

**CONTRACT TERMS AND CONDITIONS  
(GOODS AND SERVICES)**

The Company agrees to purchase the Goods and/or the Services from the Supplier and the Supplier agrees to sell the Goods and/or the Services to the Company on these Terms and Conditions.

**1. CONTRACT**

These Terms and Conditions will apply whenever the Company issues a Purchase Order. The Supplier may accept these Terms and Conditions by proceeding with the manufacture or supply of the Goods and/or Services requested or by otherwise confirming its acceptance. The parties agree that any reference to the Supplier's terms on any quote, invoice or other document, shall not import those terms into the Contract unless the Company expressly agrees otherwise in writing. Where additional terms or conditions do apply, these Terms and Conditions shall prevail in case of any inconsistency.

**2. PRECEDENCE**

The Purchase Order prevails in case of any inconsistency with these Terms and Conditions.

**3. THE GOODS AND SERVICES**

3.1 The Supplier will ensure that Goods supplied by it:

- 3.1.1 are new ready for use, free from defects performance and fit for purpose;
- 3.1.2 comply with all applicable Statutory requirements and Australian Standards at the minimum;
- 3.1.3 are supplied with a valid manufacturer's or supplier's warranty where the manufacturer or supplier offers such a warranty in respect of the Goods; and
- 3.1.4 are delivered in accordance with any specifications and/or timeframe referred to in the Contract or otherwise provided by the Company to the Supplier.

3.2 The Supplier will ensure that any services supplied by it:

- 3.2.1 are performed to a high standard in accordance with industry best practice and, at a minimum, comply with any applicable Australian Standards; and
- 3.2.2 are performed in accordance with any specifications and/or timeframe referred to in the Contract or otherwise provided by the Company to the Supplier.

**4. DELAY**

4.1 The Supplier agrees to deliver or supply all Goods and/or Services and ancillary items on time and that, if the Supplier is delayed, or expects a delay, it will notify the Company as soon as possible. The Supplier will take all reasonable steps to prevent delay, including but not limited to working overtime.

**5. PACKAGING OF GOODS**

5.1 The Supplier must:

- 5.1.1 suitably pack the Goods to avoid damage during loading, transit, delivery, unloading or storage;
- 5.1.2 pack and transport the Goods in accordance with any applicable regulations and industry codes; and
- 5.1.3 clearly mark all packages of the Goods for delivery and the delivery documents for the Goods with the Contract number and any Contract number and ensure that the delivery documents accompany the Goods to the Delivery Address.

**6. DELIVERY**

6.1 The Supplier must obtain all necessary permits and licenses which must be obtained in Supplier's name and are necessary for Supplier to perform its obligations.

6.2 The Supplier must deliver any of the Goods, and/or provide the Services at the Delivery Address by the Delivery Date.

6.3 The Supplier must, when delivering the Goods or providing the Services:

- 6.3.1 not interfere with the Company's activities or the activities of any third party at the Delivery Address; and
- 6.3.2 comply with, and ensure that its Personnel comply with, all directions and orders given by or on behalf of the Company at the Delivery Address.

**7. INSPECTION AND SAMPLING**

7.1 The Supplier must conduct all inspections and tests in strict accordance with requirements of the Contract.

7.2 The Supplier must ensure that the Company has the opportunity to inspect, test, and witness any test of the Goods and/or the Services wherever they may be located. If required, the Supplier will provide or ensure that its suppliers provide unrestricted access to reasonable facilities necessary for the Company to carry out such inspections or witness such tests.

7.3 Inspection of the Goods and/or the Services or any testing prior to delivery of the Goods or supply of the Services will not affect the obligations of the Supplier.

7.4 The Company may reject any of the Goods or the Services that do not comply with the Specification, the requirements of the Contract or any sample provided to the Company.

7.5 Where available or applicable, the Supplier shall provide samples to the Company at its cost.

**8. TECHNICAL MATERIAL**

8.1 The Supplier must, without additional cost to the Company, supply all required plans,

drawings, specifications, manuals, certificates, instructions, fabrication reports and the like in the form and at the times and in the numbers of copies specified in the Contract or otherwise as reasonably required by the Company.

