

Standard Conditions of Purchase – Works and Services

(including design if stated in the Purchase Order)

1. DEFINITIONS

The following definitions shall apply for the purpose of administering the Purchase Order:

“**Purchaser**” shall mean SAUNDERS INTERNATIONAL LIMITED (ABN 14 050 287 431) a company incorporated in the State of New South Wales, Australia or any of its affiliates named in the Purchase Order.

“**Contractor**” shall mean the person or firm on which the Purchase Order is placed.

“**Sub-contractor**” shall mean the person or firm with whom the Contractor contracts for the purpose of supplying or providing services relevant to the Purchase Order.

“**Purchase Order**” shall mean the Order and all documents incorporated therein including these Standard Conditions of Purchase or any agreement in which these terms are incorporated.

“**Purchase Order Price**” shall mean the price of the Works and Services payable by the Purchaser to the Contractor under the terms of the Purchase Order.

“**Works and Services**” shall mean any work, services and all plant, equipment, materials and other items of all kinds including labour to be supplied by the Contractor under the Purchase Order.

“**Date for Completion**” shall mean the date stated in the Purchase Order that the Works and Services are to be completed (as may be varied under the terms of the Purchase Order).

“**Date of Completion**” shall mean the date the Works and Services are completed.

2. THE PURCHASE

2.1. The Purchase Order constitutes the entire agreement between the Purchaser and the Contractor and supersedes all previous oral or written communications between the parties.

2.2. The Contractor shall be deemed to have satisfied itself as to all the conditions and circumstances affecting the Purchase Order Price and to have fixed its Prices according to its own view of such conditions and circumstances. No additional allowance except where expressly provided herein will be made to the Purchase Order Price on account of the Contractor's failure to have satisfied itself as to all conditions and circumstances affecting the Purchase Order Price. The Contractor warrants that it shall meet all the requirements of the Purchaser as set out in the Purchase Order. The Contractor shall complete all the Works and Services which are specified, described or implied by the documents forming part of the Purchase Order, and any matter or item not specifically included in the documents, but which is necessary for the satisfactory completion of the Works and Services, shall be deemed to be included in the Works and Services and compensated for within the Purchase Order Price.

2.3. If any of these Conditions of Purchase are inconsistent with any terms and conditions set out on the face of the Purchase Order the latter shall prevail, to the extent of the inconsistency.

2.4. Upon receipt and acceptance of the Purchase Order the Contractor shall formalise its acceptance of the Purchase Order by signing and dating the front page and returning a copy of that page to the Purchaser within seven (7) days. In absence of receipt of acknowledgement, acceptance shall be deemed if the Contractor's actions imply acceptance, including but not limited to entering into correspondence or the commencement of work, related to the Works and Services.

3. NATURE AND CONSTRUCTION OF PURCHASE ORDER

3.1. The Purchase Order is a fixed and firm lump sum order. The Contractor shall supply the Works and Services in accordance with the requirements of the Purchase Order and shall guarantee that the Works and Services will be suitable for their intended purpose without adjustment to the Purchase Order lump sum Price.

3.2. The Purchase Order shall be governed by and construed with reference to the laws in force in the State of New South Wales, Australia and each party shall agree that any action or proceeding arising in connection with the Purchase Order shall be held in Sydney, New South Wales and be subject to the jurisdiction of the Courts of New South Wales or any Court competent to hear appeals therefrom.

3.3. Communications between the Purchaser and the Contractor, and documents to be provided under the Purchase Order, shall be in the English language.

3.4. The Purchase Order Price shall be in the currency or currencies detailed in the Purchase Order.

4. ASSIGNMENT AND NOVATION

4.1. Other than Sub-contractors named in the Purchase Order the Contractor shall not without the prior written consent of the Purchaser assign or sub-let the Purchase Order or any part thereof nor shall it make any contract with any person for the execution of any portion of the Work except for the supply of raw materials or minor details. Consent by the Purchaser to the letting of any sub-contract by the Contractor shall not relieve the Contractor from full and entire responsibility for execution of the Purchase Order.

4.2. The Purchaser may assign all or any part of the Purchase Order. The Contractor agrees to the novation of the Purchase Order to a third party as directed by the Purchaser to the extent that it the novation is for a valid reason, including where such action may be required under an agreement between the Purchaser and its client.

