

1. Agreement

- 1.1 Acceptance by a party ("the Supplier") of a purchase order ("Purchase Order") issued by the purchaser named on the Purchase Order ("Purchaser") shall give rise to a contract between the Purchaser and the Supplier incorporating these Standard Conditions of Purchase and including any annexure, schedules, variations or amendments as agreed between the parties ("Contract") for the provision of services described in the Purchase Order ("Services") and any other terms and conditions which are part of the Purchase Order.
- 1.2 Subject to these Standard Conditions of Purchase, no other terms and conditions will form part of the Contract unless expressly agreed in writing by the Purchaser. The Contract may not be varied except by agreement in writing by the Purchaser.

2. Specification

- 2.1 The Services shall be supplied by the Supplier in a timely manner and in accordance with the Contract including any specification set out in the Contract.

3. Price

- 3.1 The Purchaser must pay the Supplier the price stipulated in the Purchase Order for the Services ("Price") based on the rates and/or quantities set out in the Purchase Order within the time(s) and at the place(s) stipulated in the Purchase Order.
- 3.2 Unless otherwise expressly provided in the contract, the Price includes all duties, taxes (except GST) and any other costs and expenses associated with delivery and/or supply of the Services free into the Purchaser's premises at the address stipulated in the Contract.
- 3.3 Any increase in the cost of delivery and/or supply of the Services between the date of the Purchase Order and the date of delivery or supply shall be borne by the Supplier.
- 3.4 The Purchaser may direct the Supplier to alter, add to or omit all or part of the Services without cause and for its own convenience and for the purpose of having all or part of the Services provided by another supplier. Unless the parties agree upon a price for such variation the price in respect thereof shall be a reasonable price.

4. GST

- 4.1 The Price is exclusive of GST. The Purchaser must reimburse the Supplier for the amount of any GST payable in respect of supplying the Services, provided the Supplier must provide the Purchaser with a tax invoice in respect of that supply.
- 4.2 If there is an adjustment event in relation to the supply:
- (a) the Supplier must refund to the Purchaser the amount by which the amount reimbursed pursuant to clause 4.1 exceeds the adjusted GST on the supply; or
 - (b) The Purchaser must pay to the Supplier the amount by which the adjusted GST on the supply exceeds the amount reimbursed pursuant to clause 4.1.
- 4.3 In this contract, "GST" means goods and services tax levied in accordance with the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the expressions "supply", "tax invoice" and "adjustment event" have the same meanings as in that Act.

5. Acceptance

- 5.1 Without limiting the Purchaser's rights hereunder, the Supplier shall re-perform any or all of the Services which are found not to be in accordance with the Contract or which, in the Purchaser's reasonable opinion fail to comply with the standard of care referred to in clause 10.1(b) herein.
- 5.2 The Services will not be considered accepted until they have passed any acceptance tests set out in the Contract and are apparently in conformity with the Contract.
- 5.3 Acceptance shall not have taken place until the Supplier has provided all designs, specifications, drawings, and technical information including installation and operating manuals, and all other documents and things specified in the contract or reasonably required in Purchase Order to use the Services for their intended purpose.
- 5.4 Services not required to be tested will be deemed accepted by the Purchaser 14 days after delivery, unless the Purchaser advises otherwise. The inspection and acceptance referred to in this clause shall be without prejudice to any of the Purchaser's rights and remedies under the Contract or otherwise.
- 5.5 The Supplier is responsible for the care of the Services including the risk of loss or damage to Services from the date of commencement until the date of completion. The Purchaser shall have title to and risk of loss of all completed and partially completed portions of the Services and any materials delivered to the Purchaser.

6. Time

- 6.1 The Supplier shall provide written confirmation to the Purchaser 3 days prior to any supply of the Services that such supply will be made at the required time(s) and place(s)

- 6.2 The Purchaser may by notice in writing given at any time prior to the actual supply of the Services postpone the time for supply or require the Supplier to perform the Services in instalments.