## **9. PRICE**

9.1 The price for the Goods and/or the Services is the price stated in the Contract. Unless otherwise agreed and clearly stated in the Contract, the price stated on the Contract excludes GST but includes any other applicable taxes, customs, excise and import duties, tariffs, fees, levies, charges, costs or expenses incurred by the Supplier, including transport, packing and insurance costs.

9.2 Unless otherwise agreed and clearly stated in the Contract the price is fixed and firm and not subject to adjustment due to currency fluctuation or any other reason.

## **10. PAYMENT**

10.1 The Supplier must claim payment for the supply of the Goods or the Services by submitting invoices which must:

- 10.1.1 be a tax invoice;
- 10.1.2 be correctly dated;
- 10.1.3 refer to the Contract;
- 10.1.4 list the particular Goods and/or Services supplied; and
- 10.1.5 be supported by relevant records to enable the Company to calculate and verify the amount stated in any Supplier invoice.

10.2 Compliance by the Supplier with clauses 10.1 and 10.6 is a condition precedent to the Supplier's entitlement to:

- 10.2.1 claim the amount stated in an invoice submitted by the Supplier to the Company; or
- 10.2.2 be paid any amount in respect of an invoice submitted by the Supplier to the Company.

10.3 The Supplier must only claim payment for the supply made in the period to which the invoice relates. The Supplier may resubmit a payment claim if the reason for rejection related to the quantity of the Services and / or Goods provided and the Supplier has since then adjusted the quantity as required under the Contract.

10.4 Payments shall be made within 30 Business Days from the end of the month in which a payment claim is made. All invoices are deemed to be submitted on the last day of the respective month.

10.5 The Company shall not be liable to pay for the Goods and/or the Services until the Goods and/or the Services have been supplied in accordance with the Contract and invoices submitted before then shall be void of effect.

10.6 The Company may at any time require that the Supplier provides additional records to calculate and verify the amount stated in any Supplier invoice. The Company's payment obligation shall be suspended pending the receipt of the required information.

10.7 If the Company disputes any amount claimed

in an invoice, the Company shall make a determination of the amount payable within 14 days from the receipt of the Supplier's payment claim and inform the Supplier of the reasons why its payment claim has (wholly or partially) been rejected. Undisputed amounts shall be paid in accordance with clause 10.4.

10.8 If the Supplier receives partial or no payment upon submission of a payment claim without having been informed as per clause 10.7, the Supplier may request in writing that the Company provides reasons within 14 days, failing which, the Supplier may issue a Dispute Notice.

10.9 Notwithstanding any other subclause of this clause 10, the Company may issue a revised payment certificate at any time correcting any omission or error discovered in any previous payment made or modifying any previous payment certificate issued by it, including as a result of the provision of information under clause 10.6.

10.10 No interest shall be payable on any amount due to the Supplier but remaining unpaid after the date upon which it should have been paid.

10.11 Without prejudice to any other rights, the Company may deduct from or set off against any monies which may be, or become, payable to the Supplier any costs, expenses or damages which are due from the Supplier to the Company, or which the Company has incurred or reasonably considers it might in the future incur as a consequence of any act or omission of the Supplier, whether under or in connection with the Contract or otherwise.

10.12 Payment by the Company of all or any part of a claim by the Supplier or any other amount to the Supplier is on account only and does not constitute approval of any Goods and/or Services or any other matter or thing in respect of which the payment is made.

## **11. TITLE AND RISK**

11.1 Risk in the Goods passes to the Company upon delivery to the Delivery Address.

11.2 Property in the Goods passes to the Company upon the earlier of payment or delivery to the Delivery Address.

## **12. WARRANTIES**

12.1 The Supplier represents and warrants that:

12.1.1 the Goods and/or the Services will be supplied in an efficient manner in accordance with all applicable laws, regulations, codes and standards;

12.1.2 the Goods and/or the Services strictly comply with the Specifications;

12.1.3 the Goods and/or the Services are free from all Defects;

