

Purchase Order / Supplier Agreement

Terms and Conditions

1. Supply of Goods or Services

- 1.1 These Purchase Order Terms and Conditions apply to any Goods and Services supplied by the Provider to CII.
- 1.2 The parties agree that any terms attached to or referenced in a Purchase Order have no effect and this Purchase Order will be the sole terms of such Purchase Order.
- 1.3 The Provider agrees to:
 - (a) supply to CII the Goods and/or perform the Services in accordance with a Purchase Order (which includes these Purchase Order Terms and Conditions);
 - (b) comply with all reasonable directions of CII's representative with regards to the supply of Goods and Services under each Purchase Order;
 - (c) provide everything required to supply the Goods and Services by the Delivery Date;
 - (d) supply the Goods and Services in accordance with all Laws (including all Safety Laws) applicable to the Goods and Services.
- 1.4 The Provider warrants that it will provide the Goods and Services:
 - (a) using competent, sufficiently skilled and appropriately qualified, licenced and trained Personnel;
 - (b) competently with due care, skill and judgement to the best of its knowledge and expertise and in a safe, lawful, expeditious and professional manner;
 - (c) so that the Goods and/or Services will:
 - (i) comply with all applicable Laws;
 - (ii) be fit for a purpose which goods or services of the same kind are commonly supplied or bought, and for any other purpose CII specifies prior to the date of this Purchase Order; and
 - (iii) be free from material defects;
- 1.5 The Provider must ensure that CII receives the full benefit of any manufacturer's warranties in respect of the Goods.
- 1.6 The Provider must ensure that Goods requiring packing are properly packed and secured in a manner to enable them to reach the Site in good condition.

2. Delivery of Goods and Services

- 2.1 The Provider must supply the Goods to, or perform the Services at, the Delivery Address or Site (as applicable) in accordance with the terms of this Purchase Order by the Delivery Date.
- 2.2 Delivery of the Goods and Services is complete upon its arrival at the Site specified in the Purchase Order.
- 2.3 If the Provider becomes aware of a delay with the delivery of the Goods or Services, the Provider must give written notice to CII advising:
 - (a) all relevant details of the matters causing the delay; and
 - (b) the duration of the delay.
- 2.4 Without limiting any other rights under any Purchase Order, CII may terminate a Purchase Order by written notice to the Provider

if the Goods or Services (as applicable) are not delivered within 7 days of the Delivery Date.

3. Variations

- 3.1 CII may direct a variation to a Purchase Order by submitting written notice (with the details of the proposed variation) to the Provider (**Variation Request**).
- 3.2 Provided the Variation Request is not fundamentally different to the original scope of the relevant Purchase Order, the Provider must:
 - (a) confirm in writing to CII that it has received such Variation Request within 7 days of receipt; and
 - (b) provided CII has authorised the Variation Request in writing, carry out the Variation Request at a price:
 - (i) agreed between the parties in writing; or
 - (ii) failing agreement under clause 3.2(b)(i), in accordance with the lowest reasonable rates and prices.

4. Title and risk

- 4.1 The risk of loss or damage to the Goods will pass to CII when the Goods are delivered to the Delivery Address specified in the Purchase Order and accepted by CII.
- 4.2 Title to the Goods will pass to CII upon payment of the invoice for the relevant Goods.

5. Fee

- 5.1 CII must pay the Provider the undisputed portion of the Fee for the Goods or Services.
- 5.2 The Fee is inclusive of all costs incurred by the Provider in the supply of the Goods or performance of the Services.
- 5.3 The Fee and any rates or other prices arising in connection with this Purchase Order will not be subject to rise and fall or any currency adjustment or escalation of any kind.
- 5.4 If GST has application to any supply made under or in connection with this Purchase Order, the Provider may, in addition to any amount or consideration payable under this Purchase Order, recover from CII an additional amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable by CII for the supply by the prevailing GST rate.
- 5.5 Any additional amount on account of GST recoverable from CII under this clause shall be calculated without any deduction or set-off of any other amount and is payable by CII upon demand by the Provider whether such demand is by means of an invoice or otherwise..

6. Invoicing

- 6.1 On completion of the Services or delivery of the Goods (or at such other time as set out in a Purchase Order), the Provider shall issue CII an invoice for the Fee payable with respect to such Goods and Services.
- 6.2 CII must pay all undisputed invoices within 45 days of receipt, or otherwise as agreed in writing between the parties.
- 6.3 Payment of invoices must be made to the bank account nominated in writing by the Provider.
- 6.4 CII may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the Provider under any

Purchase Order against any amounts payable by CII to the Provider.

7. Health and Safety

7.1 Without limiting the Provider's obligations or liabilities under this Purchase Order, the Provider and its Personnel must:

- (a) comply with all applicable Safety Laws when supplying the Goods and Services and carrying out any works on the Site;
- (b) prevent any risks to the health and safety of persons or damage to property on or near the Site.

