

1. Nature and Term of Agreement

- (a) Unless otherwise expressly agreed to in writing by the parties, this Agreement encompasses the Purchase Order, all documents attached to or expressly incorporated by reference in the Purchase Order and these Terms and Conditions for the supply Goods and/or provision of Services. No terms stated by the Supplier in making a quotation or accepting or acknowledging the Purchase Order which differ from the terms of the Purchase Order shall be binding upon the Company or shall be deemed to be any part of the Agreement between the parties.
- (b) The Agreement begins on the Commencement Date and continues until expiry of the Defects Liability Period, unless extended by agreement or terminated earlier in accordance with these terms.

2. Supply of Goods and/or Provision of Services

- (a) The Supplier must:
 - (i) deliver the Goods to the Delivery Location by the Time for Delivery; and
 - (ii) complete the Services by the Date for Completion.
- (b) The Supplier must:
 - (i) ensure all Goods supplied to the Company:
 - (A) conform with this Agreement (including any specifications stated in the Purchase Order) or any samples provided to the Company;
 - (B) are free from Defects in materials and workmanship;
 - (C) are new and of a high quality; and
 - (ii) ensure all Services performed for the Company:
 - (A) are performed using high quality new materials which comply with the requirements of this Agreement;
 - (B) comply with the requirements of this Agreement (including any specifications stated in the Purchase Order); and
 - (C) are performed at a high standard, with all due skill, care and diligence, and in accordance with relevant best practice.
- (c) The Company may inspect the Goods at any time prior to payment and reject any Goods which are not in accordance with this Agreement. The Supplier must, at its cost, collect and remove any rejected Goods as soon as practicable following notification. If the Goods conform with this Agreement, the Company will issue written notification of acceptance of the Goods.
- (d) After performance of the Services, the Company may reject the Services which are not in accordance with this Agreement. The Supplier must promptly rectify the non-compliance (if any) as soon as practicable following notification. If the Services conform with this Agreement, the Company will issue written notification of acceptance of the Services.
- (e) If the Supplier fails to comply with subclauses (c) and (d) above, the Company may terminate this Agreement immediately. If the Company terminates this Agreement under this clause, the Company will be entitled to a full refund of all moneys paid to the Supplier in respect of the Goods and/or Services.

3. Pricing

- (a) The Contract Sum is the total amount of the Fee and the Purchase Price, which is fixed and not subject to escalation, deemed to include all things necessary to the supply of Goods and/or provision of Services in accordance with this Agreement including all on-site and off-site overheads, profit, delivery and mobilisation and all other indirect and direct taxes, levies, duties, costs and charges.
- (b) The Supplier may not charge the Company any additional price, fees or charges, or recover any expenses or other costs from the Company, including any costs or expenses for any certification, design or works that are incidental or necessary to the provision of the Goods and/or Services.

4. Variations

- (a) The Supplier acknowledges and agrees that, not less than 10 Business Days before delivery of the Goods and/or commencement of the Services, the Company may add to, omit, reduce or vary the Goods and/or Services by issuing a notice in writing to Supplier specifying the required alterations to the Goods and/or Services.
- (b) If the Company provides a notice in accordance with subclause (a) above, the Contract Sum will be adjusted to reflect the alteration to the Goods and/or Services.

5. Payment and Price

- (a) The Supplier shall submit payment claims progressively no later than 5 days before the last day of each month that the Goods/and or Services are supplied, or for shorter engagements not exceeding one month, within 30 days of the provision of the Goods and/or Services.
- (b) An early payment claim shall be deemed to have been made on the date for making that claim.
- (c) The payment claim shall be given in writing to the Supplier and shall include:
 - (i) the amounts that the Supplier asserts are payable to the Supplier in accordance with the Agreement;
 - (ii) supporting documentation including weekly timesheets that have been submitted by the Supplier and approved by the Company;
 - (iii) the items and quantities of Goods and/or Services to which the payment claim relates;
 - (iv) any other amount the Supplier claims is payable by the Company under the Agreement and the legal basis for such entitlement, including the provision of the Agreement relied on and the facts to support that entitlement;
 - (v) amounts paid previously under the Agreement; and
 - (vi) any further information or documentation in relation to the payment claim as is reasonably required by the Company.
- (d) The Company shall, within 10 Business Days after receiving such a payment claim, issue to the Supplier a payment statement which states:
 - (i) the value of the Goods and/or Services supplied by the Supplier in accordance with the Agreement as at the date of the payment claim;
 - (ii) the amount already paid to the Supplier;
 - (iii) the amount the Company is entitled to retain, deduct, withhold or set-off under this Agreement;
 - (iv) the amount (if any) to be then payable by the Company to the Supplier under the Agreement and which the Company proposes to pay to the Supplier; and
 - (v) if the amount in paragraph (iv) is less than the amount claimed in the progress claim:
 - (A) the reason why the amount in paragraph (iv) is less than the amount claimed in the progress claim; and
 - (B) if the reason for the difference is that the Company has retained, deducted, withheld or set-off payment for any reasons, the reason for doing so.
- (e) The Supplier shall, within 5 Business Days of receipt of a payment statement, issue a tax invoice to the Company for the amount stated as then payable in the payment statement.
- (f) Within 20 Business Days following receipt of a payment claim, the Company shall pay the amount stated in the payment statement.
- (g) If the payment statement shows that an amount is payable by the Supplier to the Company, the Supplier shall pay that amount to the Company within 10 Business Days of receipt of the payment statement.
- (h) Neither a payment statement nor a payment of moneys shall be evidence that the subject Goods and/or Services are satisfactory. Payment other than final payment shall be payment on account only.
- (i) Without limiting the Company's rights elsewhere in the Agreement, the Company may deduct, withhold or set-off from moneys otherwise due to the Supplier:
 - (i) any debt or other moneys due from the Supplier to the Company; or
 - (ii) any claim to money which the Company may have against the Supplier whether for damages or otherwise, whether under the Agreement or otherwise at law relating to the Goods and/or Services.