12.1.4 the Supplier will, and will ensure its Personnel will, exercise the standards of diligence, due care and skill normally exercised by a prudent and similarly qualified and competent supplier supplying equivalent goods and services;

12.1.5 the Goods and/or the Services are

- fit for the purpose for which goods and services of the same kind are commonly supplied and for any other purpose described in the Contract;
- 12.1.6 all Personnel are appropriately qualified, competent and skilled to perform the relevant part of the Services in respect of which they are engaged;
- 12.1.7 any equipment used on Site by the Supplier will be in a safe working condition and comply with all Legislative Requirements and be operated by suitably qualified and competent Personnel;
- 12.1.8 all the Goods match the description of the Goods in the Contract;
- 12.1.9 if the Supplier gave the Company a sample of the Goods before the Company issued the Contract, all the Goods correspond with the sample;
- 12.1.10 all the Goods are of new and of merchantable quality; and
- 12.1.11 all the Goods are completely owned by the Supplier and will be supplied to the Company free of any interests, liens, charges or encumbrances and no interest shall be registered under the PPSA.
- 12.2 The Supplier must immediately rectify or replace at the Company's option and at Supplier's sole cost any Defective Goods or Services discovered within 15 months after supply or 12 months after the Goods or the Services are first used or enter into the service for which they are purchased, whichever occurs first.
- 12.3 If the Company reasonably considers that it is necessary to rectify or replace Defective Goods or Services then the Company, if time permits, shall give the Supplier an opportunity to rectify or replace such Goods or Services before the Company does so or causes a third party to do so. The Supplier must reimburse the Company for the full cost of such replacement or rectification.
- 12.4 The Supplier's obligation to replace or rectify Defective Goods and/or Services is cumulative of other remedies available to the Company.
- 12.5 The Supplier must ensure that the Company has the full benefit of any manufacturer's warranties that may be applicable to the Goods or the Services and the Supplier must pursue any manufacturer's warranties on the Company's behalf if the Company so requests.
- 12.6 If the Supplier has replaced or rectified Defective Goods or Services, the rectified or replacement Goods or Services must be subject to the same warranty period as the original Goods or Services, from the date of rectification or replacement.
- 12.7 If the Company elects to accept Defective Goods or Services on one occasion, such election does not bind the Company to accept any other Defective Goods or Services and does not affect any of the Company's other rights under the Contract in respect of those Defective Goods or Services.
- 12.8 The Company may assign any or all of the above warranties to any of its clients or related companies and the Supplier consents to such assignment.
- 13. LIABILITY AND INDEMNITY**
- 13.1 The Supplier is liable for, indemnifies and will indemnify and keep the Company indemnified against all Loss, and hereby releases and will release the Company from any Action arising directly or indirectly out of the supply of the Goods and/or the Services, except to the extent caused or contributed to by any wrongful act or omission of the Company.
- 13.2 The rights and obligations under clauses 12 and 13 survive termination of the Contract.
- 13.3 The Company is not liable for any consequential or indirect loss.
- 14. CANCELLATION**
- 14.1 In addition to its rights under clause 15, the Company may cancel all or any part of the a Purchase Order at any time for any reason, in its sole and absolute discretion by written notice of cancellation to the Supplier.
- 14.2 Upon receipt of notice of cancellation the Supplier must:
- 14.2.1 immediately cease performance of the Services to the extent specified in the cancellation notice;
- 14.2.2 immediately take steps to cease the procurement, manufacture or delivery of the Goods to the extent specified in the cancellation notice;
- 14.2.3 immediately take all possible action to mitigate any costs incurred by it as a result of the cancellation; and
- 14.2.4 provide the Company with a detailed report in the form required by the Company relation to the Goods and the Services supplied prior to cancellation.
- 14.3 In the event of cancellation by the Company under this clause:
- 14.3.1 the Supplier is entitled to payment for the Services supplied and the Goods delivered to the Company prior to cancellation but not already paid for;
- 14.3.2 if the Goods have been shipped, but not delivered, at the time of cancellation the Company may either:
- (a) accept the Goods when delivered, and pay the Price for them; or
- (b) return the Goods to the Supplier at the Company's expense;
- 14.3.3 if the Goods have been procured, manufactured or fabricated in accordance with the Specification (but not shipped) at the time of cancellation, the Company shall

