

1. AGREEMENT TO SUPPLY GOODS

- 1.1 These Purchase Order Terms and Conditions shall apply to all Purchase Orders issued by the Purchaser. The Supplier, by its written acceptance of the Purchase Order or part performance of the Purchase Order, is deemed to have accepted all these terms and conditions in full. To the extent that the Supplier's terms and conditions are supplied with Goods or Services the subject of a Purchase Order, the Supplier's terms and conditions shall be of no legal effect and shall not constitute part of the agreement for supply and purchase of those Goods or Services. The Supplier agrees to supply the Goods or Services to the Purchaser in consideration for the Price.
- 1.2 In the event of any error, ambiguity, contradiction, inconsistency or discrepancy between any or all of the documents comprising the agreement, they shall be relied upon and interpreted in the following descending order of precedence, Purchase Order, Purchase Order Terms and Conditions, Schedule 1 Goods and Services, Schedule 2 Special Conditions, and Annexures (including specification and drawings).

2. DELIVERY

- 2.1 Unless indicated to the contrary on the Purchase Order, the Goods must be delivered to the Delivery Point on or before the Delivery Date specified in the Purchase Order.
- 2.2 The Supplier is to provide detailed delivery dockets with every shipment. The delivery docket must contain as a minimum, the following information – Purchaser's Order Number and order item number, date, Supplier's details (including the name and telephone number of the packer), quantity dispatched, item description and part number, whether or not the delivery is part only of total order and details of any items on back order.
- 2.3 All Goods shall be packed, marked and transported as specified in the Purchase Order, but if not specified then in a proper and suitable manner to prevent damage and deterioration during transit and storage. In the case of dangerous or hazardous Goods the Supplier shall provide the carrier with the relevant emergency procedure guidelines and dangerous or hazardous Goods shipping documents.
- 2.4 Supplier shall be liable for any difference in freight charges arising from its failure to follow any transport instructions in the Purchase Order or properly describe the Goods transported.
- 2.5 The Purchaser and Supplier shall assist each other in obtaining documents and other information necessary for the prosecution of loss or damage claims against carrier (if any).

3. RISK, TITLE AND PROPERTY

- (i) The title to, and property and risk in the Goods will not pass to the Purchaser until:
- (a) the Goods are delivered to, and accepted (subject to clause 4.) by the Purchaser at the relevant Delivery Point; or,
- (b) where the Goods are held by the Supplier at a particular place, until the Supplier issues the Goods to the Purchaser from the relevant place and Goods are, inspected by, and accepted by the Purchaser.
- (ii) Notwithstanding the above, title will pass to the Purchaser upon payment of the Price however risk will remain with the Supplier while the Goods remain in the possession of the Supplier.

4. INSPECTION

- 4.1 The Supplier agrees that the Purchaser, its client or their designated agents may enter upon the premises of the Supplier (or their suppliers/subcontractors) at any time for the purpose of inspection and expediting of all work on Goods or Services contained in the Purchase Order while in any stage of engineering, manufacture or installation. The Supplier shall make this a condition of any sub-contracted works.
- 4.2 The Purchaser or its designated agent may reject any work performed or being performed that does not conform with the Purchase Order, whereupon the work rejected shall be redone at no additional cost to the Purchaser.
- 4.3 Any inspection and expediting done by the Purchaser or its designated agent shall not relieve the Supplier of any obligations contained in the Purchase Order, or these Terms and Conditions.
- 4.4 The Purchaser shall not be deemed to have accepted the Goods unless and until:
- (i) the Purchaser has had a reasonable opportunity of examining the Goods for the purpose of ascertaining whether they are in conformity with the Purchase order; and,
- (ii) the Purchaser notifies the Supplier that the Purchaser has accepted the Goods.
- 4.5 Signed Delivery documents shall not mean acceptance by the Purchaser of the Goods delivered but only of the number of packages or cartons delivered. Any monies paid by the Purchaser to the Supplier prior to inspection of the Goods shall be deemed to have been paid conditional upon, and subject to, the Goods being complete, free of any defects and to the complete satisfaction of the Purchaser, following inspection by it.