5. VARIATIONS TO THE PURCHASE ORDER

5.1. The Purchaser shall have full power during the execution of the Purchase Order by notice in writing to instruct the Contractor to alter, amend, omit, add to or otherwise vary any of the Works and Services or to defer or accelerate the time(s) for completion without prejudice to the Purchase Order. The Contractor shall carry out such variations and be bound by the same conditions and have the same obligations as though the variations had been incorporated in the Purchase Order.

5.2. The difference in cost if any, occasioned by variations directed by the Purchaser shall be added to or deducted from the Purchase Order Price as the case may require. The variation to the Purchase Order Price shall be ascertained and determined by the prior acceptance in writing by the Purchaser of the Contractor's quotation for the increase or decrease in cost which is considered appropriate to the variation or, where there is no acceptance, by the Purchaser's reasonable assessment.

6. PRICE AND PAYMENT

6.1. Payment

(i) The Purchase Order Price shall be fixed and firm and shall include all taxes, duties and fees relevant to the due performance of the Purchase Order.

(ii) Except where the Purchase Order provides for progress or milestone payments, there shall be no payments prior to completion of the Works and Services nor prior to the Contractor's return of the signed and dated copy of the Purchase Order as required by Item 2.4 of these Standard Conditions of Purchase.

(iii) Provided the Contractor complies with the terms and conditions of the Purchase Order and supplies the Works and Services in accordance with the Purchase Order, the Purchaser shall pay the Contractor forty-five days (45) following the receipt of a correctly submitted tax invoice. The tax invoice shall include sufficient detail and documentation supporting any claim for items of the Works and Services completed, less any previously claimed amounts. The Tax Invoice will also include details so as to correlate with the Purchase Order, including the Purchase Order number, and will include any related and required documents, including any required to attest to payments of employees and subcontractors, workers' compensation and currency of insurance.

(iv) Unless expressly stated in the Purchase Order or otherwise agreed in writing, where the Works and Services relate to work being undertaken by the Contractor on a site, the Purchaser shall not be obliged to make any payments for any work or unfixed materials that are not incorporated into the Works and Services on the site.

(v) Unless otherwise agreed, payment shall be effected by way of electronic funds transfer to the Contractor's nominated bank account.

6.2. Unless otherwise stated in the Purchase Order or agreed in writing, a retention amounting to five (5) % of the amount of the invoice shall be withheld by the Purchaser. Fifty (50) % of the amount withheld will be released upon satisfactory completion of the Works and Services, with the balance withheld by the Purchaser until satisfactory completion of the Defects Liability Period stipulated at Item 9.3 of these Standard Conditions of Purchase. Retention may, at the option of the Purchaser, be held in the form of an unconditional Bank Guarantee issued in favour of the Purchaser :

(i) in accordance with the form set out in Appendix 1, or such other substantially similar form acceptable to the Purchaser (at its sole discretion;

- (ii) (from a bank (or other financial institution) in Australia acceptable to the Purchaser (at its sole discretion);
- (iii) such bank (or other financial institution) having a branch located in Sydney, Australia; and
- (iv) to the extent that an expiry date is included, except as otherwise agreed in the Purchase Order, any expiry date will be no less than (180) days subsequent to the anticipated date of release at the date of the Purchase Order.

The Contractor will not be entitled to the submit tax invoices or receive payment to the extent that it is obliged to, or it has otherwise been agreed in writing, that the Contractor will provide Bank Guarantee/s as security, until such time that the security has been provided.

Nothing in this Purchase Order will oblige the Purchaser to release the security, until such time as any matters in dispute are agreed or otherwise determined.

- 6.3. The Purchaser shall be entitled to set off against any sums that would otherwise be due to the Contractor, or from any security provided pursuant to Clause 6.2, amounts in respect of any claims it has for damages for breach of Contract by the Contractor or for liquidated damages.
- 6.4. The Purchase Order Price is exclusive of Goods and Works and Services Tax (GST), Value Added Tax (VAT) and the like (“**GST**”). The Purchase Order Price shall only be increased by an amount equal to the GST liability properly incurred by the Contractor. If through the imposition of GST, or a subsequent change to GST, there is a reduction in costs in providing the Works and Services due to the abolition or reduction of existing taxes and/or charges, then the Purchase Order Price shall be reduced accordingly. The Contractor shall provide the Purchaser with reasonable evidence to demonstrate that it has complied with this requirement. The Contractor warrants that for the purpose of this Purchase Order it will be registered under the GST law and will provide a Tax Invoice that will comply with the legislative requirements and identify separately the amount of GST payable.

