

## 1. APPLICATION OF CONDITIONS

These conditions ("Trading Terms") govern the rights and obligations of the supplier ("Supplier") of goods and/or services as named on the purchase order ("Purchase Order") and the Watpac entity as named on the Purchase Order ("Purchaser"). The Purchase Order, these Trading Terms and the Technical Requirements (as defined below) are collectively referred to as the "Contract". No document or statement other than the Contract shall form part of the agreement between the Supplier and the Purchaser unless otherwise agreed in writing by the Purchaser. If there is a conflict between the Trading Terms (as varied with the Purchaser's written agreement) and any other document or statement forming part of the Contract, these Trading Terms (as varied) shall prevail. The acceptance by the Supplier of the Purchase Order or the supply of any goods or performance of any works shall be deemed to be acceptance of the terms of the Contract (including these Trading Terms) and shall constitute a binding contract between the Supplier and the Purchaser. The law of New South Wales governs this Contract.

## 2. ELECTRONIC TRANSACTIONS ACT 2000 (NSW)

The *Electronic Transactions Act 2000* (NSW) applies to the Contract. By accepting the Contract, the Supplier has consented to the provision of these Trading Terms by means of electronic communication.

## 3. PRICE

The unit prices and values indicated on the Purchase Order for the goods and/or work the subject of the Contract ("Goods" and/or "Work" as the case may be) include, as appropriate, the cost of delivery to the address stated in the Purchase Order and any insurance, duty, taxes (subject to clause 18 in respect of GST) and packing costs and any other costs and expenses associated with manufacturing, delivering and/or supplying the Goods or the Work.

## 4. DELAYS

If the Supplier fails to make deliveries within the time specified, the Purchaser has the option to terminate this Contract or such part or parts thereof to which there has been delay, without incurring cancellation or any other charges.

## 5. NON-WAIVER

Failure of the Purchaser to insist upon strict performance of any of the terms of the Contract shall not be deemed a waiver of any subsequent default of them. The shipping or receiving of any Goods or Work under the Contract shall not be deemed a waiver of any rights for any prior failure by the Supplier to comply with any of these Trading Terms.

## 6. NO ASSIGNMENT

The Contract shall not be assigned by the Supplier in whole or in part without prior written consent of the Purchaser.

## 7. INFRINGEMENT

The Supplier warrants that the Goods and the Work and the sale or use of them will not infringe any patent or any other intellectual property right, and the Supplier covenants that it will defend, at its own cost and expense, every action which may be brought against the Purchaser or those selling or using the Purchaser's product for any alleged infringement of any patent or breach of any other intellectual property right by reason of the sale or use of such Goods or Work and the Supplier agrees to pay all costs, damages, fines and profits recoverable in any such action.

## 8. COMPLIANCE

In performing its obligations under this Contract the Supplier agrees to comply with all laws and regulations applying to the Contract, the Goods and the Work.

## 9. CHANGES

The Purchaser has the right at any time to make changes to the Goods or Work (including quantities ordered or to specifications and drawings). If the Purchaser forwards an amended order changing the Goods or Work and such changes cause an increase or decrease in the amount due then a variation shall be made to allow remuneration on the basis of the unit prices or values stated on the Purchase Order for the Work that has been completed and/or Goods supplied but no cause of action for breach of contract or other right of action shall arise

or be instituted by the Supplier as a result of the amended order and the only remedy for the Supplier will be the right to payment of the remuneration referred to in this clause for that part of the order that has been completed. If such changes result in an increase or decrease in the time required for performance a reasonable variation of the time shall be made by the Purchaser. Any claim by the Supplier for adjustment under this provision must be made within two (2) weeks from the date when the change is made.

## 10. WARRANTY

Notwithstanding the Purchaser's acceptance or right of inspection and/or other terms of the Contract, the Supplier warrants that the Goods, the Work, the materials, workmanship and all other articles furnished under the Contract are free from any encumbrances, free from any defects (including in design), fully comply with any specifications and drawings supplied or referenced in the Purchase Order ("Technical Requirements") and, where not so specified or referenced, are suitable and fit for the use intended and comply with all requirements of law. The Purchaser relies on this warranty by the Supplier in purchasing the Goods and Work covered by the Contract. The Supplier must obtain and provide for the benefit of the Purchaser and the person who engaged the Purchaser ("the Principal") the guarantees and warranties as may be required under the Contract or as are advised by the Purchaser.