- 4.6 Acceptance by the Purchaser of any specimens, samples, moulds, templates, materials or the like shall not constitute acceptance of the final Goods.
- 4.7 The Purchaser will promptly after inspection notify the Supplier of any defects in or damage to the Goods and hold any Goods found to be defective or damaged ("Defective Goods") for the Supplier's instructions and at the Supplier's risk for a reasonable period not exceeding thirty (30) days. If the Supplier's instructions are not received by the Purchaser within such a period, the Purchaser may:
- (i) return the Goods or the Defective Goods (at the Purchaser's discretion) to the Supplier's premises at the Supplier's expense and risk, and any expense incurred by the Purchaser by such return:
 - (a) will be payable forthwith by the Supplier;
 - (b) shall constitute a debt due and payable to the Purchaser recoverable by the Purchaser in a court of competent jurisdiction; and
 - (c) may be set off by the Purchaser (pursuant to clause 6.4 or otherwise) against any moneys otherwise due by the Purchaser to the Supplier or recovered by the Purchaser.
 - (ii) sell the Goods or the Defective Goods (at the Purchaser's discretion) on behalf of the Supplier and forward the proceeds of the sale, after making due deductions for the Purchaser's costs in effecting the sale, to the Supplier; or
 - (iii) at the Purchaser's election, undertake a combination of (a) and (b) in the proportion determined by the Purchaser.
- 4.8 Notwithstanding clause 3 of these terms and conditions, in the case of defective or damaged Goods to which clause 4.7 applies:
- (i) acceptance and ownership of and title to the Goods will not pass to the Purchaser;
 - (ii) the Purchaser shall be under no liability to accept or to pay for the Goods or their costs of delivery;
 - (iii) risk in respect of those Goods shall remain with the Supplier; and
 - (iv) the Purchaser reserves the right to make a claim against the Supplier in respect of any such Goods.
- 5. PRICE**
- 5.1 The Purchaser agrees to pay the Price specified in the Purchase Order for the full and proper supply of the Goods or Services the subject of the Purchase Order.
- 5.2 Unless otherwise provided in the Purchase Order, the Price is not subject to rise and fall.
- 5.3 The Price is payable in Australian Dollars unless otherwise provided in the Purchase Order.
- 5.4 Payment of the Price by the Purchaser is subject to receipt of the Goods in good order and on the basis that conditions precedent to payment in clauses 4.4, 6.1 and 8, have been complied with.
- 5.5 The Price is deemed to be fully inclusive of all Delivery, Taxes, insurance, packaging and transport costs unless otherwise specifically stated in the Purchase Order.
- 6. PAYMENT AND DEDUCTIONS**
- 6.1 The Supplier shall submit its tax invoice or credit note in respect of the delivered Goods or Services, which shows the quantity of Goods or Services supplied, the Price applying to those Goods or Services and the Order Number. The tax invoice must show units of measure and Price consistent with the Purchase Order.
- 6.2 All invoices are to be forwarded to the address set out in the Purchase Order or such other address as may be notified to the Supplier by the Purchaser.
- 6.3 Subject to clause 6.5, the Purchaser shall pay the amount properly invoiced by the Supplier (except to the extent that the invoice is in dispute) within sixty (60) days from the end of the month in which the invoice is submitted, unless other payment terms have been agreed between the Purchaser and the Supplier and specifically notated in the Purchase Order.
- 6.4 In addition to any other rights that it may have under these terms and conditions or otherwise, the Purchaser may deduct from any monies due or that become due to the Supplier:
- (i) all costs, damages and expenses which the Purchaser may have paid for or incurred or is likely to incur in connection with the supply of Goods or Services for which the Supplier is liable and which remain unpaid by the Supplier; and
 - (ii) all debts owed by the Supplier to the Purchaser and which remain unpaid on any account whatsoever.
- 6.5 The Purchaser shall be entitled to return to the Supplier unpaid any invoice that fails to contain the information described in clause 6.1 and the Supplier must submit a replacement invoice in accordance with clause 6.1.
- 6.6 If the amount of GST recovered by the Supplier from the Purchaser differs from the amount of GST payable at law by the Purchaser in respect of the supply, the relevant price payable by the Purchaser will be adjusted accordingly.
- 6.7 Immediately upon becoming aware, the Supplier must advise the Purchaser if any import duty excise, or other similar tax or charge, is

or may become payable on the Goods or Services. The Supplier shall render all assistance necessary to enable the Purchaser to procure an exemption certificate, applicable to the Purchase Order or Goods.

- 6.8 The Supplier must provide any further information or documentation stipulated in any applicable GST legislation or regulation, or by the Purchaser, so that the Purchaser will receive the benefit of any input tax credit in relation to the supply under the Purchase Order.

6A SECURITY

6A.1 If **required** by the Purchaser, the Supplier shall provide Security to the Purchaser in an amount equal to 10% of the Price or such other amount as provided by the Purchase Order. Any and all costs associated with the provision of the Security shall be deemed to be included in the Price. The Purchaser reserves the right to retain the security in the form of cash.

6A.2 The **Purchaser** may have recourse to the Security whenever the Purchaser claims to be entitled to the payment of monies by the Supplier under this Purchase Order or otherwise.

6A.3 Subject to any other provision of the Purchase Order within the later of

- (i) fourteen (14) days of **acceptance** of the Goods and Services by the Purchaser; or
- (ii) where the Supply applies to Works that require a Defects Liability Period, the end of that Defects Liability Period, the Purchaser will release the Security.