7. PERFORMANCE

The Contractor shall use competent and qualified personnel in the performance of Works and Services and shall ensure that such personnel exercise a standard of care, diligence and skills expected of qualified trades persons experienced in providing the Works and Services outlined in the Contract.

8. INDEPENDENT CONTRACTOR

- 8.1. The Contractor is and shall remain an independent Contractor and is not the servant, agent or wages person of the Purchaser.
- 8.2. The Contractor and its Sub-contractors will be responsible for any wages, taxes, superannuation and any similar charges associated with the employment of their personnel and the Contractor will indemnify the Purchaser from any related claims.

9. COMPLETION, DEFECTS LIABILITY PERIOD, QUALITY & GUARANTEE OF THE WORKS AND SERVICES

- 9.1. The Contractor shall complete the Works and Services by the Date for Completion stated in the Purchase Order. The Works and Services shall be complete at such time that the Contractor has finalised all the work required under the Purchase Order, including all minor outstanding items (“**Date of Completion**”). The Contractor will notify the Purchaser in writing at such time that it considers that it has completed the Works and Services.
- Where the Works or Services are subject to completion on delivery to the Purchaser, unless otherwise stated in the Purchase Order, delivery will be DDP to the place of delivery, in accordance with Incoterms 2020.
- 9.2. The Contractor warrants that the Works and Services shall be free from defects in material and workmanship, that they shall conform in all respects to the terms of the Purchase Order and that they shall be of the best quality, if no quality is specified.
- 9.3. If a defect in material, workmanship, conformity or quality is discovered within one (1) year from the Date of Completion of the Works and Services or such other period as stated in the Purchase Order (Defects Liability Period), notwithstanding that the Purchaser may previously have inspected, approved or paid for such Works and Services, the Purchaser notifies the Contractor within a reasonable time after such discovery, the Contractor shall thereupon promptly correct such defect at its sole expense and without undue delay.
- 9.4. The expiry of the Defects Liability Period shall not relieve the Contractor of any liability that may accrue from not complying with its obligations under the Purchase Order, including any of the warranties under item 9.2.

10. INSPECTION, TESTING AND EXPEDITING

- 10.1. The Purchaser shall have the right to inspect, expedite and to test any part of the Works and Services at any time. The Works and

Services shall not be deemed accepted until a final inspection is satisfactorily carried out. At the Contractor’s expense tests shall be carried out by the Contractor as in the opinion of the Purchaser are necessary to determine that all parts of the Works and Services comply with the Purchase Order. All test certificates shall be retained and supplied to the Purchaser for its records. If the Works and Services fail any tests then the Contractor shall with all speed and at its own expense make good the defects.

11. FREE ISSUES BY THE PURCHASER

- 11.1. If the Purchase Order provides for the issue or issues of materials by the Purchaser, the following provisions shall apply
- (i) All issues of material by the Purchaser to the Contractor or Sub-contractor shall remain the property of the Purchaser and shall not be used other than for the purpose of the Purchase Order.
 - (ii) The risk for loss of or damage to the issued materials shall remain with the Contractor until Works and Services incorporating the issued materials have been delivered pursuant to the Purchase Order.
 - (iii) Neither the Contractor, a Sub-contractor nor any other person shall create or cause to be created any lien on issued materials.
 - (iv) The Contractor shall take proper and reasonable care of issued materials and shall immediately notify the Purchaser of any loss, destruction or damage to same. The Contractor shall comply with any instruction from the Purchaser in relation to preservation, forwarding or disposal of damaged material.
 - (v) The Contractor shall not without the prior written consent of the Purchaser transfer possession of any issued material to a third party and shall not enable or permit the transfer of same to the premises of a third party.
 - (vi) The Contractor shall use issued material in a skilful and proper manner and comply with all instructions given by the Purchaser in relation to it.