- pay costs reasonably incurred by the Supplier prior to the date of the cancellation which is directly attributable to the placing of the Contract and which the Supplier is not able to recoup in some other way;
- 14.3.4 the Supplier is not entitled to the Price of the Goods or the Services or to any compensation for that cancellation other than as specified in clauses 14.3.1 to 14.3.3; and
- 14.3.5 the maximum compensation payable under clause 14.3.1 to 14.3.3 arising out of the cancellation will not exceed the Price of the relevant Goods or the Services cancelled.
- 15. DEFAULT AND TERMINATION**
- 15.1 The Company may (by written notice to the Supplier) terminate the contract formed by this Contract or reduce the scope of the Goods and/or Services to be provided thereunder, where:
- 15.1.1 the Supplier is in breach of any of the Terms and Conditions of this Contract; or
- 15.1.2 the Supplier is a corporation and becomes insolvent, or has an administrator, controller or liquidator appointed under the Corporations Act, or has receivers or managers appointed to it; or
- 15.1.3 being an individual, is unable to pay its debts when they fall due or has a trustee in bankruptcy appointed;
- 15.1.4 ceases or threatens to cease to carry on business; or
- 15.1.5 for its convenience, in which case the Company's liability to the Supplier shall be limited to payment of the Price for the Goods and the Services supplied prior to such termination.
- 15.2 Termination of the Contract does not affect or prejudice any rights of the Company which have accrued prior to the termination. The Company's exercise of its rights under this clause does not affect or limit its ability to exercise any other rights under the Contract, at law or in equity.
- 16. INSURANCE**
- 16.1 The Supplier must prior to commencing the supply of the Goods and/ or Services and for as long as it has obligations outstanding in connection with the supply of the Goods or the Services effect and maintain:
- 16.1.1 all insurances specified in the Contract;
- 16.1.2 such insurances with a reputable insurer having a Standard & Poor's, Moodys, AM Best or equivalent ratings agency's long-term issuer credit rating of A minus or better, or otherwise as approved by the Company in writing; and
- 16.1.3 all necessary insurance cover for all risks arising out of the performance of its obligations under the Contract.
- 16.2 The Supplier must provide evidence satisfactory to the Company of such insurance to the Company as a condition precedent to the Supplier being entitled to:
- 16.2.1 access the Site or Delivery Address;
- 16.2.2 make a claim for payment or received payment for the supply of the Goods or the Services.
- 16.3 If the Supplier does not comply with its obligations under clause 16.2 the Company may effect and maintain the relevant insurance and pay the premiums and the amount of such payment shall be a debt due and payable by the Supplier to the Company.
- 16.4 The Supplier must notify the Company immediately if any incident occurs that is likely to give rise to a claim under any policy of insurance effected by the Supplier under the Contract and must keep the Company fully informed of all subsequent developments regarding such claim.
- 17. PERSONNEL**
- 17.1 The Company may object to any Personnel who, in the Company's reasonable opinion, do not have the appropriate qualifications, competency or skill to perform the relevant part of the Services in respect of which they are engaged, or who engage in misconduct.
- 18. SITE**
- 18.1 To the extent the Supplier or Personnel are required to be on or in the vicinity of the Site, the Supplier must:
- 18.1.1 comply, and ensure its Personnel comply, with all Legislative Requirements and all policies, standards, rules and procedures in force from time to time, including in relation to HSE;
- 18.1.2 submit and amend any HSE management plan(s) as reasonably required by the Company;
- 18.1.3 attend all induction courses as reasonably required by the Company;
- 18.1.4 permit the Company to have access to the Supplier's premises, documentation, data and Personnel as necessary to enable the Company to verify, monitor and audit the Supplier's compliance with this clause 18;
- 18.1.5 give the Company not less than 7 days prior written notice before commencing the Services on the Site.
- 18.2 The Supplier acknowledges that it will not have exclusive possession of any part of the Site and will only be granted access to the Site to the extent necessary for the performance of the Services. The Supplier must cooperate and coordinate its performance of this

Contract with other contractors and persons on the Site.