7. CONFIDENTIAL INFORMATION

7.1 The Supplier must:

- (i) keep confidential all information relating to the Goods and Services;
- (ii) ensure that each of its officers, employees suppliers and subcontractors comply with the terms of clause 7.1 (a).

7.2 The Supplier is obliged to keep confidential any information unless:

- (i) it is otherwise in the public domain through no default of the Supplier; or
- (ii) the disclosure is:
 - (a) strictly and necessarily required for the performance of the Purchase Order;
 - (b) in connection with legal proceedings relating to the Purchase Order; or
 - (c) given with the written consent of the Purchaser.

7.3 The obligations of this clause shall survive termination of the Purchase Order.

7.4 Details of the Agreement and all information provided by the Purchaser are confidential, and except to the extent that disclosure of such details or information is:

- (i) required by law (except that any such requirement will not be construed to permit disclosure of any information under section 275(4) of the PPSA unless section 275(7) of the PPSA applies); or
- (ii) made to a person (including a Secondary Subcontractor) for the purpose of enabling that person to perform Work under the Contract or to provide professional advice in relation to the Contract or the Work under the Contract (subject to that person being bound by confidentiality undertakings no less favourable to the Purchaser than this clause 7,
- (iii) the Supplier must not disclose such details or information to a third party without the prior written consent of the Purchaser. This obligation will survive the completion of the Agreement and any termination of the Agreement and will stay in effect and be enforceable by the Purchaser and where relevant the Principal for a period of 5 years from the date of such completion or termination.

7.5 The Supplier must not issue for publication any information concerning the Works, the Contract or the Project in any media without the written consent of the Purchaser. The Supplier must refer to the Purchaser any enquires from any media concerning those things.

8. INFORMATION

8.1 During the manufacture of the Goods or provision of the Services the Supplier must provide to the Purchaser, all drawings, manufacturing data, progress reports, test certificates, QA data and the like to ascertain the quality and progress of the work.

8.2 The Supplier must provide to the Purchaser at the Delivery Point at the time of Delivery such other information as may be required by law and/or requested by the Purchaser, including but not limited to material data sheets, material safety data, test certificates, heat certificates and the like.

8.3 The provision of all required documentation is a condition precedent to payment and all costs associated with providing the documentation are deemed to have been included in the Purchase Price.

9. SUPPLIER'S WARRANTIES

9.1 The Supplier represents and warrants to the Purchaser that where the Purchase Order relates to Goods:

- (i) it has the right to sell the Goods to the Purchaser on these terms and conditions and, subject to clause 4, upon payment of the Price (whether in part or in full) or Delivery (whichever is the earliest to occur) the Purchaser will have good title to the Goods, free and clear of all liens, encumbrances and restrictions;
- (ii) the Goods delivered to the Purchaser will correspond in all respects with the Specification and the representations made by the Supplier and any sample provided by or on behalf of the Supplier.
- (iii) the Purchaser shall have the full benefit of any manufacturer's warranties that may be applicable to the Goods or any part of the Goods.
- (iv) the Goods will be free from defects in design and workmanship;
- (v) the Goods will be fit for purpose and safe for purpose,
- (vi) the Goods will meet any other standards specified by the Purchaser; and,
- (vii) the Goods will comply with all laws, by-laws, statutes, regulations and standards in force in the jurisdiction in which they are supplied.
- 9.2 The Supplier represents and warrants to the Purchaser that where the Purchase Order relates to Services that the Services;
- (i) will correspond in all respects with the Specification and the representations made by the Supplier;
- (ii) will be performed with due care and diligence;
- (iii) will be fit for purpose and safe for purpose,
- (iv) will meet any other standards specified by the Purchaser; and,
- (v) will comply with all laws, by-laws, statutes, regulations and standards in force in the jurisdiction in which they are supplied.
- 9.3 Where the Supplier repairs or replaces any Goods pursuant to any warranty, the Supplier shall bear all the costs occasioned thereby including removal and transportation costs of the Goods from and return to the Purchaser's premises, labour costs and the costs of replacing or providing new parts for the Goods.
- 9.4 If the Supplier fails to repair or replace any Goods pursuant to any warranty within a reasonable time, then the Purchaser may carry out the replacement or repair in which case any or all costs associated with the replacement or repair shall become a debt due and owing from the Supplier to the Purchaser.
- 9.5 The Supplier shall warrant the Goods free from defects for a period not less than the period so specified in the Purchase Order, or if no period specified, twelve (12) months from the date of installation.
- 9.6 The Supplier irrevocably undertakes, and shall ensure that each of its suppliers and subcontractors irrevocably undertake, to assign all benefits to any warranty to the Purchaser's client if requested in writing to do so by the Purchaser.
- 9.7 The Supplier must itself provide the Purchaser, and must obtain from Secondary Subcontractors and provide to the Purchaser, warranties as specified and required by the Purchaser from time to time as deemed appropriate by the Purchaser in respect to plant, equipment, materials, goods, items and other things incorporated into the works. Such warranties
- (i) Do not limit any obligation or liability of the Supplier under this agreement, or otherwise at law, and
- (ii) if there is ambiguity, conflict, discrepancy, or inconsistency between such a warranty and the requirements of the Purchaser from time to time.
- ### 10. INDEMNITY
- 10.1 In this clause 10 and in clause 11:
- (i) **"Claim"** means any claim, action, proceeding, demand, cost, damage, loss, expense, liability or other outgoing howsoever incurred or suffered by, or brought or made or recovered howsoever arising (whether or not presently ascertained, immediate, future or contingent).
- (ii) **"Purchaser"** means the Purchaser.
- (iii) **"Supplier Personnel"** means the Supplier; its subcontractors and the directors, officers, employees and agents of each of them.
- 10.2 Unless due solely to the negligence of the Purchaser, the Supplier shall be liable for and must indemnify the Purchaser, its directors, officers, servants, principals, employees, contractors and agents against any and all Claims arising whether at common law, in equity, or under statute and caused or contributed to, whether wholly or in part, directly or indirectly by:
- (i) the performance, purported performance or non-performance of the Goods or Services; or
- (ii) the presence of any Supplier personnel or agents on or about the Purchaser's premises in respect of:
- (a) injury to or death of any person;
- (b) loss or damage to any property; or
- (c) any other loss whatsoever.
- ### 11. INSURANCE