6. Title and risk

- (a) Title to all Goods passes to the Company at the earlier of when the Goods are delivered to the Delivery Location or payment is made by the Company for the Goods.
- (b) Transfer of the title will not affect the rights of the Company as stated in the Agreement.
- (c) Risk in the Goods will be with the Supplier until the Company issues a written notification of acceptance of the Goods in accordance with clause 2(c).

7. Warranties

- (a) The Supplier represents and warrants to the Company that:

- (i) **(Title)** it has good title to the Goods and that the Goods are free from any encumbrances, liens or any third party claims whatsoever;
 - (ii) **(IP)** it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the Goods and/or the Services and to grant to the Company the licences contemplated by this Agreement;
 - (iii) **(Goods)** the Goods:
 - (A) conform in all respects with this Agreement, including any specifications and other requirements supplied to the Supplier as part of the Purchase Order; and
 - (B) are new, free from defects (including defects in installation) and of merchantable quality; and
 - (iv) **(Services)** the Services:
 - (A) must be performed to the standard of care, skill and diligence that would normally be expected of a reputable and competent supplier providing services similar to the Services;
 - (B) conform in all respects with this Agreement, including any specifications and other requirements supplied to the Supplier as part of the Purchase Order; and
 - (C) will be performed by the person(s) specified to perform the Services in the Purchase Order (if any); and
 - (v) **(Approvals)** it must obtain and maintain, and ensure that each of its Personnel obtains and maintains, all Approvals required to enable the provision of the Goods and/or Services to be undertaken lawfully.
- (b) The Company is not liable to pay the Supplier for any Goods or Services that contain Defects until the Defects have been remedied to the satisfaction of the Company.
- (c) Prior to the expiration of the Defects Liability Period, at the option of the Company, and at no cost to the Company, the Supplier will at its own cost and expense, as soon as reasonably practicable upon receipt of notice that Goods or Services contain Defects, either re-perform, replace or repair and make good the Goods or Services or part thereof notified by the Company to be defective. With respect of any remedial work of Defects performed by the Supplier under this clause 7, the Defects Liability Period will be extended for a period of 12 months from the date the remedial work is completed.
- (d) The Company's right to require remedial work of Defects is in addition to and not in lieu of any other remedies it may have at law or in equity.

8. Intellectual Property Rights

- (a) The ownership of any Intellectual Property Right in the Contract Material shall vest in the Company upon the time of its creation.
- (b) The Supplier must not use, or allow any third party to use, any material protected by the Intellectual Property Rights of the Company for any purpose other than the provision of the Goods and/or Services, unless it has obtained the prior written consent of the Company.
- (c) The Supplier acknowledges that, apart from any licence or permission that may be granted under this clause, it has no right, title or interest in the material protected by the Intellectual Property Rights of the Company.
- (d) The Supplier grants to the Company a royalty free, non-exclusive, transferable, perpetual license to use all its Intellectual Property Rights associated with the Goods and/or Services (if any).
- (e) This license includes allowing the Company or a third party engaged by the Company to use the Goods and/or Services and any documentation provided with the Goods and/or Services to effect the installation, use, support, repair, maintenance or alteration of the Goods and/or Services or to otherwise enjoy the benefit of this Agreement.