- 6.3 If the Supplier fails to supply the Services by the time stipulated in the Contract, the Supplier must pay the Purchaser any amount payable by the Purchaser under any contract under which the Services are to be on-sold, together with any amount stipulated in the contract as liquidated damages in respect of the period thereafter up to the date upon which supply is achieved. The Purchaser reserves its rights to claim actual damages for delay where no amount or 'nil' is stipulated for liquidated damages.

7. Payment

- 7.1 Unless the Contract provides for periodic progress payments or for payment by instalments (upon delivery or otherwise) the Supplier may only submit a claim for payment after all of the Services have been completed, and accepted by the Purchaser, such claim to be submitted by the next following 25th day of the month after acceptance;
- 7.2 Where the Contract provides for periodic progress payments or payment by instalments or milestones, the Supplier may submit a claim for payment of the amount due in respect of the relevant services after completion, and after acceptance by the Purchaser, by the next following 25th day of the month after the relevant payment period or instalment or milestone date (as applicable).
- 7.3 Each claim for payment under the contract shall take into account all adjustments in accordance with the contract for the period and in respect of the matters the subject of the claim, including without limitation, adjustments for any variation to the scope of the Services. If any of the Supplier's employees engaged in the provision of goods and/or services are employed in NSW, each claim for payment must be accompanied by a "subcontractor's statement" attached hereto.
- 7.4 The Purchaser may issue to the Supplier a statement ("payment certificate") setting out the amount payable in respect of the claim and the reasons for any difference between that amount and the amount claimed.
- 7.5 The amount otherwise payable by the Purchaser to the Supplier shall be reduced by any amount due from the Supplier to the Purchaser or that the Purchaser is entitled to be paid, or to deduct, set off or withhold under the Contract, for breach or otherwise, which amount shall be a debt owing from the Supplier to the Purchaser.
- 7.7 The Purchaser shall pay the Supplier the amount of the claim due to the Supplier within 30 days after the end of the month in which the claim for payment is submitted. A claim submitted after the 25th day but by the end of a month shall be considered to have been submitted in the following month.
- 7.8 If the Contract is a construction contract for the purposes of the Building and Construction Industry Security of Payment Act 1999 (NSW) or the Building and Construction Industry Security of Payment Act 2002 (Victoria):
- (a) any certificate issued by the Purchaser in response to a payment claim is deemed to be a payment schedule for the purposes of that Act; and
 - (b) the authorised nominating authority to whom any adjudication application may be made is the Institute of Arbitrators and Mediators Australia.
- 7.9 Any amount paid by the Purchaser to any subcontractor or supplier of the Supplier pursuant to any notice of claim served on the Purchaser by such subcontractor or supplier under the Contractors Debts Act 1997 (NSW) or the Building and Construction Industry Security of Payment Act 2002 (Victoria) shall be a debt due and payable by the Supplier to the Purchaser.
- 7.10 All delivery notices, invoices, packages and any other documentation relating to the purchase of goods and/or services by the Purchaser must include the relevant Purchase Order number, and where available any serial or asset numbers and/or any product or contractor names. Without limiting the above, invoices which do not quote a Purchase Order number will not be accepted for payment by the Purchaser.

8. Insurance

- 8.1 The Supplier shall, until acceptance of the Services by the Purchaser and/or completion of the performance of the Services pursuant to clause 11, at its own cost and in a form acceptable to the Purchaser, procure and maintain any insurances compulsory under the laws in the State or Territory where the work is being performed for any loss of or damage to the Services and/or related materials.
- 8.2 The Supplier shall as a minimum have in effect for the duration of the contract the following insurances:
- (a) where required by law, adequate Employers Indemnity and Workers Compensation insurance;
 - (b) Public and Products Liability insurance for an amount of at least \$5,000,000.00 per occurrence/aggregate;
 - (c) adequate Motor Vehicle Third Party Liability insurance for all vehicles in the ownership or control of the Supplier

- (d) Constructional plant and property, including all mobile equipment, tools, tackle, employees' effects, and the like, and all other property for which the Supplier is responsible, for an amount of not less than market value; and
- (d) where professional services are rendered under the contract, adequate Professional Indemnity insurance for an amount of at least \$1,000,000.00 per claim/aggregate on a claims made basis.