11.1 Before commencing work, the Supplier must at its own expense procure and maintain with reputable insurers, on terms and conditions approved by the Purchaser:

- (i) general and products liability insurance in a broad form occurrence wording with a sum insured of not less than \$5,000,000 which includes the Goods and the activities of the Supplier personnel in relation to the Goods;
- (ii) for an amount not less than that required by any legislation against any liability, loss, claim or proceedings relating to workers' compensation or employers' liability whether arising by virtue of any statute or at common law to or by any person employed by the Supplier; and
- (iii) plant and motor vehicle insurance.
- (iv) where required by the Purchaser, professional indemnity insurance for the Services with a total aggregate cover of not less than \$5,000,000. The policy shall include provisions for one automatic reinstatement of the sum insured and for loss of documents. The policy and such level of cover shall be maintained until the Supplier completes carrying out the Services and thereafter for a period of 5 years.
- (v) The Supplier shall, where required by the Purchaser provide evidence that all insurances required are current and fulfil the obligations of the Purchase Order.

11.2 The Supplier shall insure the Goods for not less than their full replacement value against loss or damage for the period that the Goods are in the Suppliers care and until acceptance of the Goods by the Purchaser.

11.3 Under no circumstances will the Purchaser or the Supplier be liable to each other for any indirect or consequential loss which shall include, but not be limited to, loss of profit, loss of earnings, loss of use, loss or reputation or loss of opportunity.

12. INTELLECTUAL PROPERTY RIGHTS AND ROYALTIES

12.1 The Supplier warrants that the supply of the Goods and Services under these terms and conditions and any use of them by the Purchaser or any other person for any purpose, will not infringe any Intellectual Property Rights. The Supplier undertakes at its expense to defend, protect and hold harmless the Purchaser and the users of the Purchaser's products from and against any claim for infringement of any Intellectual Property Rights arising by reason of the supply and/or use of the Goods or Services.

12.2 The Goods or Services are for the use of or resale by the Purchaser or its associated entities and may be incorporated in any products.

In no event shall any claim for royalties or other additional compensation be made by the Supplier by reason of such use, resale or manufacture. The Supplier must bear any such royalties or compensation and indemnifies the Purchaser in respect of any liability for them that the Purchaser incurs.

13. INSTALLATION

The following conditions also apply where the Supplier, under the terms of this Purchase Order or to enable its performance, is required to be present or perform work on or near premises or sites of the Purchaser:

- (i) all work shall be performed in a good and workmanlike manner;
- (ii) defective or unsatisfactory work may be replaced or required to be re-performed by the Purchaser at the Supplier's expense;
- (iii) the Supplier shall supply all labour, tools, equipment and materials necessary to complete the work and to perform this Purchase Order;
- (iv) the Supplier shall not impede work in progress by the Purchaser or third parties;
- (v) subject to any applicable law, the Supplier, its employees, agents, contractors, invitees and subcontractors may enter upon the Purchaser's premises, installations, vehicles and sites ("Purchaser's Property") at the Supplier's own risk and the Supplier is aware of the normal hazards of such places and the Supplier indemnifies the Purchaser against any loss, damage, expense, claims and liability arising out of or in connection with performance of this Purchase Order or presence of the Supplier, its employees, agents, contractors, subcontractors and invitees on the Purchaser's Property including claims against the Purchaser whether alleging negligence on the part of the Purchaser or otherwise;
- (vi) the Supplier, its employees, agents, contractors, subcontractors and invitees shall comply with all safety and other regulations applicable to the Purchaser's Property and shall obey all instructions of the Purchaser, its manager, supervisor or authorised officer;
- (vii) the Supplier shall not subcontract or assign work under this Purchase Order which is to be performed on the Purchaser's Property without the written consent of the Purchaser; and
- (viii) the Supplier performs all work under this Purchase Order as an independent contractor.

