

TERMS AND CONDITIONS OF PURCHASE – TRIVANTAGE GROUP OF COMPANIES

The following Terms and Conditions govern all Purchase Orders placed by the Company and will be incorporated into each Contract entered between the Company and the Supplier.

1. Definitions.

In these Terms and Conditions:

- 1.1. **Approval** means any approval, authorisation, certificate, consent, determination, exemption or permit of any Government Authority.
- 1.2. **Business Day** means a day that is not a Saturday, Sunday, or public holiday in state or territory that the Supply is to be provided to the Company.
- 1.3. **Company** means the member of the Trivantage Group (ACN 132 756 551) and each related Bodies Corporate (as defined in the *Corporations Act 2001* (Cth)) in whose name the Purchase Order is issued.
- 1.4. **Confidential Information** means any information provided to the Supplier identified as confidential; or a reasonable person would know is confidential, but excludes any confidential information of the Company that is in or becomes part of the public domain (other than through a breach of the Contract by the Supplier); or was already in the Supplier's possession at the time of receipt from the Company without any obligation of confidentiality to the Company.
- 1.5. **Contract** means these Terms and Conditions together with the Purchase Order and any other documents expressly incorporated into the Purchase Order.
- 1.6. **day** means a calendar day.
- 1.7. **Delivery Date** means the date stated in the Purchase Order, or if no date is stated in the Purchase Order the date required by the Company.
- 1.8. **Design Documents** means the drawings, specifications and other information prepared by the Supplier for the purpose of undertaking any Design Services.
- 1.9. **Design Services** means the undertaking of design services by the Supplier as required by the Contract or necessary for the Supplier to complete the Supply.
- 1.10. **Dispute** means that there must be both a claim and a rejection (in whole or part) of it.
- 1.11. **Goods** means any goods supplied or to be supplied by the Supplier to the Company pursuant to the Contract, including goods supplied by way of hire.
- 1.12. **Government Authority** means any Federal, State or local government (including any local council), and any agency, department, directorate or instrumentality thereof, including any independent regulator deriving power from statute, within Australia or elsewhere.
- 1.13. **Independent QS** means a quantity surveyor nominated by the Australian Institute of Quantity Surveyors.
- 1.14. **Installation Location** means the location at which the Supplier will carry out the Installation Services for the Company, which may be a site of the Company's client or of a third party.
- 1.15. **Installation Services** means the undertaking of installation works by the Supplier as required by the Contract or necessary for the Supplier to complete the Supply.
- 1.16. **Intellectual Property Rights** means any and all intellectual property rights granted by law or equity from time to time, including patent, design, trademark or name, copyright or other protected right, and where those rights are obtained or enhanced by registration, any registration, renewal or extension of those rights and applications and rights to apply for and be granted those registrations, renewals or extensions.
- 1.17. **Maintenance Services** means the undertaking of maintenance or repair services by the Supplier as required by the Contract or necessary for the Supplier to complete the Supply.
- 1.18. **Price** means the price stated in, or calculated in accordance with, the Purchase Order, but excludes any additions or deductions which may be required to be made under the Contract.

- 1.19. **Purchase Order** means a purchase order issued by the Company to the Supplier for the performance of the Supply.
- 1.20. **Relevant Law** means
 - 1.20.1. acts, ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the Supply or the particular part thereof is being carried out,
 - 1.20.2. certificates, licences, consents, permits, approvals and requirements of any Government Authority and other organisations having jurisdiction in connection with carrying out the Supply,
 - 1.20.3. the National Construction Code (including the Building Code of Australia),
 - 1.20.4. any Australian Standards or other standards relevant to the performance of the Supply, and
 - 1.20.5. fees and charges payable in connection with the foregoing.
- 1.21. **Services** means any works or services supplied or to be supplied by the Supplier to the Company pursuant to the Contract and may include Installation Services, Design Services or Maintenance Services.
- 1.22. **Supplier** means the supplier of the Goods, Services, or Goods and Services identified in the Purchase Order.
- 1.23. **Supply** means the supply of the Goods, Services, or Goods and Services by the Supplier pursuant to the Contract.
- 1.24. **Terms and Conditions** means these terms and conditions of purchase.
- 1.25. **Warranty Period** means either the period stated on the Purchase Order; or if no period is stated on the Purchase Order, a period of twenty-four (24) months from the date of completion of the Supply.