12. LIQUIDATED DAMAGES

Where stated in the Purchase Order, if the Contractor fails to complete the Works and Services by the Date for Completion stated in the Purchase Order (as may be extended in accordance with Clause 13.1) the Contractor shall pay the Purchaser by way of pre agreed liquidated damages the amount stated in the Purchase Order per day for every day that the Works and Services are not completed, up to the maximum amount stated in the Purchase Order. The parties agree that such liquidated damages are a genuine pre estimate of damages and are not a penalty.

13. EXTENSION OF TIME

- 13.1. Within three (3) calendar days of it becoming evident to the Contractor that the completion of the Works and Services is likely to be delayed in completing the Works by the Date for Completion, due to an event or cause beyond its reasonable control, the Contractor shall notify the Purchaser in writing of a claim for an extension of time for completion. The Contractor will substantiate any extension of time claim within ten (10) days of its initial notice, with complete supporting details, including showing the effects on the critical path and how the Date for Completion will be affected. If the Purchaser determines that the claim for an extension of time is justified, then the Purchaser will notify the Contractor in writing granting such reasonable extension. The Contractor shall take all reasonable steps to prevent and minimise delay. The mere shortage of labour or materials shall not constitute grounds for an extension of time.
- 13.2. Notwithstanding that the Contractor is not entitled to an extension of time the Purchaser may at any time and from time to time prior to completion extend the time for completion for any reason.

14. LAW, PATENTS, COPYRIGHT AND PROPERTY RIGHTS

- 14.1. The Contractor shall indemnify and save harmless the Purchaser against all costs and claims due to infringement of any patent, registered design, copyright, trademark or trade name or other intellectual property right in relation to the Works and Services ordered and used for their intended use. The Contractor warrants that all Works and Services sold hereunder have been produced, sold, delivered and furnished in strict compliance with all applicable laws and regulations to which the Works and Services are subject. The Contractor shall execute and deliver such documents as may be required to effect or to evidence compliance.
- 14.2. All intellectual property rights in any of the Contractor’s deliverables (including in the Works and Services) in respect of this Purchase Order shall vest in the Purchaser, upon its creation.

15. INDEMNITY

- 15.1. The Contractor shall indemnify the Purchaser against every liability it may incur in any other person whatsoever and against all claims, demands, proceedings, damages, costs and expenses made against or incurred by the Purchaser by reason of any act or omission of the Contractor, its employees, Sub-contractors or agents or otherwise and including any claims, demands, costs, charges or