9. Liability

- (a) The Supplier indemnifies, and will at all times keep the Company and each of its Personnel indemnified, against any:
 - (i) loss of, or damage to, any real or personal property (including property belonging to the Company or for which it is responsible);
 - (ii) liability or loss in respect of injury (including death) to any person; and
 - (iii) any other loss or damage suffered by the Company or its Personnel,
 arising out of or in connection with any breach of this Agreement, or negligent act or omission, by the Supplier or its Personnel.
- (b) The Supplier's liability to indemnify the Company under clause 9(a) is reduced to the extent that any wilful, unlawful or negligent act or omission by the Company or its Personnel contributed to the liability, loss or damage.

10. Termination

- (a) A party may terminate this Agreement with immediate effect (or with effect from a specified date) by giving notice in writing to the other party if the other party:
 - (i) breaches a material provision of the Agreement; or
 - (ii) has become insolvent or bankrupt or has had an administrator, receiver or liquidator appointed.
- (b) If the Agreement is terminated pursuant to this clause:
 - (i) the Supplier's warranties remain unaffected; and
 - (ii) the parties' other remedies, rights and liabilities shall be the same as they would have been under the law had the defaulting party repudiated the Agreement and the other party elected to treat the Agreement as at an end and recover damages.
- (c) On termination or expiry, the Supplier must immediately, following instructions by the Company, cease using all materials that contain any data or confidential information by either destroying the materials or returning the materials at no additional cost to the Company.

11. Termination for convenience

- (a) Without prejudice to any of the Company's other rights or entitlements or powers under this Agreement, the Company may at any time, for any reason and for its sole convenience, by notice to the Supplier, terminate this Agreement.
- (b) If the Company terminates this Agreement under this clause, the Supplier will subject to clause 5(i), be entitled to payment of the following amounts:
 - (i) the amount due to the Supplier shown in any unpaid tax invoice submitted by the Supplier in accordance with clause 5(e);
 - (ii) for Goods and/or Services provided prior to the date of termination, the amount which would have been payable if the Agreement had not been terminated and the Supplier submitted a payment claim under clause 5(a) for Goods and/or Services provided to the date of termination; and
 - (iii) the amount specified in the Purchase Order as payable to the Supplier upon termination by the Company for its convenience.
- (c) The amount to which the Supplier is entitled under this clause will be a limitation on the Company's liability arising out of or in connection with the termination of the Agreement and the Company will not be liable to the Supplier for any claim in respect of the termination other than for the amount payable under this clause.

12. Insurance

- (a) The Supplier must effect and maintain professional indemnity insurance, public and products liability insurance, workers' compensation insurance and any other insurances set out in the Purchase Order, for an amount and/or period not less than the amount and/or period as set out in the Purchase Order.
- (b) On request, the Supplier must, within 10 Business Days, provide the Company with evidence of the currency of any insurance it is required to obtain.

13. Confidentiality, privacy and data protection

- (a) The Supplier acknowledges that the information contained in this Agreement and all data and information provided by the Company during or in connection with the negotiation or performance of this Agreement is confidential and must not be disclosed to any third party without the prior written consent of the Company.
- (b) This clause does not apply to confidential information required to be disclosed by law or pursuant to stock exchange listing rules or disclosed to legal advisers, auditors, agents or employees of each party or its related bodies corporate in connection with this Agreement.

14. Compliance with law and policy

- (a) The Supplier must, in performing its obligations under the Agreement, comply with the laws (including but not limited to the WHS Legislation) relevant to the provision of the Goods and/or Services by the Supplier under this Agreement and any policies or standards specified in the Purchase Order.

15. GST

- (a) The terms used in this clause have the same meanings given to them in the GST Act.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with the Agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with the Agreement, the recipient of the taxable supply must pay to the party making the taxable supply an amount equal to the

GST payable on or for the taxable supply. Subject to the recipient first receiving a valid tax invoice, payment of the GST amount will be made at the same time the consideration for the taxable supply is to be paid or provided in accordance with the Agreement.

16. General

- (a) The Agreement is governed by and is to be construed in accordance with the laws of Western Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- (b) Time is of the essence in relation to the provision of the Goods and/or Services.
- (c) The Agreement may only be varied or replaced by a written document executed by the parties.
- (d) A party may not assign any right under the Agreement without the prior written consent of the other party.
- (e) Notwithstanding anything in this Agreement to the contrary, neither the Company nor the Supplier will be liable to each other for any consequential loss or damages of any nature whatsoever whether based on contract, warranty, tort (including negligence) or otherwise including (but not limited to) those arising out of delay, loss of product, loss of production, business interruption, loss of revenue or loss of profits howsoever arising and the Company and the Supplier agree that such loss or damages will not be claimed as direct loss or damage.
- (f) The relationship between the Company and Supplier is that of Company and independent contractor.
- (g) This Agreement constitutes the entire agreement in respect of the supply of the Goods and/or Services.
- (h) The operation of Part 1F of the Civil Liability Act 2002 (WA) is excluded in relation to all and any rights, obligations and liabilities under this Agreement whether such rights, obligations are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at law.

