

MEM ORDER TERMS AND CONDITIONS

1.0 AGREEMENT TO SUPPLY GOODS AND/OR PERFORM SERVICES

- 1.1 Subject to Clause 1.4 In consideration of payment of the Price by MEM, the Contractor must supply the Goods to MEM and/or perform the Services in accordance with, and as specified in, this Agreement.
- 1.2 Subject to clause 1.4, any terms and conditions contained in any documents other than this Agreement in respect of the Goods and/or Services, including those supplied with the Goods or Services, are of no legal effect (even if any representative of MEM signs those terms and conditions or annexes the terms and conditions to the Order).
- 1.3 Subject to clause 1.4, by indicating acceptance of these MEM Order Terms and Conditions, either electronically, in writing or by conduct or performance, the Contractor agrees to be bound by these Terms and Conditions in relation to the Order.
- 1.4 Notwithstanding clauses 1.1 to 1.3, MEM may enter into Subcontractor Agreement conditions, and shall be referenced in the Order if applicable, and shall take precedence to Order terms and will apply to the supply of Goods and/or performance of Services instead of those set out in this Order Terms.

2.0 CONTRACTOR'S OBLIGATIONS

- 2.1 In supplying the Goods and/or performing the Services, the Contractor must:
- not interfere with MEM's activities or the activities of any other person at the Delivery Point and/or on the Site;
 - comply with all applicable Laws, including all anti-bribery, anti-corruption and anti-money laundering laws, regulations and/or policies and all laws, regulations and policies relating to economic or trade sanctions or export controls;
 - perform all activities on the Site in a safe manner and with due care and skill;
 - comply with all lawful directions of MEM's personnel in and around the Site and all policies and procedures of MEM which MEM makes available to the Contractor from time to time;
 - ensure that the Contractor is, and that the Contractor's employees, agents and contractors are, properly qualified for, and skilled in, the performance of their tasks;
 - at MEM's request, provide any documentation as to the results of quality testing and certification in relation to the Goods and any other information or documentation in relation to the Goods and/or Services reasonably requested by MEM;
 - ensure that any information, documentation, results of quality testing and certification provided to MEM, either under clause 2.1(f) or otherwise, are accurate, valid and in good order; and
 - take all reasonable measures to ensure that its employees, agents and contractors comply with the requirements set out in clauses 2.1(a) to (g).
- 2.2 If the Contractor breaches its obligations under clause 2.1(d) or otherwise puts the safety of any person (including themselves) at risk, MEM may immediately remove the Contractor from the Site and prevent the Contractor from further accessing the Site, without prejudice to any other rights MEM may have against the Contractor under this Agreement or otherwise.
- 2.3 MEM will not be responsible for any losses suffered or expenses incurred by the Contractor as a consequence of the exercise of MEM's rights under clause 2.2, including in respect of any consequential breach of this Agreement by the Contractor.

3.0 PRICE

- 3.1 MEM must pay the Contractor the Price for the Goods and/or Services in accordance with clause 6.0.
- 3.2 The Price is inclusive of all costs incurred by the Contractor in the supply of the Goods and/or performance of the Services, including all charges for packaging, insurance, loading, delivery, quality testing, preparation of documentation and provision of certification, unless otherwise stated in the Order.
- 3.3 The Price is inclusive of all taxes and duties, except GST.
- 3.4 Unless explicitly stated in the Order, the Price is fixed and is not subject to change for any reason, including any changes due to:
- rise and fall adjustments (including any changes in the Australian Consumer Price Index); or
 - exchange rate fluctuations.

4.0 DELIVERY AND PERFORMANCE

- 4.1 The Contractor must:
- deliver the Goods to the Delivery Point by the Delivery Date; and/or
 - perform the Services by the Completion Date.
- 4.2 The Contractor must:
- ensure that all Goods are suitably packed (to avoid damage in transit or storage) and clearly labelled as to the contents, destination and Order number relevant to each package;
 - strictly comply with any direction given to it by MEM in relation to the manner of delivery of the Goods and/or performance of the Services; and
 - provide MEM with all information and documentation in relation to any warranties given by a third party supplier in connection with the Goods and/or Services;

5.0 TITLE

- 5.1 The Contractor warrants that it is the legal and beneficial owner of the Goods and that the Goods are free from any encumbrances, liens or any other claims by third parties whatsoever (including any claim for infringement of any intellectual property rights in either Australia or other countries).
- 5.2 If the Contractor is required to supply Goods under this Agreement, the title in the Goods (including any packaging) does not pass to MEM until:
- where the Price is paid by MEM before delivery, on payment of the Price; or
 - otherwise, on delivery.
- 5.3 In all circumstances, title in the Goods and in any works created pursuant to this Agreement passes upon MEM accepting the Goods following their delivery in accordance with this Agreement.