- (ix) The conditions of this clause 13 shall apply equally where the Supplier may be required to enter upon the premises of a client or subcontractor of the Purchaser.

14. CANCELLATION

- 14.1 The Purchaser may at its option and at any time, and without cause, cancel any unshipped Goods or unperformed Services.
- 14.2 If the Purchase Order relates to any Services, the Purchaser's only obligation shall be to pay for Services performed prior to the notice of cancellation.
- 14.3 If the Purchase Order covers any standard stock Goods, the Purchaser's only obligation shall be to pay for Goods shipped and accepted prior to the notice of cancellation.
- 14.4 If the Purchase Order covers Goods manufactured or fabricated to the Purchaser's specifications or specifications prepared by the Supplier for the Purchaser, then upon receipt of a notice of cancellation the Supplier shall immediately cease manufacture, supply or work in accordance with and to the extent specified in the notice and shall immediately do everything possible to mitigate any cost after such cancellation. Provided then that the Supplier is not in default, the Purchaser shall pay to the Supplier the reasonable cost incurred by the Supplier in connection with the Purchase Order prior to the date of notice of cancellation. Upon such payments, title to and property in any material or incomplete Goods shall pass to the Purchaser.
- 14.5 Any payments made by the Purchaser to the Supplier pursuant to this clause 14 shall not in any event exceed the Price.
- 14.6 Under no circumstances shall the Supplier be entitled to, or recovery of, loss of profits or loss of overheads under this clause 14.

15. TERMINATION FOR DEFAULT

- (i) In the event of a breach by the Supplier of any of the terms, conditions or warranties contained in the Purchase Order, including failure to comply with Delivery, quality, Information or Insurance requirements, or if the Supplier:
 - (ii) takes any action or there is reason to anticipate that the Supplier will take any action or any steps are taken or legal proceedings started for:
 - (a) the Supplier's winding-up, dissolution, liquidation or reorganisation other than to reconstruct or amalgamate while solvent on terms approved by the Purchaser (which approval shall not be unreasonably withheld);

- (b) the appointment of a controller, administrator, official manager, trustee or similar officer of the Supplier or any of its revenues and assets; or
- (iii) makes any assignment or arrangement for the benefit of its creditors,
- (iv) then in any one or more of such cases the Purchaser, without prejudice to any other rights it might have including damages, may cancel any undelivered Goods or unperformed Services and shall not be obliged to make any payment therefore or in respect of such cancellation.
- (v) Any loss or damages incurred by the Purchaser as a result of a breach by the Supplier under this Purchase Order will be a debt due and owing to the Purchaser.

16. TERMINATION WITHOUT CAUSE

- 16.1 If:
 - (i) the Purchaser in its absolute discretion elects to terminate a contract for its own convenience;
 - (ii) The Main Contract is terminated for any reason; or
 - (iii) The Works or work which includes the Works is taken out of the hands of the Purchaser under the Main Contract for any reason,
 - (a) Then the Purchaser may terminate the Agreement by written notice to the Supplier
- 16.2 Subject to 16.3, and without prejudice to any of the Purchaser's rights under the contract or otherwise at law, upon termination under Clause 16.1
 - (i) The Supplier must comply with all reasonable directions given by the Purchaser relating to the cessation of the Work under the Agreement, the handover of the Works (whether or not completed) and demobilisation from the Site;
 - (ii) The contractor must be paid
 - (a) For work performed up to the date of termination, the amount which would have been payable if the Agreement had not been terminated and the Supplier had made a payment claim on the date of Termination
 - (b) And to the extent that they are not included in amounts otherwise paid or payable to the Supplier (including in sub paragraph (1), the reasonable cost of plant, equipment, materials, goods, items and other things reasonably ordered by the Supplier for incorporation into the Works, which the Supplier is legally liable to accept, but only if.
 - (c) The plant, materials, goods, items or other things are delivered to the site (or other place as directed by the

Purchaser), are equally and indelibly labelled "the property of Intelligent Infrastructure Solutions Pty Ltd" or otherwise directed by the Purchaser, and are free from any claims and any liens, charges and other encumbrances; and

- (d) Ownership of the plant, equipment, materials, goods, items and other things pass to the Purchaser upon their delivery and acceptance by the Purchaser

16.3 And to the extent permitted by law, it is agreed that:

- (i) the Purchaser will not be liable to the supplier for any other cost, expenses, losses or damages as a result of termination; and
- (ii) Termination of the Agreement under clause 16.1 is without prejudice to any right or remedy of either party that has accrued as at the date of termination.