2. Interpretation.

- 2.1. In the Contract: headings and bold text are for ease of reference only and do not affect the interpretation; the singular includes the plural and vice versa; and a reference to a clause or paragraph is to a clause or paragraph of the Contract.
- 2.2. The Contract constitutes the entire agreement between the Company and the Supplier in relation to the Supply. All prior discussions, undertakings, agreements, representations, warranties, and indemnities in relation to that subject matter are replaced by this Contract and have no further effect.
- 2.3. The Supplier's tender (including any of the Supplier's standard commercial terms) do not form part of the Contract. Any purported incorporation of other standard terms and conditions by the Supplier is void and of no effect.
- 2.4. These Terms and Conditions shall apply to any work performed by the Supplier in connection with the Supply prior to the Company issuing the Purchase Order.
- 2.5. Unless stated otherwise in the Contract, in the event of any ambiguity, inconsistency or discrepancy in any document which forms part of the Contract the Company shall direct the Supply as to the interpretation to be followed. The Supplier is not entitled to any claim arising out of any ambiguity, inconsistency or discrepancy or any direction by the Company under this clause.
- 2.6. If a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed, or the event must occur on or by the next Business Day.

3. Key Obligations.

- 3.1. In consideration for the proper performance of the Supply, the Company agrees to pay the Supplier the Price adjusted by any additions or deductions made pursuant to the Contract.
- 3.2. The Supplier must:

- 3.2.1. carry out and complete the Supply in accordance with: the Contract; any directions authorised by the Contract; and all Relevant Law and Approvals,
- 3.2.2. provide suitably qualified, experienced, and licensed workers, subcontractors, and suppliers,
- 3.2.3. comply with all occupational, health and safety policies, procedures, and requirements of the Company, at no cost to the Company,
- 3.2.4. unless stated otherwise in the Contract, obtain, and maintain, any Approval necessary in connection with the Supply (including those required to own, possess, use or operate the Goods), and
- 3.2.5. unless stated otherwise in the Contract, where the Supply includes: work at an Installation Location; Installation Services; or Maintenance Services, provide all temporary services and facilities reasonably required by the Supplier to perform the Supply at no cost to the Company.
- 4. Supply of Goods.**
- 4.1. This clause 4 applies to the extent the Supply includes Goods.
- 4.2. The Supplier warrants to the Company that the Supplier is the legal and beneficial owner of the Goods and has the right to sell the Goods to the Company free from all mortgages, charges, encumbrances, liens and other third party rights and claims.
- 4.3. Legal and equitable title in the Goods passes to the Company upon delivery.
- 4.4. Unless stated otherwise in the Contract, for all Goods that are being supplied on a delivery only basis:
- 4.4.1. the Goods shall be delivered to either the location stated on the Purchase Order, or if not stated the location advised by the Company, and
- 4.4.2. the Supplier shall be responsible for the care of the Goods until delivered, at which time responsibility for the care of the Goods shall pass to the Company.
- 5. Supply of Services.**
- 5.1. This clause 5 applies to the extent the Supply includes Services.
- 5.2. The Supplier must do and provide all things necessary for the provision of the Services to the Company in accordance with:
- 5.2.1. the description of the Services in the Contract; and
- 5.2.2. all Relevant Laws and Approvals.
- 6. Installation Services.**
- 6.1. This clause 6 applies to the extent the Supply includes Installation Services.
- 6.2. The Company shall provide reasonable access to the Installation Location for the Supplier to complete the Installation Services.
- 6.3. The Supplier agrees to:
- 6.3.1. perform the Installation Services at the Installation Location; and
- 6.3.2. except as otherwise provided in the Contract, supply all tools, plant and equipment, and materials to complete the Installation Services.
- 7. Design Services.**
- 7.1. This clause 7 applies to the extent the Supply includes Design Services.
- The Supplier must provide the Design Services so that the Supply, when completed:
- 7.1.1. is fit for the purpose reasonably implied by the Contract; and
- 7.1.2. is in accordance with the Contract and all Relevant Laws and Approvals.
- 7.2. No review, approval, rejection, or comment by the Company of any Design Documents, or failure of the Company to review, approve, reject or comment on any Design Documents shall relieve the Supplier of any of its obligations under the Contract.
- 8. Maintenance Services.**
- 8.1. This clause 8 applies to the extent the Supply includes Maintenance Services.
- 8.2. Unless stated otherwise in the Contract, the Supplier must provide any deliverables, replacement parts, plant, materials, or equipment required to complete the Maintenance Services.
- 8.3. If the Supplier discovers any defects in the plant, equipment or goods being serviced, or any hazards at the locations at which the Maintenance Services are to be performed, the Supplier must immediately notify the Company.
- 8.4. The Supplier must not use any building services equipment not owned or hired by the Supplier or a subcontractor of the Supplier without the consent of the Company. The Company may at its sole discretion place conditions on any consent.
- 9. Time and completion**
- 9.1. The Supplier must complete the Supply by the Delivery Date, subject to any adjustment in accordance with the Contract.
- 9.2. The Company may, at its sole discretion, by written notice to the Supplier suspend the Supply (or any part of the Supply) for such time as the Company decides and the Supplier must immediately suspend the performance of the Supply. The Company may issue a written notice to recommence the performance of the suspended (or part of the suspended) Supply and the Supplier must promptly recommence.
- 9.3. When the Company is satisfied that the Supplier has completed the Supply, it shall notify the Supplier.
- 9.4. If the Supplier is or will be delayed by (a) a breach of the Contract by the Company, or (b) a variation, and the Supplier submits a claim for an extension of time within 1 day after the event first occurs, the Supplier shall be entitled to an extension of time to the Delivery Date by the period reasonably determined by the Company.
- 9.5. Unless stated otherwise in the Contract, the Supplier accepts the risk of an assumes responsibility for all increased costs, losses and damages however incurred or sustained in the execution of the Supply resulting directly or indirectly from any delay or disruption which occurs or arises in connection with the Supply.
- 10. Price, invoicing, and payment.**
- 10.1. Unless stated otherwise in the Contract, the Price:
- 10.1.1. is in \$AUS, is exclusive of GST, and is not subject to rise and fall or any fluctuations in currencies,
- 10.1.2. includes all other taxes, duties, customs and import charges, and the costs of storage, packing, loading, freight, delivery and unloading, and
- 10.1.3. includes proper allowance for all the Supplier's risks, obligations, and responsibilities under the Contract.
- 10.2. Unless stated otherwise in the Contract:
- 10.2.1. on the last Business Day of each month, the Supplier will invoice the Company for the Goods delivered, the Services performed, and any other money that the Supplier becomes entitled to under the Contract, and
- 10.2.2. the Company shall pay the supplier within 60 days of the end of the month that the invoice was received.
- 10.3. The Company may deduct from any money due to the Supplier any debt or other money due or due and payable from the Supplier to the Company, and any claim to money which the Company may have against the Supplier whether under the Contract or any other agreement between the parties or otherwise at law, and if those moneys are insufficient have recourse to any security under the Contract.
- 11. GST.**
- 11.1. In this clause 11, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any related law imposing such tax has the meaning given to it in that law.
- 11.2. The Price and all amounts payable under a Contract are exclusive of GST.
- 11.3. If a party makes a taxable supply under or in connection with the Contract in respect of which GST is payable, the consideration for the supply but for the application of this clause 11.3 (GST exclusive consideration) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made unless that consideration is stated to already include GST.