## 11. INSPECTION AND TESTING

The Purchaser, its insurers and the Principal shall be entitled to inspect and test the Goods or Work during manufacture, whether on the Supplier's premises or the premises of any subcontractor, and the Supplier shall attend the inspection and provide any requested assistance to those conducting the inspection and testing. Such inspection and testing shall not release the Supplier from any obligation of the Supplier under the Contract.

## 12. REJECTION

The Purchaser may at any time, whether before or after delivery, reject any Goods or Work found to be inferior or defective or damaged or not in accordance with the Contract and without limiting the liability of the Supplier, the Purchaser may require, at its option:

- (1) a refund of payment by the Supplier within seven (7) days; or
- (2) replacement of the Goods or resupply of the Work. Risk in the rejected Goods immediately re-vests in the Supplier once the Purchaser has notified the Supplier of its rejection. The Supplier is liable for all loss or expenses incurred by the Purchaser due to the rejection of the Goods or Work. This condition shall apply notwithstanding that the Goods or Work have been inspected or tested or that the Purchaser has paid for the Goods or Work.

## 13. CANCELLATION

The Purchaser may by notice in writing to the Supplier cancel the Contract in whole or in part if the Supplier fails to complete supply of the Goods or Work by the date and time specified in the Purchase Order; fails to replace defective Goods or Work in accordance with the Contract; breaches any provision contained in the Contract; becomes insolvent or subject to any kind of external administration, files or has filed against it a petition in bankruptcy, or makes an assignment for the benefit of creditors. Upon such cancellation the Purchaser may cease payment, recover from the Supplier all monies paid for undelivered Goods or uncompleted Work and purchase similar Goods or Work from an alternative supplier. The Supplier must indemnify the Purchaser for any additional cost it may incur in doing so.

## 14. DELIVERY OF GOODS

Delivery shall occur when the Goods have been delivered in good condition at the address stated in the Purchase Order at a point stipulated by the Purchaser's representative and receipt of the Goods has been given by the Purchaser's representative. All the Goods shall remain at the Supplier's risk until delivery is effected. Title to the Goods passes to the Purchaser on delivery unless payment has been made prior to delivery, in which case title to the Goods passes upon payment.

## 15. WORK ON PURCHASER'S PREMISES

If any Work is to be performed at the Purchaser's or Principal's premises, then the Supplier must comply with all applicable laws and requirements of the Purchaser in the performance of the Work.

## 16. INSURANCE

Unless the Purchaser has provided evidence in writing to the Supplier of insurance cover for:

(1) damage to vehicles, plant and equipment of the Supplier used or supplied under the Contract, including liability cover for property damage and death or bodily injury ("Plant and Equipment Insurance");

(2) liability at common law in accordance with statutory requirements for the Supplier's employees ("Worker's Compensation Insurance"); or

(3) the Supplier's liability to third parties for loss or damage to property (including any indirect or consequential loss) and death of or injury to any person ("Public Liability Insurance"), the Supplier shall have in place its own Plant and Equipment Insurance, Worker's Compensation Insurance and Public Liability Insurance. If requested by the Purchaser, the Supplier shall produce evidence of the currency of the Supplier's Worker's Compensation, Public Liability and Plant and Equipment Insurance policies.

## 17. TERMS OF PAYMENT

In this clause 17 and in clause 25, "business day" has the meaning given to that term in the *Building and Construction Industry Security of Payment Act 1999* (NSW).

The Supplier may issue a payment claim on the 25th day (or a day otherwise agreed) of each calendar month in a form acceptable to the Purchaser. Within 10 business days of receipt of a valid payment claim, the Purchaser may issue to the Supplier a payment schedule setting out the amount payable by the Purchaser to the Supplier (subject to set off of any moneys due from the Supplier to the Purchaser). Within 3 business days of receiving the payment schedule the Supplier must provide the Purchaser with a tax invoice for the amount stated in the payment schedule. If no payment schedule is issued, the Supplier must provide the Purchaser with a tax invoice for the amount claimed in the Supplier's payment claim within 13 business days of the issue of the payment claim. Unless otherwise specified, the Purchaser shall pay the Supplier the amount stated in the payment schedule, or (if no payment schedule is issued) the amount claimed in the Supplier's payment claim, within thirty (30) days after the end of the calendar month in which the Supplier's payment claim for the Goods or Work is received by the Purchaser provided that all other terms of the Contract have been observed.