- expenses arising from the death of or injury to any persons employed by the Contractor or a Sub-contractor.
- 15.2. Proportionate Liability**
For the purposes of this Clause 15.2, a reference to Proportionate Liability Acts means each of the following or, if repealed, the succeeding legislation:
- (i) The Civil Liability Act 2002 (NSW)
 - (ii) The Proportionate Liability Act 2005 (NT) and the Building Act 1996 (NT)
 - (iii) The Civil Liability Act 2003 (Qld)
 - (iv) The Law Reform (Contributory Negligence and Apportionment of Liability (Proportionate Liability)) Amendment Act 2005 (SA)
 - (v) The Civil Liability Act 2002 amended by the Civil Liability Amendment (Proportionate Liability) Act 2005 (Tas) and the Building Act 2000 (Tas)
 - (vi) The Wrongs Act 1958 (Vic) and
 - (vii) The Civil Liability Act 2002 (WA)
- To the maximum extent permitted by Law:
- (i) The Parties agree that the Proportionate Liability Acts will not have any application to the Contract, the performance of the work under the Agreement, or any of the obligations of the Contractor under the Agreement or at law
 - (ii) Despite the provisions of the Proportionate Liability Acts, the Contractor acknowledges that the Contractor is solely responsible for and indemnifies Saunders in respect of any loss, damage, cost, claim, expense or proceeding that the Purchaser suffers or incurs, arising out of or in connection with any wrongful or negligent act or omission on the part of the Contractor, its officers, employees, agents and subcontractors, in performance of this Agreement or on the part of any Contractor's subcontractor, consultant or supplier engaged by the Contractor in performance of the relevant subcontract or consultancy or supply arrangement and
 - (iii) The Parties agree that their rights, obligations and liabilities will be those which would exist if the Proportionate Liability Acts did not apply.
- 15.2.3** The Contractor must ensure that all policies of insurance covering third party liability that it is required by the Agreement to effect or maintain, cover the Contractor for potential liability to the Purchaser assumed by reason of the exclusion of the Proportionate Liability Legislation.
- 16. SAFETY**
The Purchaser shall ensure that the Contractor's employees, agents and invitees and the Contractor's sub-contractors and their employees, agents and invitees while upon the Purchaser's premises or the premises of the Purchaser's other Contractors or Subcontractors, or any other site on which the Contractor is contracted to work, comply with all applicable laws, rules and regulations, Purchaser's safety regulations and safety regulations relevant to a site where the Purchaser has contracted the Contractor to work on its behalf. The Purchaser on request shall supply to the Contractor a copy of the Purchaser's and/or other relevant site-specific safety regulations.
- 17. UNSUITABLE PERSONS**
The Purchaser shall be at liberty to object to any representative and/or person employed by the Contractor or Sub-contractor who in the opinion of the Purchaser is guilty of misconduct or is incompetent or negligent. The Contractor shall remove the person objected to from any group performing any of the Work upon receipt of written notice from the Purchaser requiring the Contractor to do so.
- 18. INSURANCE & RISK**
- 18.1.** Notwithstanding any other provision of the Purchase Order risk in the Works and Services shall pass to the Purchaser only upon satisfactory completion in accordance with Clause 9.1.
- 18.2.** Where the Works and Services include a component that has to be supplied, manufactured and erected or constructed, the Contractor shall effect a Contract Works insurance policy to jointly insure such works against loss or damage from any cause in the names of the Contractor and the Purchaser.
- 18.3.** The Contractor shall insure and shall maintain insurance against all liability in connection with the death of or injury to any persons employed by the Contractor or a Sub-contractor.
- 18.4.** The Contractor shall maintain Public and Products Liability covering bodily injury, death and property damage in an amount of not less than AUD 20,000,000.00 for any one occurrence and unlimited in the aggregate. The policy shall extend to indemnify the Purchaser for its interest under an indemnity to principal provision.
- 18.5.** Where stated in the Purchase Order that the Works or Services include design, the Contractor shall maintain a Professional Indemnity Insurance policy for an amount not less than AUD 5,000,000 per event and AUD 10,000,000 in the aggregate from the commencement of the work and for a period of seven (7) years from completion.
