 16.3, 18, 19, 20 and 21 will survive termination or completion of this Contract.
- 21.8 The Parties agree that the terms of the Contract are not to be construed as creating a partnership, association, employment or trust or other fiduciary relationship between the Parties.
- 21.9 No amendment or variation of this Contract is valid or binding on a Party unless made in writing and signed by all Parties.
- 21.10 Subject to anything else in this Contract and any prior communications between the Parties in relation to the quality requirements for the Services, the Parties agree that the Contract constitutes the entire agreement between the Parties in relation to the supply of the Services.
- 21.11 For the purposes of the *Personal Property Security Act 2009* (Cth), to the extent that a "security interest" arises in respect of the Services, the Supplier recognises that this is a "Security Agreement" relating to those Services and that Golding may register its interest in those Services.
- 21.12 Subject to the remainder of the terms of this Contract, the terms of this Contract contain the entire agreement between the Parties in connection with the supply of the Services, including any terms and conditions of, or proposed by, the Supplier.

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