## 18. GST

Unless this Contract provides otherwise, and subject to this clause, any consideration that may be provided for under the Contract is exclusive of GST. If a party makes a taxable supply in connection with this Contract for a consideration which represents its value, then the recipient of the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply subject to the provision to the recipient of a valid tax invoice.

## 19. PRICE VARIATION

Unless stated in the body of the Purchase Order the cost of the Goods or Work shall be fixed and not subject to escalation.

## 20. HEALTH AND SAFETY

The Supplier must ensure that the Goods and Work are supplied and performed in accordance with, and otherwise comply with, safe practices applicable in the relevant industry and all applicable laws, including, without limitation, the provisions of the *Work Health and Safety Act 2011* (NSW) and any regulations and/or codes of practice prescribed thereunder.

## 21. BUILDING CODE (CTH)

This clause 21 only applies to the extent that the Work comprises "building work", as defined under section 6 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

### (1) Interpretation

Except to the extent otherwise expressly provided in these Trading Terms, in this clause 21:

- (i) 'Building Code' means the Code for the Tendering and Performance of Building Work 2016;
- (ii) terms used have the meanings given to them in the Building Code; and
- (iii) other than in clause 21(3)(iii)(E), in this clause 21, 'building work' means 'building work' (as defined in the Building Code) forming part of the Goods or the Work.

### (2) General (all projects)

- (i) By entering into the Contract, the Supplier is deemed to have read and agreed to comply with all of the obligations, requirements and restrictions that apply to a code covered entity set out or referred to in the Building Code, as if the Supplier was a code covered entity under the Building Code. Copies of the Building Code are available at <https://www.abcc.gov.au/building-code/building-code-2016>.
- (ii) Without limiting clause 21(2)(i), the Supplier:
  - (A) must respond to any requests for information made by the Purchaser concerning matters relating to the Building Code;
  - (B) must, in relation to building work, report actual or threatened industrial action that is not protected action by employees of the Purchaser to the Purchaser as soon as practicable, but no later than 24 hours, after becoming aware of the threat or action;
  - (C) must, to the extent reasonably practicable, take steps to prevent or bring an end to industrial action that is not protected action taken by the employees of the Purchaser;
  - (D) must, in relation to building work, report any request or demand by a building association, whether made directly or indirectly, that the Supplier or secondary supplier engage in conduct that appears to be for the purposes of a secondary boycott within the meaning of the *Competition and Consumer Act 2010* (Cth) to the Purchaser as soon as practicable, but no later than 24 hours, after the request or demand is made;
  - (E) must comply with the Purchaser's approach to managing drug and alcohol issues in the workplace to help ensure that no person attending the site to perform building work does so under the influence of alcohol or drugs listed in Schedule 4 of the Building Code;
  - (F) must notify the Purchaser of a breach, or a suspected breach, of the Building Code as soon as practicable, but no later than 2 working days after becoming aware of the breach or suspected breach and advise the Purchaser of the steps proposed to be taken to rectify the breach;
  - (G) where a notification under clause 21(2)(ii)(F) is made in relation to a breach of this clause 21, must notify the Purchaser of the steps taken to rectify the breach within 10 days of providing the notification; and
  - (H) comply with, and ensure all secondary suppliers comply with, the WRMP applicable in respect of the Goods or the Work (if any).

- (iii) The Supplier acknowledges the powers and functions of the ABC Commissioner and the ABCC under the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) and the Building Code and

must ensure that it and its secondary suppliers comply with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including requests for entry under section 72 of the *Building and Construction Industry (Improving Productivity Act) 2016* (Cth), requests to interview any person under section 74 of the *Building and Construction Industry (Improving Productivity Act) 2016* (Cth), requests to produce records or documents under sections 74 and 77 of the *Building and Construction Industry (Improving Productivity Act) 2016* (Cth) and requests for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.