9. Guarantee and Indemnity

- 9.1 Without limiting any of the Purchaser's rights, and without limiting any other warranty provided elsewhere in the contract, the Supplier hereby guarantees the Services against any omissions, defects or failures whether due in whole or in part from faulty design, materials or workmanship or any other cause which occurs (whether or not apparent) at any time from the date of acceptance and/or completion of all of the Services until the date 12 months from the date the services are put into commercial use, notwithstanding that such omissions, defects or failures come to the attention of the Purchaser at any time after expiry of that period.
- 9.2 Without limiting any other rights of the Purchaser, if the Supplier breaches its obligations under clause 9.1, the Supplier shall, at the option of the Purchaser:
- (a) refund the price for and, where such of the Services that do not conform with the contract; and/or
 - (b) re-perform the Services which, in the reasonable opinion of the Purchaser do not so conform, and the Supplier shall be liable for all resulting costs and expenses incurred by the Purchaser, including but not limited to, where applicable, any costs and expenses incurred by the Purchaser in re-performing, testing or re-commissioning the Services.
- 9.3 The Purchaser may, at its option, have any modification, replacement or resupply of the Services referred to in clause 9.2 undertaken by a third party or undertake the modification, replacement or resupply itself, and all resulting costs and expenses shall be borne by the Supplier.
- 9.4 The Supplier shall indemnify the Purchaser against:
- (a) loss of or damage to property of the Purchaser including the Contract materials provided by the Purchaser to the Supplier;
 - (b) claims by any person against the Purchaser in respect of personal injury or death or loss of or damage to property, arising out of or as a consequence of the carrying out by the Supplier of the Services
 - (c) any liability or costs incurred by the Purchaser as a consequence of the Supplier (or any of the Supplier's staff) being deemed an employee of the Purchaser.
- The provisions of this clause 9.4 shall survive termination of the Contract for any reason.
- 9.5 The Supplier shall provide performance security for the Services under Contract in the form of and amount as stated in the Annexure.

10. Warranty

- 10.1 The Supplier hereby warrants to the Purchaser that:
- (a) the Services will be fit and sufficient for the purpose for which they are intended;
 - (b) the Services will be performed by the Supplier with due care, skill and diligence in accordance the standard of care normally exercised by members of the profession or trade under which the Services are being provided to the Purchaser;
 - (c) the Services will be free of all errors or misdescriptions; and
 - (d) the Services strictly comply with all applicable laws, regulations, standards and codes.

11. Materials Supplied by the Purchaser

- 11.1 The Purchaser shall provide to the Supplier any patterns, designs, specifications, drawings, samples, technical information, specified in the Contract (whether in electronic format or otherwise) or which the Purchaser has agreed in writing to provide to enable the Supplier to supply the Services ("Materials").
- 11.2 All Materials, and the Purchaser's intellectual property rights therein (if any), remain the property of the Purchaser. The Supplier must return the Materials to the Purchaser within 7 days after supply of the Services.
- 11.3 The Supplier must not use the Materials for any purpose except the supply of the Services to the Purchaser.

12. Design and Specifications

- 12.1 If the Purchaser reviews design drawings, specifications, construction drawings or workshop drawings or any other documents prepared by or on behalf of the Supplier, gives any approval, direction, or instruction to the Supplier, or provides information to the Supplier, this shall not relieve or reduce the Supplier's sole responsibility for the performance of the Services in accordance with the contract, nor release the Supplier from its obligations under clauses 9 and 10, and shall not restrict the Purchaser's rights and remedies under the contract or constitute acceptance by the

Purchaser that the Supplier has complied with its obligations under the contract.