- 11.4. If a party must pay, reimburse or indemnify another party for a loss, the amount to be paid, reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, and then increased in accordance with clause 11.3.
- 11.5. Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with a Contract.
- 11.6. A party need not make a payment for a taxable supply made under or in connection with a Contract until it receives a tax invoice for the supply to which the payment relates.
- 12. Defects.**
- 12.1. Delivery of Goods or provision of Services shall not be deemed to be acceptance of the Supply by Company. If, at any time, the Company considers that the Supply is not in accordance with the Contract, the Company shall notify the Supplier and the Supplier must carry out the work necessary so that the Supply does comply with the Contract at the Supplier's cost. If the Supplier fails to do so within the time stated in the notice, or if no time is stated in the notice within a reasonable time, the Company may carry out, or engage others to carry out, all work necessary and any costs, losses or damages incurred by the Company shall be a debt due and payable by the Supplier.
- 13. Care of the Supply**
- 13.1. Subject to clause 4.4, the Supplier is responsible for care of the whole of the Supply until the completion of the Supply, including any unfixed items, and any items provided by the Company for the Supplier to incorporate into the Goods. If any Goods are re-taken by the Supplier, the Supplier is again responsible for the care of those Goods.
- 13.2. If any loss or damage occurs while the Supplier is responsible for its care, the Supplier must rectify such loss or damage at the Supplier's cost. If the Supplier fails to rectify in a reasonable time, the Company may carry out, or engage others to carry out, all rectification work necessary and any costs, losses or damages incurred by the Company shall be a debt due and payable by the Supplier.
- 14. Insurance.**
- 14.1. The Supplier must maintain with a reputable insurance company until the end of the Warranty Period:
- 14.1.1. public and products liability insurance written on an occurrence basis providing cover for an amount not less than \$10,000,000 and noting the Company as an interested party; and
- 14.1.2. workers' compensation insurance appropriate to its activities in the form and amount required by law, and
- 14.2. If the Supply includes Design Services, professional indemnity insurance for an amount not less than \$5,000,000 per claim until seven (7) years after completion of the Supply.
- 14.3. The Supplier shall provide copies of certificates of currency as evidence that it holds the insurance required under clause 14.1 whenever reasonably requested by the Company.
- 14.4. If the Company, or the Company's client, makes a claim under a policy of insurance maintained by either of them due to any act, omission, negligence or default of the Supplier, the Supplier shall be liable for any deductible payable and any legal costs in respect of the claim, and the amount shall be a debt due and payable.
- 15. Liability and Indemnities.**
- 15.1. To the maximum extent permitted by law, the Company will not be liable to the Supplier for any indirect or consequential loss, economic, incidental or special loss or for any loss of production or production stoppage, loss of profit or anticipated profit, loss of revenue or other form of consideration, loss of savings or anticipated savings, loss of use, loss of data, loss of contract or repudiation of contract, loss of goodwill or reputation or loss of business opportunity, business interruption, holding over or overhead loss, loss of future business or for any punitive or exemplary damages.
- 15.2. The Supplier indemnifies the Company, its officers, employees, and agents from and against all costs (including reasonable legal fees), losses, claims, damages, and liabilities arising from or in connection with:
- 15.2.1. the personal injury, illness, or death of any person,
- 15.2.2. any loss of or damage to any property of any person, including the Installation Location and the Supply,
