

TERMS AND CONDITIONS

Doc No: **WQA-FM-009**

Rev: **1**

Issue Date: **27/08/2021**

Review Date: **27/08/2023**

This is a controlled document



1. If there is an inconsistency between these Conditions and any quotation or offer by the Supplier, then these Conditions shall prevail unless and to the extent only that the Purchaser agrees in writing to the contrary.
2. The Supplier warrants that the materials supplied will conform with any specification attached to this order. In the absence of any other requirement, the materials will comprise new materials of merchantable quality suitable for the Purchaser's purpose and will conform, in all respects, with all requirements of relevant Australian Standards.
3. The Purchaser may direct the Supplier to alter, add to or omit the materials. The Supplier shall not however vary the materials without the Purchaser's prior written direction. Unless the Purchaser and the Supplier agree upon a price for a variation the price shall be a reasonable price.
4. The Supplier shall deliver the materials to the Purchaser at the time for delivery and at the place for delivery stated in this order. Where a program is attached to this order, the program providing for deliveries of part of the materials on separate dates, the Supplier shall deliver those parts of the materials on those dates.
5. The Supplier shall take all reasonable steps to prevent and minimize delay. If any cause (including any direction, act or omission of the Purchaser) beyond the control of the Supplier delays the Supplier in making delivery of the materials and the Supplier within 14 days after the delay occurs gives the Purchaser a notice in writing of a claim for an extension of time for delivery, the Supplier shall be entitled to a reasonable extension of time. The notice shall specify the number of day's extension of time claimed and shall include details of the delay and the cause. If Supplier is entitled to an extension of time the Purchaser shall, within 28 days after receipt of the notice of the number of day's extension claimed, grant a reasonable extension of time.
6. If the Purchaser finds that the materials are not in accordance with this order then the Purchaser may direct the Supplier to remove the materials from Purchaser's premises. Upon receipt of such direction the Supplier shall repay to the Purchaser all moneys which the Supplier has received from the Purchaser in relation to the rejected materials. Upon repayment of the moneys the Supplier shall own the rejected materials and shall remove them from the Purchaser's premises.
7. The Purchaser shall have the right to recover from the Supplier any damages exceeding the amount repaid, which the Purchaser suffers by reason of the failure of the Supplier to supply materials which are in accordance with the requirements of the contract.
8. Unless otherwise stated in any specification or special conditions attached to this order, a Defects Liability Period of twelve months shall commence on delivery of the materials. At any time prior the expiration of the defects liability period, the Purchaser may direct the Supplier to rectify and defect in the materials which becomes apparent prior to the expiration of the Defects Liability Period. The direction shall identify the defect and state a date by which the Supplier must complete rectification.
9. Prices stated in the purchase order are not subjected to adjustment for rise and fall in costs. The Purchaser shall pay the Supplier the purchase price for the materials within the period stated in this order and if no period is stated, then within 30 days after the end of the month in which an invoice is received from the Supplier. The Supplier shall not render such invoice to the purchaser until the materials have been delivered to the purchaser. The purchaser may deduct from moneys otherwise due to the Supplier any monies due from the Supplier to the purchaser. When the Supplier renders an invoice for the materials or part thereof the purchaser may direct the Supplier to establish that ownership of the materials or part thereof has passed to the purchaser or will upon making of the payment claimed pass to the purchaser if the Supplier fails to comply with the direction, the purchaser

shall not be bound to make payment. If the purchaser requires that the materials be tested then those tests shall take place and the materials pass the test, before the purchaser is obliged to make payment to the Supplier.

10. Without prejudice to any other rights the Purchaser may have the Supplier terminate this order immediately by notice in writing if:
 - (a) The Supplier is in breach of any provision of this order and such breach is not remedied within 7 days of written notice by the Purchaser
 - (b) Materials are lost, stolen, sold, disposed of, repossessed, destroyed or damaged beyond reasonable repair prior to the passing of title to the purchase.The Purchaser may terminate the order immediately from notice in writing to the Supplier if the Supplier becomes or threatens to become or is in jeopardy of becoming subject to any form of insolvency administration.
11. The Purchaser shall not be liable upon any claim by the Supplier in respect of any matter arising out of this order unless the claim together with full particulars thereof, is lodged in writing with the purchaser not later than seven days after the occurrence of the events or circumstances on which the claim is based.
12. Where applicable, the Supplier is required to act consistently with the 2016 Code in respect of the building work that is the subject of the agreement.
13. In the event of a payment dispute arising between the parties, the Construction Contracts Act 2004 (WA) will apply which allows for adjudication of the dispute. The parties agree that the Institute of Arbitrators (IAMA) shall be the nominator of the adjudicator.
14. The Purchaser has a Modern Slavery Policy that states that the Purchaser does not accept any form of modern slavery and is committed to ensuring that all workers in its operations and supply chain are treated fairly, ethically and with respect. The Purchaser expects its suppliers to do the same and uphold the human rights of all people involved in their operations and supply chains. The Purchaser reserves the right to terminate any contractual arrangement if there is a breach of the Policy or the Australian Modern Slavery Act 2018 (Cth).
15. The Supplier of materials to the Purchaser must comply, and ensure that its suppliers comply with all laws relating to the Chain of Responsibility (CoR), to the extent applicable and co-operate with the Purchaser for compliance.