7.2 The Provider indemnifies CII against all Claims made against or loss incurred by CII or arising out of or in connection with a breach of the Provider's obligations under this clause 7.

8. Warranty Period

8.1 If, during the Warranty Period, any of the Goods or Services are found to be Defective, CII may:

- (a) return the Defective Goods to the Provider at the Provider's cost;
- (b) reject the Defective Services;
- (c) repair or make good the Defective Goods; or
- (d) re-perform or make good the Defective Services.

8.2 The Provider must (at CII's election):

- (a) repair or replace the Defective Goods;
- (b) re-perform or make good the Defective Services; or
- (c) reimburse CII for any expenses incurred in repairing, re-performing or making good (as the case may be) any Defective Goods or Services at the Provider's cost.

9. Confidential information and intellectual property

9.1 Where the Provider has access to any of CII's confidential information (including information relating to the Goods or Services, or information relating to any of CII's Related Bodies Corporate), the Provider must:

- (a) keep the confidential information confidential; and
- (b) not (except to the extent required by Law) disclose it to any person without the prior written consent of CII.

9.2 Without CII's prior written consent, the Provider must not refer to CII in any public facing materials, including the existence and contents of such Purchase Order.

9.3 The Provider assigns and transfers all Intellectual Property Rights created by the Provider in supplying the Goods or performing the Services to CII upon creation (excluding any Intellectual Property Rights owned or licensed to the Provider prior to or independently of this Purchase Order (**Provider IP**)).

9.4 Unless otherwise agreed, the Provider provides CII with a non-exclusive, irrevocable, royalty-free, transferable, sublicensable (to CII Personnel only) license to use the Provider IP for the duration of this Purchase Order for the purpose of enjoying the full benefit of any Goods provided or Services performed in connection with this Purchase Order.

9.5 The Provider warrants that it will not infringe any third party Intellectual Property Rights in supplying the Goods or performing the Services.

10. Indemnities

10.1 The Provider acknowledges that it is responsible for any loss or damage to CII or any third party arising from any breach of this Purchase Order by the Provider, negligence of the Provider (including its Personnel) or defective Goods or Services.

10.2 The Provider will indemnify CII and its employees, agents, consultants and contractors (**Indemnified Parties**) against all liability, loss, damage, cost, charge, claims, demands, judgments, actions or expense suffered or incurred by any of them arising from:

- (a) any personal injury, disease or illness suffered by, or the death of, any person, caused or contributed to by the acts or omissions of the Provider or its Personnel;
- (b) physical loss of or damage to property of CII or any third party caused, or contributed to, by the acts or omissions of the Provider or its Personnel; and
- (c) any criminal or fraudulent act or omission, or wilful misconduct of the Provider or its employees, agents, consultants or contractors,

provided that the Provider's liability to indemnify CII will be reduced proportionally to the extent the liability, loss, damage, cost, charge or expense is caused, or contributed to by, a negligent act or omission of the Indemnified Parties.

10.3 Notwithstanding any other provision of this Purchase Order, a party is not liable to the other party, under or in connection with any Purchase Order, for any liability for any Consequential Loss.

11. Insurance

11.1 The Provider must, at its cost, effect and maintain the following insurance policies with reputable insurers:

- (a) public liability insurance in the sum of \$20 million for each single claim and unlimited in the aggregate;
- (b) workers compensation insurance as required by law; and
- (c) any insurances set out in the Purchase Order,

from the date of the Purchase Order until expiry of the Warranty Period.

11.2 Upon request by CII, the Provider must provide CII with a copy of its certificates of currency for all insurance policies required under clause 11.1.

12. Termination

12.1 Either party may terminate any Purchase Order immediately without notice if the other party:

- (a) is in material breach of any relevant Purchase Order and has failed to remedy such breach within 15 business days of being advised in writing of such breach by the party; or
- (b) suffers an Insolvency Event.

12.2 Clauses 8, 9, 10 and 14.3 survive the expiration or earlier termination of any Purchase Order.

13. Force Majeure

13.1 Neither party shall be liable for any delay or failure to perform its obligations pursuant to a Purchase Order if such delay is due to a Force Majeure Event.

13.2 CII may terminate a Purchase Order on written notice to the Provider if a Force Majeure Event continues for a continuous period of 30 days.

14. General

14.1 The Law applicable to this Purchase Order is the Laws of the State of Queensland.

14.2 Any part of this Purchase Order that is held to be unlawful, unenforceable or void by a court of competent jurisdiction is severed and the remaining provisions will continue to operate.