## **19. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

- 19.1 The Supplier warrants that any design, equipment, methods of working and documentation including but not limited to specifications, drawings, reports and publications used or produced by the Supplier in connection with the Services do not infringe any IP Right.
- 19.2 The Company acknowledges that ownership of all IP Rights used or created under the Contract or in the provision of the Services is retained by the Supplier. The Supplier grants to the Company a non-exclusive, transferable, royalty free, irrevocable and perpetual licence to use such IP Rights for the purpose of the Company having the benefit of the Services.
- 19.3 The Supplier indemnifies the Company for all loss and expense incurred as a result of a breach of this clause.
- 19.4 The Supplier acknowledges that the terms of the Contract are confidential and agrees not to disclose any information regarding the Contract, its existence or its terms to any third party (including by making any media release) without the express written permission of the Company.
- 19.5 This clause 19 shall survive the cancellation, termination or repudiation of the Contract for any reason.

## **20. DISPUTE RESOLUTION**

- 20.1 If a dispute arising out of or in connection with the Contract arises then either party may serve the other party with a Dispute Notice.
- 20.2 Within 7 days of receipt of a Dispute Notice, representatives of the parties having authority to bind the parties shall confer in an attempt to resolve the dispute, which conferral shall be confidential and without prejudice.
- 20.3 If the dispute is not resolved within 21 days of the service of the Dispute Notice, then:
- 20.3.1 the Company may determine in its sole discretion whether the dispute is to be resolved through an alternative method of dispute resolution, and if so, which alternative method of dispute resolution;
- 20.3.2 save where an alternative method of dispute resolution has been determined by the Company, either party may commence legal proceedings.
- 20.4 Notwithstanding the existence of a dispute, the Supplier shall continue to perform its obligations under the Contract.
- 20.5 Neither party may commence legal proceedings (except for urgent interlocutory relief) in relation to any dispute unless the procedure referred to in this clause 20 has been strictly complied with.
- 20.6 This clause 20 shall survive the cancellation, termination or repudiation of the Contract for any reason.

## **21. SECURITY OF PAYMENT**

- 21.1 The parties agree that for the purposes of any adjudication under any Security of Payment Act in relation to the Contract or the Goods or the Services:

21.1.1 the prescribed appointor shall be the Chairperson from time to time of the Chapter of Institute of Arbitrators and Mediators Australia in the State in which the Goods or the Services are supplied, or if the Goods or the Services are supplied in Queensland then the Registrar appointed under the *Building and Construction Industry Payment Act 2004* (Qld);

21.1.2 the amount stated in a progress certificate given by the Company under clause 10.7 is the amount of the 'progress payment' calculated in accordance with the terms of the Contract to which the Supplier is entitled; and

21.1.3 the date under clause 10.1 on which the Supplier must claim payment is the 'reference date'.

## **22. GENERAL**

- 22.1 **Entire Agreement:** The Contract comprises the entire agreement between the Parties in respect of its subject matter and supersedes all prior agreements, quotation requests, understandings, representations, warranties, promises, statements, negotiations, letters and documents in respect of its subject matter. Any terms that may have been attached or embodied in the Supplier's tender or offer or other correspondence (including quote forms and Contracts) whether before, at or after the acceptance of the Contract are not applicable.
- 22.2 **Severance:** If any provision of the Contract is determined to be void by any court then that determination does not affect any other provision of the Contract.
- 22.3 **Waiver:** The Company's failure or delay to exercise a power or right does not operate as a waiver of that power or right. No waiver by the Company of any breach of a provision of the Contract is a waiver of any subsequent breach of that provision or any other provision. A waiver is not effective unless it is in writing, signed by the Company.
- 22.4 **Variations:** An amendment or variation to the Contract is not effective unless it is in writing and signed by the Company prior to the supply of additional or varied Goods and/or Services.
- 22.5 **Assignment:** The Supplier must not assign the Contract or any part of the Supplier's obligations under the Contract without the prior written consent of the Company, which must not be unreasonably withheld.
- 22.6 **Subcontracting:** The Supplier must not subcontract all or any of its obligations under the Contract without the prior written consent of the Company, which must not be unreasonably withheld.
- 22.7 **Exclusion and apportionment:** The operation of, to the extent not prohibited by

law, Apportionment Legislation is excluded. the Supplier indemnifies the Company against any claim, cost, expense or liability whatsoever arising out of or in connection with the Contract which are caused or contributed to by the Supplier's Personnel and for which the Supplier would have been liable to the Company but for, or which the Company is not able to recover from the Supplier because of, any apportionment under any Apportionment Legislation.