6.0 INVOICE AND PAYMENT

- 6.1 The Contractor:
- may provide MEM with a Tax Invoice at the end of each month during which the Goods were delivered and/or the Services were performed, for all Goods delivered or Services performed during that month; and
 - must provide MEM with a Tax Invoice on or before the Delivery Date or Completion Date (as applicable), for all Goods delivered or Services performed that have not been previously invoiced.
- 6.2 All Tax Invoices must state the relevant Order number.
- 6.3 Provided that the Contractor complies with clauses 6.1 and 6.2, MEM will pay each Tax Invoice provided by the Contractor within 35 days from the end of the month in which the relevant Tax Invoice is provided or as otherwise stipulated in the Order.
- 6.4 MEM may reduce any payment due to the Contractor under this Agreement by any amount which the Contractor must pay to MEM, including costs, charges, damages and expenses and any debts owed by the Contractor to MEM on any account whatsoever. This does not limit MEM's right to recover those amounts in other ways.

7.0 QUALITY

- 7.1 The Goods and/or Services must:
- match the description referred to in the Order;
 - be fit for the purpose for which the Goods and/or Services of the same kind are commonly supplied or bought and for any other purpose MEM has made known to the Contractor; and
 - be of merchantable quality and, unless otherwise specified in the Order, must be new.
- 7.2 Without limiting any other provision of this Agreement, if the Contractor gave MEM a sample of the Goods or a demonstration of the Services, the Goods and/or Services must, as a minimum, be of the same nature and quality as the sample or demonstration given.

8.0 WARRANTY PERIOD AND DEFECTS

- 8.1 If, during the Warranty Period, any of the Goods or Services are found to be Defective, MEM may, at its sole discretion:
- return the Defective Goods to the Contractor and/or reject the Defective Services; or
 - require the Contractor to repair or make good the Defective Goods and/or re-perform or make good the Defective Services within a reasonable time frame, or as otherwise specified by MEM; or
 - at the Contractor's expense, repair or make good the Defective Goods and/or re-perform or make good the Defective Services, or cause others to do such work.
- 8.2 If MEM returns any Defective Goods or rejects any Defective Services, MEM will not be liable to pay the Price in respect of those Defective Goods and/or Services and will be entitled to a refund from the Contractor of any part of the Price which has already been paid, without prejudice to any other rights MEM may have against the Contractor under this Agreement or otherwise.
- 8.3 If MEM repairs, re-performs or makes good any Defective Goods and/or Services, the Contractor must reimburse MEM for the cost of that repair, re-performance or making good within 7 days of receipt of a notice from MEM setting out the amount owing.
- 8.4 Any warranty given by a third party supplier in relation to the Goods and/or Services shall not relieve the Contractor from its obligations under this clause 8 and will be provided to MEM (as required by clause 4.2(c)) in addition to MEM's rights under this clause 8.
- 8.5 MEM may at any time, either at the Site or the Contractor's premises, inspect and test the Goods and/or Services to ensure the Contractor's compliance with this Agreement and the Contractor must provide all necessary assistance. Nothing in the clause 8.5 relieves the Contractor from any of its obligations under this Agreement.