(3) **Commonwealth Funded Projects**

- (i) This clause 21(3) applies unless otherwise notified by the Purchaser.
- (ii) Without limiting clause 21(2), the Supplier must:
  - (A) comply with, and must ensure that each of its related entities, comply with the Building Code in respect of building work; and
  - (B) report actual or threatened industrial action (whether protected industrial action under section 8 of the *Building and Construction Industry (Improving Productivity Act) 2016* (Cth) or industrial action that is not protected) by employees of the Purchaser to the Purchaser as soon as practicable, but no later than 24 hours, after becoming aware of the threat or action;
- (iii) The Supplier must ensure that it and its secondary suppliers:
  - (A) are not covered by an enterprise agreement that does not meet the requirements of section 11 of the Building Code;
  - (B) are not subject to an exclusion sanction;
  - (C) have not had an adverse decision, direction or order made by a court or tribunal for a breach of the *Building and Construction Industry (Improving Productivity Act) 2016* (Cth), a designated building law, work health and safety law or competition and consumer law and failed to comply with the decision, direction or order;
  - (D) will only use products in relation to the Contract and the Goods or the Work that comply with the relevant Australian standards published by, or on behalf of, Standards Australia; and
  - (E) unless approved otherwise by the ABC Commissioner, are not excluded from performing building work funded by a state or territory government.
- (iv) The Supplier must:
  - (A) without limiting and notwithstanding clause 21(3)(ii)(A), ensure that remedial action is taken to rectify any behaviour on the part of it and its secondary suppliers that is non-compliant with the Building Code;
  - (B) advise the Purchaser every six months during the performance of its obligations under the Contract whether:
    - 1. it has in the preceding 6 months or since it last advised the Purchaser (whichever is earliest), had an adverse decision, direction or order of a court or tribunal made against it for a breach of a designated building law,

work health and safety law or the *Migration Act 1958* (Cth);

- 2. it or its related entities have in the preceding 6 months or since it last advised the Purchaser (whichever is earliest) been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of building work) to a building contractor or building industry participant; or
  - 3. owed any unsatisfied judgment debts to a building contractor or building industry participant; and
- (C) must only enter into an agreement with a secondary supplier in relation to the Goods and/or the Work, as the case may be, where:
- 1. the secondary supplier has submitted to the Purchaser a declaration of compliance, including the further information outlined in Attachment A to the declaration of compliance, in substantively the same form as the model declaration of compliance applicable to suppliers and secondary suppliers in relation to the Building Code; and
  - 2. the agreement with the secondary supplier contains clauses in substantively the same form as this clause 21 titled "Building Code (Cth)".
- (v) Compliance with the Building Code shall not relieve the Supplier from responsibility to perform its obligations under the Contract, or from liability for any defect in the Goods or the Work arising from compliance with the Building Code.

## 22. PROPORTIONATE LIABILITY

The parties agree that to the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities arising out of or in connection with this Contract, the Goods or the Work.

## 23. SEVERABILITY

If any provision in this Contract is unenforceable, illegal or void or makes this Contract or any part of it unenforceable, illegal or void, then that provision is severed and the rest of this Contract remains in force.

## 24. NSW CODE

### **Alternative 1 – Purchase Orders up to \$25,000**

The NSW Government's Code of Practice for the Building and Construction Industry ("NSW Code") and the NSW Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry ("NSW Guidelines") apply to the Contract. By accepting this Contract, the Supplier warrants and agrees that it will be taken to have read and understood, and that it will comply with, the NSW Code and NSW Guidelines.

### **Alternative 2 – Purchase Orders over \$25,000**

In this clause 24, words and expressions that are defined in the NSW Guidelines have, unless the context otherwise indicates, the same meaning as in the NSW Guidelines. The NSW Code and NSW Guidelines are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au). The Supplier must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines. The Supplier must notify the Construction Compliance Unit, the Purchaser and the Principal of any alleged breaches of the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance. Where the Supplier is authorised to engage a subcontractor or consultant, and it does so, the Supplier must ensure that any secondary contract imposes on the subcontractor or consultant equivalent obligations to those in this

clause 24 (under a heading "NSW Code and NSW Guidelines"), including that the subcontractor or consultant must comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.