16.4 If the Purchaser terminates the contract under clause 16.1 because the Main Contract has been terminated and if the termination of the Main Contract is the result of a failure by the Supplier to comply with its obligations under the contract, then to the extent permitted by law, it is agreed that the rights and liabilities of the Purchaser and the supplier will be the same as they would be at common law as if the Supplier had repudiated the Agreement and the Purchaser had elected to treat the Agreement at an end to recover damages.

17. VARIATIONS

The Purchaser may at any time prior to acceptance of the Goods or Services make a change(s) to any or all of the Purchase Order, including, but not limited to the location, manner, materials, sequence or time. If such change(s) actually cause an increase or decrease in the Price or an amendment to the Delivery Date, a fair and equitable variation to the Price and Delivery Date shall be mutually agreed, or in the absence of agreement, as may be determined by the Purchaser.

18. FORCE MAJEURE

Where a circumstance or event beyond the reasonable control of the Purchaser or Supplier causes a delay to the Delivery Date, the Purchaser may, at its sole discretion, extend the Delivery Date. Force Majeure events shall include fire, tempest, government intervention, act of God or national labour stoppages. It shall not include shortage of material, labour or utilities of the Supplier or its subcontractors or suppliers. An extension to the Delivery Date shall be the Suppliers sole remedy for a Force Majeure event.

19. GENERAL

19.1 Entire Agreement

The Purchase Order, Schedule 1 Goods and Services (if any), Schedule 2 Special Conditions (if any) including any annexures thereto and these Purchase Order terms and conditions constitute the entire agreement for the supply and purchase of the Goods or Services and supersede all previous arrangements, correspondence, tenders, proposals, understandings and communications whether written or oral.

19.2 Governing Law

The agreement for the supply and purchase of the Goods or Services shall be deemed to have been made in the State shown on the Purchase Order and shall be subject to the laws of that State. The parties shall be subject to the non-exclusive jurisdiction of the State and any courts that may hear appeals from those courts in relation to any proceedings concerning the Purchase Order.

19.3 Severability

Any provision in these terms and conditions which is or becomes invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of these terms and conditions of the validity or unenforceability of that provision in any other jurisdiction.

19.4 Taxes

The Supplier is and remains liable for payment of any Taxes. If any exemptions, reductions, allowances, rebates or other privileges in relation to Taxes may be available to the Supplier or the Purchaser, the Supplier shall use to its best endeavours on enable the Purchaser to benefit from any such savings or refunds (including interest awarded) to the maximum allowable extent.

19.5 Notices

Any notice or document shall be deemed to have been given and received on the earliest date of:

- (i) The actual receipt
- (ii) confirmation of correct transmission of facsimile; or
- (iii) the three (3) business days after posting,

and provided where faxed as (b) above or posted as (c) above, it is to the correct address in the Purchase Order or the address last communicated in writing, to the person giving the notice. A transmission by e-mail shall not be regarded as a notice under this clause 18.5.

19.6 Amendment

No amendment or variation of the Purchase Order is valid or binding on the Purchaser unless made in writing by the Purchaser.

19.7 Waiver

A provision of the Purchase Order may not be waived or varied except in writing signed by the Purchaser. No waiver of a breach of any provision of the Purchase Order shall constitute a waiver of any other breach or of any other provision.

19.8 Assignment

The Supplier may not assign this Purchase Order in whole or in part without the Purchaser's prior written consent. Any approval by the Purchaser to assign the Purchase Order in whole or in part shall not relieve the Supplier from any of its obligations or liabilities under the Purchase Order.

If requested by the Purchaser, the Supplier must assign or novate any Secondary Subcontracts to Purchaser or the Purchaser's Client

19.9 Time

Time is of the essence of the Purchase Order. The Supplier shall maintain a rate of progress that will ensure achievement of the Delivery Date. The Purchaser shall have the right to enter upon the premises of the Supplier or its suppliers and subcontractors at any time for the purposes of monitoring progress and inspecting the Goods.

19.10 Dispute Resolution

In the event of a dispute arising between the parties, both parties shall genuinely attempt amicable resolution by conference or, failing this by arbitration. The choice of an arbitrator shall be mutually agreed or, failing this, be chosen by the president of the institute of engineers of Australia in the state of the Delivery Point.

19.11 Payment Schedule

This clause applies where the Supplier is supplying with Building Work as defined in Clause 20.2

It is a condition precedent to payment that the Supplier will provide to the Purchaser at the point of invoice or Claim pursuant to the relevant Security of Payment Legislation, a Statement that the Supplier has paid its subcontractors, employees and all debts associated with the Suppliers supply, of the Works.

20. Building Code 2016

20.1 The provisions of this clause 20 apply the Supplier is carrying out Building Work as defined in subsection 3(4) of the Building Code.