- 15.2.3. any acts, defaults or omissions of a Supplier's subcontractors or suppliers (including their employees and agents),
- 15.2.4. any failure of the Supplier to comply with clauses 9.1, 12.1, 13, 14, 16, 17 or 19.2,
- 15.2.5. the Company not being able to fully recover because of the operation of provisions of any proportionate liability legislation, and
- 15.2.6. the Supply not being in accordance with the requirements of the Contract,
- arising out of or in connection with the Contract, but the indemnity will be proportionately reduced to the extent that a negligent act or omission of the Company directly contributes to the injury, death, loss, or damage.
- 15.3. Each indemnity of the Supplier is a continuing obligation, separate and independent from the other obligations of the Supplier and survives the termination or expiration of this Contract. It is not necessary for the Company to incur expense or to make any payment before enforcing a right of indemnity conferred by the Contract. The Supplier shall pay on demand any amount it is obliged to pay to the Company under any indemnity in this Contract.
- 16. Intellectual Property Rights and Moral Rights.**
- 16.1. The Supplier warrants that any design, materials, documents, and methods of working provided by the Supplier will not infringe any Intellectual Property Right.
- 16.2. All Intellectual Property Rights developed by the Supplier for this Contract will be the sole and exclusive property of the Company, and the Supplier hereby irrevocably assigns to the Company all right, title and interest in and to such upon creation.
- 16.3. The Supplier grants the Company a perpetual, irrevocable, non-exclusive, world-wide, royalty-free licence (including the right to sublicense) to use for any purpose related to the use of the Supply under, or as reasonably inferable from, the Contract and otherwise to receive the benefit of the Supply, all Intellectual Property Rights owned by, or licensed to, the Supplier that arise, or have arisen, independently of the Contract.
- 16.4. The Supplier must ensure that any person who has a moral right (within the meaning given by pt IX of the *Copyright Act 1968* (Cth)) in relation to any work or service, made, created, provided or procured as part of the performance of the Supply acknowledges and agrees that the Company, the Company's client and any other beneficiary of the Supply that is the subject of the applicable moral right, may use, adapt, change, modify, vary, alter, amend, relocate, demolish or destroy the whole or any part of such Supply without objection by the person and without identifying the person. If required by the Company, the Supplier must procure a written release from each person in a form acceptable to the Company.
- 17. Confidential Information.**
- 17.1. The Supplier must safeguard the confidentiality of the Confidential Information; and not disclose, make public or use for purposes other than for the purposes of the Contract any Confidential Information without the prior written consent of the Company. The Supplier will not have breached this clause if the Confidential Information is required to be disclosed by law or court order, provided that the Supplier, gives the Company prompt notice of the existence of such an obligation and makes a reasonable effort to otherwise protect the confidentiality of such information.
- 18. Variations to the Supply.**
- 18.1. The Company may at any time direct the Supplier in writing by a notice entitled '**Variation Order**' to perform a variation to the Supply and the Supplier shall be bound to undertake such variation. The Supplier must not vary the Supply other than pursuant to a Variation Order and has no claim against the Company if it does. If the Variation Order is to decrease or omit any part of the Supply, the Company shall be entitled to bring forward the Delivery Date; and the Company may carry out, or have others carry out, the decreased or omitted Supply.
- 18.2. If requested by the Company, the Supplier shall provide the following regarding a proposed variation: a detailed quotation; and advice on whether the proposed variation will affect any of the