INSURANCE

Please note the following

*Insurance Requirements in Clause 16 and Clause 17 apply to **Non-Attendance** to WFC controlled Premises/Construction Sites.*

16. Prior to commencing the Services, the Supplier shall provide to the Purchaser certificates of currency or copy of the policy schedules & wordings when requested by the Purchaser for such other insurances that the Supplier requires by law or in order to conduct their work under this Contract.
17. The Supplier must ensure that its Subcontractors are insured as required and appropriate (including as to amounts of insurance and type of insurance) given the nature of Services or work to be performed by them, as if they were the Supplier.

Please note the following

All Insurance Requirements below are required for **Attendance** to West Force Construction controlled Premises/Construction Sites.

18. Prior to commencing the Services, the Supplier shall provide to the Purchaser certificates of currency or copy of the policy schedules & wordings when requested by the Purchaser for:

(a) public and product liability insurance written on an occurrence basis with a limit of indemnity of not less than \$50,000,000 each and every occurrence and, in the case of product liability, no less than \$50,000,000 in the aggregate during any one 12 month period of insurance which covers the liability of the Supplier and any of the Supplier's Personnel (including to the Purchaser) in respect of:

- (i) physical loss of, damage to, or loss of use of, any real or personal property; and
- (ii) the bodily injury of, disease or illness (including mental illness) to, or death of, any person,

arising out of the performance of or in connection with this Contract by the Supplier. This insurance must also extend to cover liability for:

- (iii) the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with this Contract;
- (iv) registered vehicles used as a tool of trade in the performance of the Services; and
- (v) any plant and equipment of the Purchaser in the care, custody or control of the Supplier;
- (vi) professional advice or services provided under this Contract which is not given for a specific fee by the Supplier;
- (vii) all the activities of Supplier or Supplier's Personnel as per the Scope of Work under this Contract;
- (viii) sudden and accidental pollution, including any clean up or remediation cost or expenses;

(b) motor vehicle insurance, covering all mechanically propelled vehicles that are registered, or capable of being registered, for road use and are at any time used in connection with this Contract, including:

- (i) insurance that is compulsory under applicable Laws governing the use of motor vehicles and liability for personal injury or death; and
- (ii) liability insurance for third party property damage or bodily injury with a sum insured of not less than \$30,000,000 per occurrence;
- (iii) bodily injury gap coverage;

- (c) workers compensation insurances covering Liability, including any applicable worker's compensation legislation, to the Supplier's Personnel engaged in doing anything for the purpose of the performance of the Services or executing the Supplier's rights or obligations under the Agreement, and extends to name the Purchaser and Purchaser's Personnel as a Principal via a principal extension where the policy indemnifies the Purchaser or Purchaser's Personnel for benefits under the Workers Compensation and Injury Management Act 1981 (WA) or equivalent legislation and at common law for cover for not less than \$50,000,000. Also the insurer agrees to wavier any rights of subrogation against the Purchaser or the Purchaser's Personnel. Policy to have common law Industrial Diseases extensions;
- (d) mobile plant and equipment insurance covering all insurable risks for the Supplier's Equipment, and the like and all other property of the Supplier for which the Supplier is responsible for an amount not less than its full replacement value or reinstatement value. Policy must provide a waiver of subrogation in favour of the Purchaser.
- (e) all risks insurance for each item of equipment or tools or product been supplied to Purchaser covering for an amount not less than its replacement value. Such insurance policy must note the interest of Purchaser as an interested party. Policy must provide a waiver of subrogation in favour of the Purchaser.
- (f) If you are providing professional services, professional indemnity insurance of not less than the \$10,000,000 for each claim and in the aggregate for all claims arising in any one 12 month period of insurance, covering the liability of the Supplier for any professional services provided by the Supplier and the Supplier's Personnel under this Contract for a specific fee;
- (g) such other insurances that the Supplier requires by law or in order to conduct their work under this Contract.

19. Supplier's obligations in relation to insurance

- (a) ensure that the insurance referred to in clause 18(a), 18(b), 18(d), 18(e) and 18(g):
 - i. includes the Purchaser and Purchaser's Personnel as additional insured in respect to this Contract;
 - ii. contains a cross liability clause as if there was a separate policy of insurance covering all parties included as additional insured (subject always to the overall sum insured not being increased thereby);
 - iii. contain a waiver of subrogation from the insurer in favour of the Purchaser and Purchaser's Personnel;
 - iv. provides that failure by any insured to observe and fulfil the terms of the policy does not prejudice the insurance of any other insured; and
 - v. contains provisions to the effect that:
 - a. notice to the insurer by one insured party is deemed to be notice by all insured parties;
 - b. disclosure to the insurer by one insured party is deemed to be disclosure by all of the insured parties; and

- (b) The Supplier must ensure (and, where relevant, procure that its Subcontractors ensure) that any insurance required to be taken out under clause 18 is effected with reputable insurers with a financial security rating of A- or better by Standard & Poors or the equivalent rating with another recognised rating agency.
- (c) promptly and without delay notify the Purchaser if an insurer gives a notice of cancellation or other notice in respect of any insurance policy;
- (d) indemnify the Purchaser to the extent of any excess, deductible or self insured retention applicable to the insurances referred to in clause 18.
- (e) All the insurance policies required under clause 18, are primary, and not secondary, to the indemnities referred to in this Contract. It is the intention of the parties that the insurer cannot require any party to exhaust a claim under an indemnity referred to in this Contract before the insurer considers or pays the relevant claim.
- (f) Whenever a claim is made under any of the policies of insurance referred to in this clause 18, the Supplier is liable for any excess or deductible payable as a consequence.