- 18.6.** Where the Works and Services include the use of registered motor vehicles on the Purchaser's site or the Purchaser's client site, the Contractor will effect and maintain a comprehensive motor vehicle insurance policy for any loss or damage caused by the use of the
- 18.7.** Proof of insurance shall be provided by the Contractor if requested by the Purchaser.
- 19. MOTOR VEHICLES**
All motor vehicles used by the Contractor on the Purchaser's site or a site on which the Purchaser may be contracted to work shall be and shall remain registered for use on public roads. All registered motor vehicles shall be kept in a roadworthy condition. Failure to do so may result in the Purchaser directing the Contractor to remove any motor vehicle from the Purchaser's site or a site on which the Purchaser may be contracted to work.
- 20. TITLE AND OWNERSHIP OF THE WORKS AND SERVICES**
- 20.1.** The Works and Services to be supplied pursuant to the Purchase Order shall become the property of the Purchaser upon completion of the Works and Services, save and except that the property in any materials, equipment or manufactured or party manufactured components forming part of the Works and Services has been paid for by the Purchaser prior to completion.
- 20.2.** The Contractor warrants that any materials and items furnished by the Contractor in the performance of its obligations under the Purchase Order shall be free and clear of all liens, restrictions, reservations, security interests and encumbrances.
- 20.3.** Personal Properties Security Act (if applicable)
- 20.3.1.** In this Clause 20.3 words and expressions which are not defined in these Conditions but which have a defined meaning in the PPSA have the same meaning as in the PPSA (Personal Property Securities Act 2009 (Cth)).
- 20.3.2.** The Vendor acknowledges that the Purchaser has a purchase money security interest in the Goods including, but not limited to, where the Purchaser has paid the Vendor (in whole or in part) for the Goods prior to delivery.
- 20.3.3.** The Vendor acknowledges that if the Purchaser has rights and interest in proceeds derived from the Goods such rights and interests constitute a security interest in such proceeds.
- 20.3.4.** The Purchaser may register any security interest on the PPSA register in any manner it chooses (including by registering one or more financing statements in relation to its interest in the Goods, with such expiry dates as the Purchaser determines in its absolute discretion). The Vendor must provide the Purchaser with any information it requires for the purposes of giving effect to such registration.
- 20.3.5.** For the purposes of section 157(3) of the PPSA, the Vendor irrevocably and unconditionally receive any notice from the Purchaser in connection with the registration of a financing statement or a financing change statement in respect of the Goods.
- 20.3.6.** If section 95 or chapter 4 of the PPSA would otherwise apply to the enforcement of any security interests then those provisions are excluded, to the extent possible.
- 20.3.7.** The Vendor must take any steps (including provide information) the Purchaser reasonably requires to perfect or otherwise ensure the enforceability and priority of any security interest.
- 20.3.8.** Neither the Vendor nor the Purchaser will disclose information of the kind described in PPSA section 275(1), unless section 275(7) of the PPSA applies.
- 20.3.9.** Until the Purchaser' security interest (whether perfected or not) is satisfied, the Vendor agrees security interest of higher priority to be created in the Goods. If the Vendor breaches this subclause, the Vendor shall indemnify the Purchaser for any cost, expense, loss or damage suffered.
- 21. CONFIDENTIALITY**
- 21.1.** All drawings, design calculations, specifications and intellectual property or other information of any kind supplied by the Purchaser and contained in the Purchase Order or supplied by the Purchaser in connection with the Purchase Order are confidential to the Purchaser. The Contractor shall not use any confidential documents for any purpose other than for the purpose of the Purchase Order. The obligations of this Clause shall survive the completion of the Purchase Order and a Confidentiality Agreement shall be established at the option of the Purchaser.
- 21.2.** The Contractor shall not copy or reproduce any information except, and only, to the extent reasonably necessary for the execution of the Purchase Order.
- 21.3.** The Contractor agrees to ensure that any Sub-contractor, employee, agent or consultant, or any other person to whom it supplies the information permitted by this Clause, will be bound by terms no less onerous than those contained in Clause 21.