20.2 For the purposes of this clause 26.2, the following definitions apply:

ABCC means the body referred to in subsection 29(2) of the Act.

ABC Commissioner means the Australian Building and Construction Commissioner referred to in subsection 15(1) of the Act.

Act means the Building and Construction Industry (Improving Productivity) Act 2016.

Building Code means the Code for the Tendering and Performance of Building Work 2016, which is available at <https://www.legislation.gov.au/Details/F2017C00125>.

Building Contractor has the same meaning as in the Act.

Building Industry Participant has the same meaning as in the Act.

Building Work has the same meaning as in subsection 3(4) of the Building Code.

Commonwealth Funded Building Work means Building Work in items 1-8 of Schedule 1 of the Building Code.

Enterprise Agreement has the same meaning as in the Fair Work Act 2009.

Exclusion Sanction has the same meaning as in subsection 3(3) of the Building Code.

Related Entity has the same meaning as in subsection 3(2) of the Building Code.

Sub-subcontractor means a Building Contractor or Building Industry Participant who the Subcontractor has entered, or proposes to enter, into a sub-subcontract with to undertake any of the Works.

Workplace Relations Management Plan or **WRMP** means the **Workplace Relations Management Plan** approved by the ABCC in accordance with Part 6 of the Building Code that applies to the Works as updated by the Purchaser from time to time.

Works means Commonwealth Funded Building Work that is the subject of this Subcontract.

- 20.3 The Subcontractor declares as at the date of commencement of this Subcontract in relation to the Works, that it:
- (i) is not subject to an Exclusion Sanction;
 - (ii) unless approved otherwise by the ABC Commissioner, is not excluded from performing Building Work under by a state or territory government; and
 - (iii) is not covered by, and does not have Related Entities covered by, an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code.
- 20.4 The Subcontractor:
- (i) declares as at the date of commencement of this Subcontract in relation to the Works; and
 - (ii) must ensure that during the term of this Subcontract in relation to the Works,
 - (iii) that it and its Sub-subcontractors:
 - (iv) comply with the Building Code;
 - (v) will only use products in relation to the Works that comply with the relevant Australian standards published by, or on behalf of, Standards Australia; and
 - (vi) will comply with the Workplace Relations Management Plan that applies to the Works.
- 20.5 Without limiting and notwithstanding clause 20.4(iii), the Subcontractor will ensure that remedial action is taken
- (i) to rectify any behaviour on the part of it and its Sub-subcontractors that is non-compliant with the Building Code.
- 20.6 The Subcontractor must every six months during the term of this Subcontract advise the Purchaser whether:
- 20.7 it has in the preceding 6 months or since it last advised the Purchaser, whichever is the earliest, had an adverse decision, direction or order of a court or tribunal made against it for a breach of a designated building law, work health and safety law or the Migration Act 1958; or
- (i) it has in the preceding 6 months or since it last advised the Purchaser, whichever is the earliest:
 - (a) been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of building work) to a Building Contractor or Building Industry Participant; or
 - (b) owed any unsatisfied judgement debts to a Building Contractor or Building Industry Participant.
- 20.8 Compliance with the Building Code does not relieve the Subcontractor from responsibility to perform this Purchase Order, or from liability for any defect in the Works arising from compliance with the Building Code.
- 20.9 The Subcontractor must notify the Purchaser and the ABCC of any breach or suspected breach of the Building Code as soon as practicable but no later than 2 working day after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.
- 20.10 The Subcontractor acknowledges the powers and functions of the ABC Commissioner and the ABCC under the Act and the Building Code and will ensure that it and its Sub-subcontractors comply with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including but not limited to requests for entry under section 72 of the Act, requests to interview any person under section 74 of the Act, requests to produce records or documents under sections 74 and 77 of the of the Act and requests for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
- 20.11 The Subcontractor must only enter into a sub-subcontract for any of the Works where:
- (i) the Sub-subcontractor has submitted a declaration of compliance, including the further information outlined in Attachment A to the declaration of compliance, in substantively the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code; and
 - (ii) the sub-subcontract with the Sub-subcontractor contains clauses in substantively the same form as the model contract clauses applicable to contractors and subcontractors in relation to the Building Code.
- 20.12 The Subcontractor must ensure that it and its Sub-subcontractor comply with clauses contained in the sub subcontract referred to in clause 19.10 (a)&(b)
- 21. Personal Property Securities Act (PPSA)**
- 21.1 The Supplier agrees that the terms of this Agreement may constitute one or more Security Interests (as it has the meaning in the PPSA) for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPSA") and that:
- (a) to perfect any such Security Interest the Purchaser may register one or more financing statement(s) on the Personal Property Securities Register established under section 147 of the PPSA;