9.0 TERMINATION AND FORCE MAJEURE

- 9.1 MEM may terminate this Agreement:
- if the Goods and/or Services include one or more items and/or services that are (at MEM's sole discretion) critical to MEM's business, by 1 day prior notice to the Contractor; and
 - otherwise, at any time and in its sole discretion by 7 days prior notice to the Contractor.
- 9.2 MEM may terminate this Agreement (without prejudice to any rights that MEM may have under this Agreement or otherwise):
- if the Contractor becomes, or is deemed to become, insolvent or if insolvency, receivership or bankruptcy proceedings are commenced in respect of the Contractor - immediately upon notice to the Contractor;
 - if the Contractor's performance of its obligations under this Agreement is affected by an Event of Force Majeure for a period of 14 days or more - immediately upon notice to the Contractor; and
 - if the Contractor is in breach of any of its obligations under this Agreement:
 - if the Goods and/or Services include one or more items and/or services that are (at MEM's sole discretion) critical to MEM's business - by 1 days prior notice to the Contractor; or
 - otherwise - immediately upon such breach not being remedied within 7 days of the receipt of a notice from MEM requesting the breach be remedied.
- 9.3 If this Agreement is terminated under clause 9.1, MEM must reimburse the Contractor for the costs incurred in relation to the Goods and/or Services supplied by the Contractor as at the date of the notice given under that clause, provided that the amount payable by MEM does not exceed the proportion of the Price that the Goods and/or Services supplied bears to the whole of the Goods and/or Services to be supplied under this Agreement.
- 9.4 If, as a result of an Event of Force Majeure, a Party becomes unable, wholly or in part, to perform any of its obligations under this Agreement, or is delayed in performing those obligations:
- the affected Party must immediately give notice to the other party setting out the full details of the Event of Force Majeure, the obligations affected and the estimated delay in those obligations being able to be performed;
 - the affected obligations will be suspended, but only in so far, and for so long as, the performance of those obligations is affected by the Event of Force Majeure; and

- the affected Party must use its best endeavours to overcome or remove the effects of the Event of Force Majeure, to mitigate its effects and to minimise the delay, provided that this does not require the settlement of strikes or labour disputes on terms contrary to the reasonable wishes of the Party affected.
- 9.5 Clauses 9.3 shall survive any termination of this Agreement.

10.0 INSURANCE

- 10.1 The Contractor must procure and maintain from reputable insurers during the term of this Agreement:
- all and any insurances that are reasonable in the circumstances;
 - where any design or engineering work is required to be performed by the Contractor, professional liability insurance with a limit of liability of not less than \$5,000,000 in respect of the performance of the Services; and
 - all and any insurances that the Contractor is required to have by Law, and the Contractor must provide evidence, upon request from MEM, of its compliance with this clause 10.1.

11.0 CONFIDENTIALITY

- 11.1 The Contractor must treat all information not publicly available which the Contractor obtains in connection with this Agreement as confidential and must not disclose such information to any person without MEM's prior written approval (except to the extent necessary to comply with its obligations under this Agreement).
- 11.2 This clause 11 survives any termination of this Agreement.

12.0 INTELLECTUAL PROPERTY

- 12.1 To the extent that any Intellectual Property Rights form any part of the Goods and/or Services, the Contractor must assign those rights to MEM unless they include Intellectual Property Rights that were owned by the Contractor as at the date of this Agreement, in which case the Contractor grants to MEM an absolute and irrevocable royalty-free licence to use, and unfettered right to assign, those Intellectual Property Rights.

13.0 GOODS AND SERVICES TAX

- 13.1 If: a) GST is imposed on any supply made by the Contractor under or in connection with this Agreement; and b) the Contractor has provided MEM with a Tax Invoice in respect of that supply, the Contractor may recover from MEM (in addition to the Price) an amount equal to the GST payable in respect of that supply.

14.0 MISCELLANEOUS

- 14.1 The Contractor will perform its obligations under this Agreement as an independent contractor and not as an agent, partner, representative or employee of MEM.
- 14.2 This Agreement constitutes the entire agreement of the Parties about its subject matter and supersedes all previous agreements, understandings, negotiations and communications on that subject matter.
- 14.3 A provision of this Agreement or a right created under it may not be waived, assigned, sub-contracted or varied except in writing signed by the Party or Parties to be bound (including, in the case of variation, by way of a variation to the Order which is signed by both parties).
- 14.4 This Agreement is governed by the laws in force in Victoria and the Parties submit to the exclusive jurisdiction of the courts of that place.
- 14.5 The Parties agree that the Sale of Goods (Vienna Convention) Act 1986 (Victoria) does not apply to this Agreement.
- 14.6 All amounts referred to in this Agreement (including the Order) are in Australian dollars unless stated otherwise.
- 14.7 Any notices given in accordance with this Agreement must be in writing and sent by email or post to the recipient's address as specified in the Order.
- 14.8 A notice sent by email is regarded as given and received when sent by the sender unless:
- the sender receives a report of delivery failure or delivery delay;
 - the sender receives an "Out of Office" reply or similar response; or
 - the recipient informs the sender that the notice is illegible, incomplete or corrupted within 4 hours of the notice being transmitted.
- 14.9 A notice delivered other than on a business day in the place of receipt or after 4.00pm (recipient's time) is to be regarded as being received at 9.00am on the following business day in the place of receipt and a notice delivered before 9.00am (recipient's time) is to be regarded as being received at 9.00am.
- 14.10 In this Agreement:
- the singular includes the plural and vice versa; and
 - the word "including" is not intended to be used as a word of limitation.