The Supplier 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. The Supplier must: (1) maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its subcontractors, consultants and related entities; and (2) allow, and take reasonable steps to facilitate, New South Wales Government authorised personnel (including personnel of the Construction Compliance Unit) to: (a) enter and have access to sites and premises controlled by the Supplier; (b) inspect any work, material, machinery, appliance, article or facility; (c) access information and documents; (d) inspect and copy any record relevant to the Goods or Work; (e) have access to personnel; and (f) interview any person, as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by the Supplier, its subcontractors, consultants and related entities. The Supplier, and its related entities must, agree to, and comply with, a request from New South Wales Government authorised personnel (including personnel of the Construction Compliance Unit) for the production of specified documents by a certain date, whether in person, by post or electronic means. The Supplier 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 tendering for work to which the NSW Code and NSW Guidelines apply. If the Supplier 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. Where a sanction is imposed: (1) it is without prejudice to any rights that would otherwise accrue to the parties; and (2) the State of New South Wales (through its agencies, Ministers and the Construction Compliance Unit) is entitled to: (a) record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and (b) take them into account in the evaluation of future expressions of interest or tender responses that may be lodged by the Supplier, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply. The Supplier 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 Supplier is not entitled to make a claim for reimbursement or an extension of time from the Purchaser, the Principal or the State of New South Wales for such costs. Compliance with the NSW Code and NSW Guidelines does not relieve the Purchaser from responsibility to perform the Work or supply the Goods and any other obligation under the Contract, or from liability for any defect in the Goods or Work or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines. Where a change in the Contract or the Goods or Work is proposed, and that change would, or would be likely to, affect compliance with the NSW Code and NSW Guidelines, the Supplier must immediately notify the Purchaser and the Principal of the change, or likely change and specify: (1) the circumstances of the proposed change; (2) the extent to which compliance with the NSW Code and NSW Guidelines will, or is likely to be, affected by the change; and (3) what steps the Supplier 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 Purchaser will direct the Supplier as to the course it must adopt within 10 business days of receiving notice.

## 25. NOTICES

In this clause 25, "Electronic Portal" means the electronic portal or document management system (if any) nominated by the Purchaser and notified to the Supplier.

Any notice, demand, consent or other communication given or made under these Trading Terms which is in writing:

- (1) must either be delivered to the intended recipient:
  - (i) by prepaid post, by hand or via the Electronic Portal, to the address or in accordance with the Electronic Portal details, last notified by the intended recipient to the sender; or
  - (ii) by email:

1. with a subject heading of the email containing the name of the notice that is being given in the following format: "[name of project] Purchase Order – [name of notice]" – so that the nature of the email is readily identifiable by the recipient; and
  2. to the email address last notified by the intended recipient to the sender; and
- (2) will be taken to be duly given or made:
    - (i) in the case of delivery in person, when delivered;
    - (ii) in the case of delivery by post by:
      1. regular prepaid post or registered post, 6 business days after the date of posting;
      2. priority prepaid post or priority registered post, 4 business days after the date on which the notice was posted; and
      3. using express post, 2 business days after posting; and
    - (iii) in the case of sending via the Electronic Portal, immediately upon the notice being successfully uploaded to, or sent to the recipient via, the Electronic Portal; and
    - (iv) in the case of sending via email, immediately upon the email being sent, unless the sender receives an automatically generated notification from the recipient, or the recipient's email system, that the notice or relevant email has not been delivered or received or that the delivery of the notice or relevant email has been delayed ('bounce back notification'), in which case the notice is not taken to have been effected,

but if the email (other than where the sender receives a bounce back notification from the recipient or the recipient's email system) or Electronic Portal transmission is received after 4.00 pm on any day, or on a day that is not a business day, it will (unless it is a payment schedule or any notice issued by the Purchaser under the *Building and Construction Industry Security of Payment Act 1999* (NSW)) be taken to have been duly given or made at the commencement of business on the next business day in that place.

## 26. MODERN SLAVERY LEGISLATION

The Supplier warrants that:

- (1) it has not engaged in, and does not engage in, any activity, practice or conduct in its operations that would constitute a modern slavery offence under any law (including the *Modern Slavery Act 2018* (Cth)) or otherwise contravene any laws or codes of practice in force from time to time in relation to modern slavery; and
- (2) it will comply with, and take reasonable steps to ensure any subcontractor complies with, mandatory reporting obligations in any laws or codes of practice in force from time to time in relation to modern slavery.