- (b) the Supplier shall have no rights under sections 95, 118, 121(4), 125, 130, 132, 135, 142 and 143 of the PPSA;
- (c) the application of Part 4.3 (other than sections 123, 124, 126, 128, 129(1), 133, 134(1) and 136) of the PPSA is contracted out of if that Part would otherwise have applied by virtue of section 116(2) of the PPSA;
- (d) the Supplier waives its right to receive notice of a verification statement under section 157 of the PPSA, and

21.2 the Supplier must promptly, on request by the Purchaser, provide any such information and execute and deliver any such documents as the Purchaser may reasonably require to protect the Security Interests granted to the Purchaser by the Subcontractor under or in relation to this Subcontract

22. Inductions

- 22.1 When supply of Goods or Services require Site Access, the Supplier acknowledges receipt of, and submits to, the Purchasers Site Induction requirements, which the Supplier acknowledges may vary from time to time, and site to site
- 22.2 Without limiting the generality of clause 23.1 the Supplier accepts responsibility for the induction of both:
 - (a) Personnel; and
 - (b) Plant and / or equipment
- 22.3 The Supplier acknowledges and accepts receipt of notice of costs associated with Site Inductions and accepts liability for same.

23. DEFINITIONS AND INTERPRETATIONS

23.1 Definitions

In these terms and conditions unless the context otherwise requires:

“**Delivery**” means the delivery of the Goods by the Supplier to the Purchaser at the Delivery Point;

“**Delivery Date**” means the date(s) upon which the Supplier has undertaken to deliver the Goods or Services to the Purchaser at the Delivery Point;

“**Delivery Point**” means the delivery address set out in the Purchase Order or such other address that may be advised from time to time by the Purchaser;

“**Goods**” means the goods specified in the Purchase Order;

“**Intellectual Property Rights**” means letters patent, a pending patent; registered and unregistered, trademarks, copyright, design, trade secrets, confidential information or similar protection whether granted by the Commonwealth of Australia or any foreign state or the common law;

“**Main Contract**” means any agreement between the Purchaser and their client where the Supplier is supplying Works.

“**Order Number**” means the identifying order number so set out in the Purchase Order;

“**Price**” means the amount specified in the Purchase Order for the Goods and/or Services;

“**Principal**” means the Purchasers Client, or the client of the Purchasers Client.

“**Purchase Order**” means the document issued by the Purchaser to the Supplier to order the Goods or Services and includes any specifications, drawings or other documents that may be contained therein or annexed thereto;

“**Purchaser**” means Intelligent Infrastructure Solutions Pty Ltd identified as such on the Purchase Order to which these Purchase Order terms and conditions apply;

“**Security**” means one or more bank guarantees in a form acceptable to the Purchaser or monies retained by the Purchaser from payments made by the Purchaser under clause 6.3 for the purpose of ensuring the Supplier’s performance of the Purchase Order;

“**Security of Payments Legislation**” means If the Site is in

- (1) Victoria, the *Building and Construction Industry Security of Payment Act 2002*;
- (2) New South Wales, the *Building and Construction Industry Security of Payment Act 1999*;
- (3) Queensland, *Building Industry Fairness Act 2017*;
- (4) Western Australia, the *Construction Contracts Act 2004*;
- (5) South Australia, the *Building and Construction Industry Security of Payment Act 2009*;
- (6) Australian Capital Territory, the *Building and Construction Industry (Security of Payment) Act 2009*;
- (7) Northern Territory, the *Construction Contracts (Security of Payment) Act 2004*; and
- (8) Tasmania, the *Building and Construction Industry (Security of Payment) Act 2009*.

“**Services**” means the services specified in the Purchase Order.

“**Specification**” means the specification for the Goods or Services (if any) as set out in the Purchase Order;

“**State**” means the State or Territory in the Commonwealth of Australia in which Delivery is to be made;

“**Supplier**” means the company, firm or person identified in the Purchase Order as the supplier of the Goods and/or Services;

“**Taxes**” means all taxes, fees, levies, duties and charges imposed or assessed in respect of the Goods or Services by all local, state or national government authorities including but not limited to, customs duty, excise tax, stamp duty and goods and services tax (or equivalent) but excludes taxes imposed on the income of the Supplier.

24. Interpretation

- (b) In these terms and conditions unless the context otherwise requires:
- (c) the singular shall include the plural and vice versa;
- (d) words importing persons shall include corporations and words importing the masculine gender shall include the feminine gender;
- (e) the headings shall not affect the interpretation of these terms and conditions;
- (f) reference to any statute shall mean that statute as amended, modified or replaced from time to time and includes orders, ordinances, regulations and rules and by-laws made in terms of or pursuant to the relevant legislation;
- (g) reference to a party or parties includes a reference to its successors and permitted assigns in accordance with these terms and conditions; and
- (h) “including” means “including (without limitation)”.

SCHEDULE 1

GOODS AND SERVICES

SCHEDULE 2

SPECIAL CONDITIONS