15.0 PUBLICITY AND PHOTOGRAPHS

- 15.1 No film or digital photograph of the Goods, Services or the Site shall be taken or used by the Contractor or any person engaged by the Contractor, including the Contractor's subcontractors, agents, consultants and suppliers, without prior written approval of MEM. All negatives and prints of any photograph taken pursuant to MEM's permission shall be the property of MEM and shall be delivered to MEM upon request.
- 15.2 Neither the Contractor nor any person engaged by the Contractor, including the Contractor's subcontractors, agents, consultants and suppliers, shall issue any press release or otherwise publicise the fact it is supplying Goods or performing Services for MEM without prior written approval of MEM. Any and all requests for comments, statements, interviews or any other information whatsoever in relation to MEM, the Goods, Services or the Site received from the news media or other third parties shall be referred to MEM for response and further handling and shall not otherwise be acted upon by Contractor.

16.0 DEFINITIONS

- 16.1 In this Agreement, unless the contrary intention appears:
- Agreement** means the agreement between the Parties comprising: (a) the Order, (b) any other documents referred to in the Order; and (c) these MEM Order Terms and Conditions.
- Contractor** means the party to whom the Order is addressed.
- Completion Date** means the date identified as such in the Order.
- Defective** means Goods and/or Services (or any part of them) which are not in accordance with this Agreement or which are damaged, deficient, faulty, inadequate or incomplete.
- Delivery Point** means the date identified as such in the Order.
- Delivery Point** means the address identified as such in the Order.
- Event of Force Majeure** means any cause outside the reasonable control of the affected Party (other than an obligation to pay money) and which could not have been prevented or avoided by that Party taking all reasonable steps.
- Goods** means:
- all goods (if any) described in the Order; and
 - any goods which are incorporated into, or supplied to MEM as part of, any Services, and
 - includes any part of those goods.
- GST** has the meaning given to that term under the *A New Tax System (Goods and Services Tax) Act 1999* (Ch).
- Intellectual Property Rights** are all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, know how, materials, documents, methods, confidential information, patents, inventions and discoveries and all other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation 1967 (as amended and revised from time to time).
- Law** means:
- Commonwealth, State and local government legislation, including regulations, by-laws, orders, awards and proclamations;
 - common law and equity; and
 - requirements and guidelines of Government authorities, consents, certificates, licences, permits and approvals, and any conditions of the same.
- Parties** means MEM and the Contractor and "Party" means one of them.
- Price** means the price specified in the Order.
- Order** means the order for Goods and/or Services issued by MEM to the Contractor (whether the order is placed through a form, by facsimile or electronically).
- Services** means all the services (if any) described in the Order, which may include services for consultancy services, and includes any part of those services.
- Site** means any place which is occupied, operated, controlled or owned by MEM.
- Subcontractor Agreement** means MEM Subcontractor terms and conditions as referenced in any Order and to take precedence over Order terms, the Contractor must perform the Works at the Site for the Subcontract Price in accordance with the Subcontract Terms.
- Tax Invoice** has the meaning given to that term under the *A New Tax System (Goods and Services Tax) Act 1999* (Ch).
- MEM** means MILWARD ENGINEERING MANAGEMENT PTY LTD (ABN 54 547 282 475).
- Warranty Period** means the period of 12 months commencing on the date of delivery of the Goods to the Delivery Point or the date of completion of the Services (as applicable), or such longer period as specified in the Order.