14.3 If a dispute arises between the parties in relation to the Goods and/or Services, neither party can commence litigation (other

than urgent injunctive proceedings) until a representative from each party meets to attempt to resolve the dispute, and the dispute cannot be resolved within 14 days of that meeting.

- 14.4 A notice given under this Purchase Order must be in writing addressed to the recipient at the address on the Purchase Order and may be effected by personal delivery, by post, or by email. The date of service shall be deemed to be the second business day after the date of posting, or the date shown in the sender's email system delivery confirmation report if sent by email.
- 14.5 CII may assign or novate all or any part of the Purchase Order at any time, in its absolute discretion and the Provider must take all steps as may be reasonably required by CII to effect any assignment or novation.
- 14.6 The Provider must not assign the Provider's rights or novate the Provider's rights and/or obligations under this Purchase Order without the prior written consent of CII, which consent must not be unreasonably withheld.
- 14.7 It is the intention of CII and the Provider that their relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership.

15. Defined terms and interpretation

15.1 In this document:

- i. **CII** means Civil Independence Industries Pty Ltd (ACN 621 542 881).
- ii. **Claims** means all losses, liabilities, demands, claims, costs and expenses of any kind
- iii. **Consequential Loss** means any consequential, special, indirect or incidental loss, including without limitation loss of profit, loss of revenue, business interruption, loss of business, loss of opportunity, loss of reputation or loss in connection with breach of third party contracts or arrangements.
- iv. **Defective** means Goods or Services (or any aspect of them) which are not in accordance with the Purchase Order or which are damaged, deficient, faulty, inadequate or incomplete.
- v. **Delivery Address** means the place for delivery specified in the Purchase Order.
- vi. **Delivery Date** means the date for delivery of the Goods or completion of the Services specified in the Purchase Order.
- vii. **Fee** means the consideration payable by CII to the Provider for the supply of the Goods or performance of the Services as set out in the Purchase Order.
- viii. **Force Majeure Event** means an act of God, national emergency, terrorist act, sabotage, flood, storm, earthquake, fire, explosion, epidemic, pandemic, civil disturbance, insurrection, riot, war, industrial action, lockout, rebellion, quarantine, embargo and other similar governmental action or a general and continued energy shortage, power or utilities interruption, but cannot apply with respect to the payment of money due under the Purchase Order.
- ix. **Goods** means the goods, if any, described on the Purchase Order.
- x. **GST** has the meaning set out in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- xi. **Insolvency Event** means any of the following:
 - (a) a controller (as defined in the *Corporations Act 2001* (Cth)) or controlling trustee is appointed to the party or over any of the assets of the party;

- (b) the party is unable to pay its debts as and when they become due and payable;
- (c) the party ceases to carry on business; or
- (d) any event happens in Australia or any other country or territory of a party that is similar to any of the event or circumstances referred to in this definition.

- xii. **Intellectual Property Rights** means all industrial and intellectual property rights throughout the world, whether registered, unregistered or unregistrable, including all copyrights, patents, trademarks, service marks, designs, confidential information, trade secrets, know how, data and databases, systems and domain names.
- xiii. **Law** means:
- (a) Commonwealth, State and local government legislation including regulations, bylaws, orders, awards and proclamations;
 - (b) common law and equity;
 - (c) authority requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals); and
 - (d) guidelines of authorities with which the Provider is legally required to comply.
- xiv. **Provider** means the entity responsible for supplying the Goods or performing the Services and to which the Purchase Order is addressed.
- xv. **Personnel** means a party's directors, employees, officers, agents, contractors and subcontractors, as the context permits.
- xvi. **Purchase Order** means:
- (a) the purchase order for Goods or Services issued by CII to the Provider containing, amongst other things, a description of the Goods or Services; and
 - (b) these Purchase Order Terms and Conditions.
- xvii. **Related Bodies Corporate** has the meaning set out in the *Corporations Act 2001* (Cth).
- xviii. **Safety Laws** means all applicable work health and safety Laws.
- xix. **Site** means the site described in the Purchase Order.
- xx. **Services** means the services, if any, described in the Purchase Order.
- xxi. **Warranty Period** means the period of 12 months commencing on the date the Goods are delivered and accepted by CII (in accordance with clause 4.1) or 12 months from the date on which the Services are completed and accepted by CII.

15.2 In this document:

- (a) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, these terms and references to this Purchase Order include any schedules or annexures;
- (b) a reference to a party to this Purchase Order or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (c) a reference to a document or agreement (including a reference to this Purchase Order) is to that document or agreement as amended, supplemented, varied or replaced;

- (d) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (e) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
- (f) a reference to '\$' or 'dollar' is to Australian currency;
- (g) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (h) if any day on or by which a person must do something under this Purchase Order is not a business day, then the person must do it on or by the next business day; and
- (i) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', or 'for example' (or similar phrases) do not limit what else might be included.