22.8 **Governing Law:** The Contract is governed by, and is to be interpreted in accordance with the laws in force in the State or Territory in which the Goods or the Services are supplied and the Parties submit exclusively to the jurisdiction of the courts in that State or Territory.

## 23. DEFINITIONS

In these Terms and Conditions:

**Action** means any claim, action, suit, proceeding or demand.

**Apportionment Legislation** means any legislation under which an apportionment may be made.

**Business Days** means any day other than a Saturday, Sunday, public holiday and the period between 27 to 31 (inclusive) of December.

**Company** means the Forgacs entity stated in the Purchase Order.

**Contract** means the Purchase Order and these Terms and Conditions.

**Defect** means any aspect of the Goods or the Services not in accordance with this Contract, or which is damaged, deficient, faulty, inadequate or incomplete in design, performance, workmanship, quality or makeup and **Defective** has an equivalent meaning.

**Delivery Address** means the address for delivery stated in the Contract.

**Delivery Date** means the date for delivery of the Goods and performance of the Services stated in the Contract.

**Dispute Notice** means a written notice stating that it is issued under clause 20

**Goods** means the goods (if any) specified in the Contract including, without limitation, manuals, operating instructions, reports and drawings.

**HSE** means health, safety and environment.

**IP Rights** means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and similar rights which may subsist or may hereafter subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registrable), rights in relation to registered or unregistered trade marks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers.

**Legislative Requirements** means any applicable statutes, regulations, by-laws,

orders, awards, proclamations of the Commonwealth, certificates, licenses, consents, permits, approvals, codes, standards and requirements of organisations. **Loss** means any loss, damage, expense, payment or liability, whether direct or indirect, and includes consequential loss, damage or expense (including but not limited to loss of profit or revenue, loss of market or loss of contracts or damage to commercial reputation).

**Party** means the Company or the Supplier, and a reference to Parties is a reference to both of them.

**Personnel** means any person, consultant or subcontractor engaged by the Supplier to provide all or any part of the Services on behalf of the Supplier.

**Purchase Order** means the written order signed by or on behalf of the Company for the supply of the Goods and/or the Services.

**Security of Payment Act means:**

23.1.1 if the law governing the Contract is the law of Western Australia, then the *Construction Contracts Act 2004* (WA);

23.1.2 if the law governing the Contract is the law of New South Wales, then the *Building and Construction Industry Security of Payment Act 1999* (NSW);

23.1.3 if the law governing the Contract is the law of Queensland, then the *Building and Construction Industry Payments Act 2004* (Qld);

23.1.4 if the law governing the Contract is the law of Tasmania, then the *Building and Construction Industry Security of Payment Act 2009* (Tas);

23.1.5 if the law governing the Contract is the law of the Northern Territory, then the *Construction Contracts (Security of Payments) Act 2004* (NT);

23.1.6 if the law governing the Contract is the law of Victoria, then the *Building and Construction Industry Security of Payment Act 2002* (Vic); or

23.1.7 if the law governing the Contract is the law of South Australia, then the *Building and Construction Industry Security of Payment Act 2009* (SA), each as amended from time to time.

**Services** means the services (if any) specified in the Contract, and includes all necessary incidental services.

**Site** means the premises specified in the Contract.

**Specification** means all codes, standards, drawings and specifications applicable to the Contract, referred to in the Contract or otherwise incorporated into the Contract by reference and to be complied with by the Supplier.

**Supplier** means the supplier of the Services and/or Goods specified in the Contract.