- Supplier's obligations under the Contract, including completing the Supply by the Delivery Date and the provisions of any warranties. The Supplier is not entitled to any costs of complying with this clause.
- 18.3. The Company and the Supplier shall first attempt to agree upon the price (and the effect on any other of the Supplier's obligations under the Contract) for a variation. If agreement cannot be made, or the Supplier fails to comply with its obligations in clause 18.2, the Company shall determine the price (and any effect on any other of the Supplier's obligations under the Contract) for a variation.
- 18.4. At its sole discretion, the Company may direct that a variation be carried out on a dayworks basis. If directed to carry out dayworks, the Supplier must, as a precondition to any entitlement to payment, each day record all resources used in carrying out the Supply the subject of the variation and provide a copy to the Company. The Supplier's entitlement to payment for dayworks is limited to (a) the all-inclusive hourly rate agreed with, or determined by the Company; and (b) the actual cost plus 10% of any plant, materials and equipment approved by the Company to be used or provided.
- 19. Subcontracting and Assignment.**
- 19.1. If required by the Company's client, the Company may assign its rights or novate its rights or obligations under the Contract (in whole or in part) to any person without the consent of the Supplier.
- 19.2. The Supplier must not assign this Contract or any payment or otherwise transfer its rights under the Contract without prior notice to and consent from the Company, which consent must not be unreasonably withheld.
- 20. Termination.**
- 20.1. By written notice to the Supplier, the Company may take the whole or part of the Supply remaining out of the hands of the Supplier, or terminate the Contract, if:
- 20.1.1. the Company is of the opinion that the Supplier is not solvent or financially capable to completing the Supply,
- 20.1.2. in the reasonable opinion of the Company the Supplier's delays in performing the Supply will inhibit the progress of the Company to the extent that there is a real risk that the Company will be delayed in completing its work by the date required by the Company's client; or
- 20.1.3. the Supplier is otherwise in breach of any of its obligations under the Contract and fails to remedy the breach within 10 Business Days after receipt of written notice from the Company requesting the breach be remedied, or by its nature cannot be remedied.
- 20.2. When the Company takes Supply out of the hands of the Supplier, the Company shall (either itself or through others) carry out and complete the Supply and provided that the Company is not legally prohibited from doing so suspend all payments (including any payments due) to the Supplier until the Company has determined any costs, losses or damages incurred by the Company in carrying out and completing the Supply which shall be a debt due and payable by the Supplier to the Company.
- 21. Services and Notices.**
- 21.1. Any notice, demand, consent, approval, or communication under this Contract must be in writing and delivered to the applicable party's address stated on the Purchase Order. If not delivered by 4.00pm on a Business Day (in the time zone of the addressee), the Notice is taken to be received at 9.00am on the next Business Day.
- 22. Disputes.**
- 22.1. Nothing in this clause 22 prevents either party seeking urgent injunctive or other interim relief from a court, or from continuing existing court proceedings.
- 22.2. It is a condition precedent to the commencement of any proceedings in any court in any jurisdiction (other than for urgent interlocutory relief) that the parties first follow the procedure referred to in clauses 22.3, 22.4 and 22.5,
- 22.3. If a Dispute arises, a party may give the other party a written notice of dispute which must adequately identify and provide details of the Dispute.
- 22.4. Within 15 Business Days of receipt of the notice the parties must meet and use genuine efforts to resolve the dispute or agree on an alternate dispute resolution method.
- 22.5. If, within 30 Business Days of receipt of the notice the parties are unable to resolve the Dispute, or agree on an alternate dispute resolution method, the Dispute must be referred as follows:
- 22.5.1. where the Dispute is purely in respect of the value, or the method of valuing, an Independent QS in accordance with clause 22.6 with the valuation certificate being final and binding and not subject to appeal; and
- 22.5.2. for all others, expert determination in accordance with clause 22.7 with the determination being final and binding and not subject to appeal.
- 22.6. The Independent QS shall use methods it deems appropriate to value the Dispute and issue a written valuation certificate.
- 22.7. If the parties cannot agree on an expert within 20 Business Days of the Dispute being referred, Resolution Institute shall nominate the expert. The Resolution Institute's Expert Determination Rules shall apply.
- 22.8. Each party must bear its own costs of complying with this clause 22 and split the costs of any Independent QS or expert.
- 22.9. **(Victoria only)** The parties agree that clause 22.5 is a method for resolving disputes for the purposes of section 10A(3)(d) of Victoria's security of payment legislation.
- 23. Provision of Security**
- 23.1. If the Company requires the Supplier to provide security for its obligations pursuant to the Contract, the Supplier shall provide security in the form and for the amount (which cannot exceed 10% of the Price) required by the Company.
- 23.2. Unless stated otherwise in the Contract, 50% of the security shall be returned to the Supplier within 20 Business Days of the Supplier completing the Supply, and the balance within 20 Business Days of the expiry of the Warranty Period.
- 23.3. The Company may have recourse to any security where the Company claims to be entitled to the payment of money or an indemnity by the Supplier under, arising out of, or in connection with the Contract.
- 24. Governing law and jurisdiction**
- 24.1. The Contract will be governed by and construed in accordance with the laws in force in the state or territory that the Supply is to be provided to the Company.
- 25. Amendment**
- 25.1. This Contract may not be amended or varied unless the amendment or variation is in writing signed by all parties.
- 26. Waiver**
- 26.1. Waiver of any power or right under this Contract by the Company must be in writing signed by the parties and is effective only to the extent set out in that written waiver. The failure of the Company at any time to require full or partial performance of any provision of the Contract will not affect in any way the full right of the Company to require the performance of that provision subsequently.
- 27. Severance**
- 27.1. The parties agree that a construction of this Contract that results in all provisions being enforceable is to be preferred to a construction that does not so result. If, despite the application of this clause, a provision of this Contract is illegal or unenforceable:
- 27.1.1. if the provision would not be illegal or unenforceable if a word or words were omitted, that word or words are severed; and
- 27.1.2. in any other case, the whole provision is severed, and the remainder of this Contract continues in force.