13. Confidentiality

- 13.1 The Supplier shall keep confidential the terms of the Contract and the Materials and shall only disclose the same as required by law and to those of its employees, servants or agents necessary to enable the Supplier to perform the Contract.

14. Intellectual Property

- 14.1 Other than as otherwise specified in the Contract, the Supplier:
- (a) hereby grants to the Purchaser a perpetual, irrevocable, non-exclusive, royalty-free, transferable licence (with the right to sub-licence) to use all intellectual property (whether owned by the Supplier or not) which is used by the Supplier in connection with the performance Services under the Contract;
 - (b) acknowledges and agrees that all intellectual property developed by the Supplier in connection with the performance of the Services vests in the Purchaser; and
 - (c) agrees to enter into and/or execute any document reasonably required to give effect to the provisions of this clause 14.1.
- 14.2 The Supplier warrants that:
- (a) the supply of Services and the licence granted by the Supplier pursuant to clause 14.1 does not infringe the intellectual property rights of any third party; and
 - (b) the Services are not subject to any intellectual property rights of any third party that in any way restrict the rights of the Purchaser or its customers to use or sell the same.
- 14.3 In this contract "intellectual property" means any intellectual or industrial property whether protected by statute, at common law or in equity, including any patent, invention, copyright, or design right (whether or not registrable), in any design, specification, process, technique, software, know how, trade secret, technical information, financial information, business method and confidential information.

15. Breach and Termination

- 15.1 The Purchaser may terminate the contract by written notice to the Supplier:
- (a) in its absolute discretion at any time up to and including 14 days prior to the date of delivery/acceptance stated in the Contract;
 - (b) if the Services are not supplied by the time(s) stipulated in the Contract, as varied pursuant to clause 6;
 - (c) if the Supplier is in breach of a term of the Contract and fails to remedy the breach within 7 days of the receipt by it of a notice in writing from the Purchaser specifying the breach and requiring the Supplier to remedy it;
 - (d) if the Purchaser is of the reasonable opinion that the Supplier is unable or unwilling to comply with its obligations under the contract with due diligence or in a competent manner; or
 - (e) if the Supplier becomes bankrupt or makes an assignment of its estate for the benefit of its creditors or makes a composition or other arrangement with its creditors or if, being a company, the Supplier goes into liquidation whether voluntary or compulsory (except for the purposes of reconstruction) or has a receiver appointed over all or any of its assets or if any person or corporation goes into possession of or appoints an agent overall of any of the assets of the Supplier.
- 15.2 The Supplier may suspend or terminate the contract:
- (a) upon giving 30 days prior written notice to the Purchaser in the event that the Purchaser breaches a material term of the contract and fails to remedy such default within 14 days notice of such default; or
 - (b) if the Purchaser becomes goes into liquidation whether voluntary or compulsory (except for the purposes of reconstruction) or has a receiver appointed over all or any of its assets or if any person or corporation goes into possession of or appoints an agent overall of any of the assets of the Purchaser.
- 15.3 Termination of the contract pursuant to this clause shall be without prejudice to the rights of either party accruing prior to termination.

16. Assignment

- 16.1 The Supplier must not assign, sub-licence, sub-contract or transfer in whole or in part any of its interest or obligations under the Contract without the Purchaser's prior written consent, which consent may be granted, withheld or granted subject to conditions in the Purchaser's absolute and unfettered discretion.

17. Dispute Resolution

- 17.1 If a difference or dispute between the parties arises in connection with the subject matter or interpretation of the Contract, including (but not limited to) a dispute concerning a claim in tort, under statute, or on any other basis in law or equity available under the law governing the Contract ("Dispute"), either party may by hand or registered post addressed to the delivery

address of the other party give the other party a written notice of Dispute identifying and providing details of the Dispute and entitled Dispute Notice ("Dispute Notice").