21.4.	Improvements to any Confidential Information developed as a result of or in connection with the work covered by this Purchase Order by either the Purchaser or the Contractor or Sub-contractor shall remain the property of the Purchaser.		proceedings shall be held in, or in the event of proceedings via video conferencing, administered from, Sydney, Australia.
22.	CONFORMANCE TO REGULATIONS The Contractor shall ensure that its recommendations including all drawings and specifications shall conform with (a) all rules and regulations of the Purchaser; and (b) statutory requirements of any authority that has jurisdiction over the Work.	27.2.	The language of the arbitration shall be the English language and the laws governing the arbitration shall be the laws in force in the State of New South Wales, Australia.
23.	ITEMS TO BE SUPPLIED BY THE CONTRACTOR	27.3.	An award pursuant to any arbitration shall be final and binding and sufficient for execution by any court of competent jurisdiction.
23.1.	The Contractor shall supply all labour, tools, implements, equipment and consumables necessary for the completion of the Work except those items which are specified in the Purchase Order as Purchaser supplied.	27.4.	Reference to arbitration shall not relieve the Contractor of its obligation to proceed with work and complete its obligations under the Purchase Order.
24.	DEFAULT	28.	Design
24.1.	If the Contractor is not acting in accordance with its obligations under the Purchase Order and such failure to act is seriously affecting the due performance of the Purchase Order, the Purchaser may give notice to the Contractor requiring it to make good such failure or neglect.	28.1.	The Contractor shall comply with Clause 28.2 where the Purchase Order expressly states that the Contractor shall have all design and engineering responsibilities in respect of the Works and Services.
24.2.	If the Contractor does not make good such failure or neglect within a reasonable time, if it assigns the Purchase Order or subcontracts the whole of the Purchase Order without the Purchaser's consent, becomes bankrupt or insolvent, has a receiving order made against it, compounds with its creditors, carries on business under a receiver, trustee or manager for the benefit of its creditors or commences to be wound-up or goes into liquidation the Purchaser may, after giving seven (7) days written notice to the Contractor, terminate the Purchase Order.	28.2.	Design review. Unless otherwise agreed, in respect of any design, the Contractor shall submit to the Purchaser any design documents before commencing construction, providing reasonable time for the Purchaser to review the submitted design documents. In this respect, the Contractor shall comply with any directions by the Purchaser (including resubmitting design documents for further design review). For avoidance of doubt, any comment or lack of comment by the Purchaser shall not be construed as approval or acceptance of the design.
24.3.	The Purchaser shall after such termination pay the amount due to the Contractor as at the date of termination taking into consideration such extra cost the Purchaser may incur as a result of the default of the Contractor.	29.	Limitation and Exclusion of Liability
25.	SUSPENSION	29.1.	Subject to Clause 29.3 below, the Contractor's maximum liability in respect of this Purchase Order (whether in contract, tort (including negligence), equity or otherwise) is limited to a sum equivalent to the Purchase Order Price (" Limit of Liability ").
25.1.	The Purchaser may suspend the Work in whole or in part at any time by written notice to the Contractor stating the extent and effective date of such suspension. The Contractor shall forthwith suspend the Work to the extent specified including any Work in progress by subcontractors. The Purchaser shall compensate the Contractor for Work performed up to the time of suspension. Where a lump sum price forms part of the Contract, the Purchaser shall compensate the Contractor pro rata for lump sum Work completed.	29.2.	Subject to Clause 29.3 below, neither party is liable whether in contract, tort (including negligence), equity or otherwise under the Purchase Order to the other party for any loss of revenue, loss of profit, loss of contract, loss of goodwill or loss of opportunity that is an indirect consequential loss suffered or incurred by the other party (" Exclusion of Consequential Loss ").
25.2.	The Contractor shall propose action necessary for orderly suspension. A course of action shall be mutually agreed and, except to the extent that the suspension was as a result of the acts or omissions of the Contractor, the Purchaser shall compensate the Contractor for reasonable costs incurred in carrying out the agreed course of action. The Contractor shall do all things reasonably possible to reduce such costs to a minimum.	29.3.	Notwithstanding any provision of this Purchase Order, the Limit of Liability and the Exclusion of Consequential Loss each does not apply to limit or exclude in any way, any liability of the Contractor arising out of, or in any way in connection with: <ul style="list-style-type: none"> (i) personal injury or death; (ii) loss of or damage to any third-party property; (iii) infringement of any intellectual property right; (iv) wrongful disclosure of confidential information; (v) defect rectification, repudiation or wrongful abandonment of the Purchase Order; (vi) fraudulent or criminal conduct (including any breach of applicable law); (vii) damages for delay; (viii) Contractor's gross negligence, or deliberate and wilful disregard; (ix) to the extent the Contractor is paid or indemnified for the liability by an insurer, or to the extent the Contractor would have been paid or indemnified for the liability by an insurer, but for this paragraph or any breach, act or omission of the Contractor; or (x) to the extent the liability is one that the Contractor, by law, is not able to contract out of or limit.
26.	TERMINATION In addition to any other rights that it may have with respect to cancellation or termination the Purchaser may terminate the Purchase Order as to all or any part of the Work for which the Contractor's performance has not been completed by giving notice of termination to the Contractor. Upon receipt of the termination notice the Contractor shall complete only such work as is necessary to preserve and protect Works and Services completed or in the process of completion. If, in the opinion of the Purchaser, the Contractor is not in default at the time the termination notice is given, the Purchaser shall make an equitable termination payment to the Contractor. The termination payment shall not exceed that fraction of the total Purchase Order Price which is allocable to the Work performed up to the point of termination and in no event shall the Purchaser be liable for any special, indirect, incidental or consequential damages of any nature. The Purchaser shall have the right to complete any of the Works or Services that have not been completed itself or by a third party.	30.	NSW Code and NSW Guidelines
27.	DISPUTES	30.1.	Clause 30 will apply to any Purchase Order that requires the performance of Works and Services in New South Wales.
27.1.	All disputes arising in connection with the Purchase Order which cannot be settled by proper and continuous discussion between the parties shall be referred to the Chief Executives of the parties for negotiation. If resolution cannot then be achieved within a reasonable time and to the mutual satisfaction of the parties the dispute shall be submitted for Arbitration to a person to be mutually agreed between the parties or in the event of no agreement or the agreed person's unavailability or unwillingness to arbitrate then the sole arbitrator shall be appointed by the Chairperson (New South Wales) of the Chapter of the Institute of Arbitrators, Australia. All	30.2.	In addition to terms defined in this document, terms used in this clause 1 have the same meaning as is attributed to them in the New South Wales Industrial Relation Guidelines: Building and Construction Procurement (NSW Guidelines) (as published by the NSW Treasury July 2013 and updated September 2017). The NSW Guidelines are available at https://www.industrialrelations.nsw.gov.au/industries/key-industries-in-nsw/building-and-construction/
		30.2.1.	Primary Obligation <ul style="list-style-type: none"> (i) The Contractor must at all times comply with, and meet any obligations imposed by, the NSW Government Supplier Code of Conduct (NSW Code) and NSW Guidelines. (ii) The Contractor must notify the CCU and the Client Agency and the Purchaser of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance. (iii) Where the Contractor engages a subcontractor or consultant, the Contractor must ensure that that contract imposes on the subcontractor or consultant equivalent obligations to those in this section 2 (under the heading NSW Code and NSW Guidelines), including that the subcontractor or consultant