17. Personal Property Securities Act

- (a) A word or expression used in this clause which is defined in the PPSA has the same meaning in this clause unless the context otherwise requires.
- (b) In respect of any Goods supplied under this Agreement by the Supplier which:
 - (i) give rise to a security interest in favour of the Company, the Supplier must do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information), if requested, to assist the Company to register that security interest;
 - (ii) gives rise to a security interest in favour of the Supplier and the Supplier proposes to register the security interest under the PPS Law, the Supplier must give the Company notice prior to the registration that the Supplier proposes to register the security interest;
 - (iii) gives rise to a security interest in favour of any third party and the Supplier becomes aware that the third party may register the security interest, the Supplier must give the Company notice as soon as it becomes aware of the third party's intention to register the security interest; and
 - (iv) gives rise to a security interest in favour of the Supplier and the Supplier registers the security interest, the Supplier must promptly remove any security interest registered if it no longer requires it to be registered under PPS Law.
- (c) In the event that this Agreement is terminated, the Supplier shall ensure that any security interest registered under PPS Law over the Goods is removed and the Company may enter upon any premises and take possession of such Goods.

18. Definitions

In these terms and conditions, unless the context otherwise requires:

Agreement means these terms and conditions, the Purchase Order and any other documents specified in the Purchase Order.

Approvals means any certificates, licences, consents, permits, approvals, authorisations, permissions, determinations, notices, waivers and requirements of authorities.

Business Day means a day other than a Saturday, Sunday or public holiday in Western Australia.

Completion Date means the date on which the Goods and/or Services are accepted by the Company under clause 2(c).

Commencement Date means:

- (a) in relation to Goods, the date on which the supply of the Goods will commence;

- (b) in relation to Services, the date on which the provision of the Services will commence, as specified in the Purchase Order.

Company means Aspect Engineering Solutions Pty Ltd.

Contract Materials means any materials (including any Intellectual Property) which the Supplier creates (whether alone or jointly with any other person) in performing the Services.

Contract Sum means the total sum of any Purchase Prices and/or Fees under this Agreement.

Date for Completion means:

- (a) in relation to Goods, the Time for Delivery; and
- (b) in relation to Services, the date by which the provision of the Services must be completed by the Supplier, as specified in the Purchase Order.

Delivery Location means the location or address to which the Goods are to be delivered, as specified in the Purchase Order.

Defect means:

- (a) any defect, shrinkage or fault in, or omission from, any Services under this Agreement for which the Supplier is responsible;
- (b) any aspect of the Services under this Agreement that is not in accordance with under this Agreement; or
- (c) any damage to, or loss of, the Goods or any part thereof that would not have occurred but for any such defect, shrinkage, fault, omission or aspect.

Defects Liability Period means the period commencing on date on which the Goods and/or Services are accepted under clause 2, as specified in the Purchase Order.

Fees mean the fees payable to the Supplier for the provision of the Services, to be calculated using the Rates as specified in the Purchase Order and as provided under this Agreement.

Goods means the goods specified in the Purchase Order and as provided under this Agreement.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all intellectual property rights at any time recognised by law, including all present and future copyright, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, trade secrets and know-how, registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

WHS Legislation means all legislative requirements in relation to work health and safety that may apply from time to time including: the *Work Health and Safety Act 2020* (WA) including any updates, revisions or replacements; the *Work Health and Safety (General) Regulations 2022* (WA) including any updates, revisions or replacements; the *Dangerous Goods Safety Act 2004* (WA); any directions on safety notices issued by an authority; and any workplace health and safety code of practice or compliance code relevant to the Goods and/or Services.

Personnel of a party includes the officers, employees, agents, contractors and sub-contractors of that party.

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPS Law means:

- (a) any regulations made at any time under the PPSA; and
- (b) any amendment to any of the above.

Purchase Order means any form of order or purchase issued by the Company for the supply of the Goods and/or Services, made under or incorporating these Terms and Conditions.

Purchase Price means the sum ascertained by multiplying the unit price for the applicable Goods by the number of units delivered.

Rates means the monetary amount (whether charged on an hourly, daily, weekly or other time-related basis) payable to the Supplier for the provision of the Services, as specified in the Purchase Order, and includes all things necessary to the provision of Services including all on-site and off-site overheads and profit.

Services means the services or works, and includes any deliverables provided as part of the services or works, specified in the Purchase Order and as provided under this Agreement.

Supplier means the person, business or entity described in the Purchase Order or otherwise from whom the Goods and/or Services are being provided.

Time for Delivery means the date and, where relevant, the time specified in the Purchase Order (or such other date or time as may be agreed in writing) by or on which the Goods must be delivered by the Supplier.