- 17.2 Within seven (7) days of receipt of a Dispute Notice, representatives of the parties having authority to bind the parties shall confer to seek to resolve the Dispute or agree on a method of doing so and whether that method shall be binding. If a resolution or method of resolution has not been agreed within twenty-one (21) days of the service of Dispute Notice, the Chief Executive Officers of the parties (or their equivalent officer) shall confer for the same purpose as the parties' representatives. All aspects of such conference(s) shall be conducted on a 'without prejudice' basis.
- 17.3 Except for the enforcement of payment due under the Contract or to seek injunctive or urgent declaratory relief, and subject to any agreement to the contrary, neither party may institute legal proceedings in respect of any Dispute unless a Dispute Notice in respect thereof has first been given and then only after a period of twenty eight (28) days from receipt of such Dispute Notice has elapsed and the procedures detailed in this clause 17 have been complied with.

18. General

- 18.1 The Purchaser shall have no liability to the Supplier in respect of any matter in connection with the Contract unless the claim together with full particulars thereof is lodged with the Purchaser within 14 days of the occurrence of the event(s) or circumstance(s) on which the claim is based.
- 18.2 Neither party will be considered to be in breach of its obligations of this Contract to the extent that the performance of any obligation is prevented

or delayed by force majeure. Each party will use all reasonable endeavours to overcome the force majeure as soon as possible. For the purpose of this contract, "force majeure" means acts of God; acts of war, terrorism or other civil disturbance; industrial action; inclement weather, flood, earthquake, fire or any other events beyond the reasonable control of the parties and which actually caused the delay.

- 18.3 If any provision or part of any provision of the Contract is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision of the Contract.
- 18.4 Any waiver by the Purchaser of strict compliance with any provision of the Contract shall not be effective unless in writing and signed by an authorised officer of the Purchaser.
- 18.5 The Contract shall be governed by the laws and jurisdiction of the State or Territory of Australia in which the Services are to be performed and the parties agree to submit to the non-exclusive jurisdiction of the courts of that State or Territory and any courts having appellate jurisdiction from them.
- 18.6 No provision of the Contract shall be construed adversely against one party solely on the basis that that party was responsible for the drafting of that provision (contra proferentem).

19. Special Conditions

- 19.1 Any special conditions included in the Purchase Order by the Purchaser apply as if those special conditions were included in these Standard Conditions of Purchase.

Annexure to Purchase Order No:

(This Annexure to be read in conjunction with the attached Standard Conditions of Minor Services)

Purchaser: **SIMPEC Pty Limited** (ABN 44 619 238 505) of:
(Clause 1.1) Level 1, Suite 2
92 Walters Drive
OSBORNE PARK WA 6017

Purchaser's Representative: **Title:**
Contact Details: Telephone: () Facsimile: () Mobile:

Supplier: (ABN) of:
(Clause 1.1)

Supplier's Representative: **Title:**
Contact Details: Telephone: () Facsimile: () Mobile:

Specification: *The Supplier shall carry out the following services strictly in accordance these Standard Conditions of Purchase (Services),*
Clause (2.1) *including any Special Conditions, designs, drawings, specifications and technical information contained herein;*

(Description of the Services to be provided)

.....
.....
.....
.....

Delivery Address: *(work site/location)*
Clause (3.2; 17.1)

Timing: Date for Commencement: Date for Completion:
Clause (6.1)

Liquidated Damages: Clause (6.3) **Performance Security:** Clause (9.5)

Payment: *(periodical/instalments/upon completion?)*
Clause (7.1)

Special Conditions: (Clause 19.1) The following Special Conditions apply as if contained in the Standard Conditions of Purchase (Services):

.....
.....
.....
.....
.....
.....

Acceptance: Dated this day of 20
for and on behalf of:

Purchaser's Signature **Supplier's signature**