must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.

- (iv) The Contractor must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

30.2.2. Access and information

- (i) The Contractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its subcontractors, consultants and related entities.
- (ii) The Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - a. enter and have access to sites and premises controlled by the Contractor, including but not limited to the project site;
 - b. inspect any work, material, machinery, appliance, article or facility;
 - c. access information and documents;
 - d. inspect and copy any record relevant to the project;
 - e. have access to personnel; and
 - f. interview any person;
- (iii) as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by the Contractor, its subcontractors, consultants, and related entities.
- (iv) The Contractor, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

30.2.3. Sanctions

- (i) The Contractor warrants that at the time of entering into this contract, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (ii) If the Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- (iii) Where a sanction is imposed:
 - a. it is without prejudice to any rights that would otherwise accrue to the parties; and
 - b. the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - i. record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
 - ii. take them into account in the evaluation of future procurement processes and responses that may be submitted by the Contractor, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

30.2.4. Compliance

- (i) The Contractor bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Contractor is not entitled to make a claim for reimbursement or an extension of time from the Purchaser, the Client Agency or the State of NSW for such costs.
- (ii) Compliance with the NSW Code and NSW Guidelines does not relieve the Contractor from responsibility to perform the works and any other obligation under the contract, or from liability for any defect in the works or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (iii) Where a change in the contract or works is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the Contractor must immediately notify the Client Agency (or nominee) and the Purchaser of the change, or likely change and specify:
 - a. the circumstances of the proposed change;
 - b. the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and
 - c. what steps the Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Work Health and Safety Management Plan); and

the Client Agency will direct the Contractor as to the course it must adopt within 10 Business Days of receiving notice.

Appendix 1 – Form of Bank Guarantee

Bond/Guarantee No: XXXX

At the request of

..... [Name of the Contractor] ACN of [address] ("the Contractor") and in consideration of [Purchaser Name] accepting this undertaking in respect of the contract for [Description of the Purchase Order] ("the Purchase Order") Financial Institution name and ABN] ("the Financial Institution") of [Financial Institution address] unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the Principal to a maximum aggregate sum of [Bond Amount in Words and Figures] ("the Sum").

This undertaking is to continue until the earlier of:

- notification has been received from the Purchaser that the Sum is no longer required by the Purchaser; or
- this undertaking is returned to the Financial Institution; or
- payment to the Principal by the Financial Institution of the whole of the Sum or such part as the Purchaser may require; or

Should the Financial Institution be notified in writing, purporting to be signed for and on behalf of the Purchaser that the Purchaser desires payment to be made of the whole or any part or parts of the Sum, it is unconditionally agreed that the Financial Institution will make the payment or payments to the Purchaser forthwith without reference to the Contractor and notwithstanding any notice given by the Contractor or not to pay same.

Provided always that the Financial Institution may at any time without being required so to do pay to the Purchaser:

- the Sum less any amount or amounts it may previously have paid under this undertaking or
- such lesser sum as may be required and specified by the Purchaser

and thereupon the liability of the Financial Institution hereunder shall immediately cease.

Signed by Financial Institution this day of 202.....