

## PURCHASE ORDER - TERMS AND CONDITIONS

### 1.0 AGREEMENT TO SUPPLY GOODS AND/OR PERFORM SERVICES

1.1 In consideration of payment of the Price by E25, the Contractor must supply the Goods to E25 and/or perform the Services in accordance with, and as specified in, this Agreement.

1.2 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 unless agreed to in writing by E25 and the Contractor.

1.3 By accepting the E25 PO, either electronically, in writing or by conduct or performance, the Contractor also agrees to be bound by these Terms and Conditions in relation to the PO.

### 2.0 CONTRACTOR'S OBLIGATIONS

2.1 In supplying the Goods and/or performing the Services, the Contractor must:

- a) not interfere with E25's activities or the activities of any other person at the Delivery Point and/or on the Site;
- b) comply with all applicable Laws;
- c) perform all activities on the Site in a safe manner and with due care and skill; and
- d) comply with all lawful directions of E25's personnel in and around the Site and all policies and procedures of E25 which E25 makes available to the Contractor from time to time;
- e) 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;
- f) at E25'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 E25;
- g) ensure that any information, documentation, results of quality testing and certification provided to E25, either under clause 2.1(f) or otherwise, are accurate, valid and in good order; and
- h) 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, E25 may immediately remove the Contractor from the Site and prevent the Contractor from further accessing the Site, without prejudice to any other rights E25 may have against the Contractor under this Agreement or otherwise.

2.3 E25 will not be responsible for any losses suffered or expenses incurred by the Contractor as a consequence of the exercise of E25's rights under clause 2.2, including in respect of any consequential breach of this Agreement by the Contractor.

### 3.0 PRICE

3.1 E25 must pay the Contractor the Price for the Goods and/or Services in accordance with clause 8.0.

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 PO.

3.3 The Price is inclusive of all taxes and duties, except GST.

3.4 Unless explicitly stated in the PO, the Price is fixed and is not subject to change for any reason, including any changes due to:

- a) rise and fall adjustments (including any changes in the Australian Consumer Price Index); or
- b) exchange rate fluctuations.

### 4.0 DELIVERY AND PERFORMANCE

4.1 The Contractor must:

- a) deliver the Goods to the Delivery Point by the Delivery Date; and/or
- b) perform the Services by the Completion Date.

4.2 The Contractor must:

- a) ensure that all Goods are suitably packed (to avoid damage in transit or storage) and clearly labelled as to the contents, destination and PO number relevant to each package;
- b) strictly comply with any direction given to it by E25 in relation to the manner of delivery of the Goods and/or performance of the Services; and
- c) provide E25 with all information and documentation in relation to any warranties given by a third party supplier in connection with the Goods and/or Services;
- d) where the Services to be performed involve the repair and/or maintenance of E25's equipment:
  - i. supply E25 with detailed information about the repairs and/or maintenance carried out and the parts replaced; and
  - ii. complete any worksheets and/or test certificates that E25 requests.

### 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 E25 until:

- a) where the Price is paid by E25 before delivery, on payment of the Price; or
- b) otherwise, on delivery.

5.3 In all circumstances, risk in the Goods and in any works created pursuant to this Agreement passes upon E25 accepting the Goods following their delivery in accordance with this Agreement, unless E25 repossesses any property under clause 9.3, in which case risk in any Goods that are repossessed will pass upon repossession by E25.

### 6.0 QUALITY

6.1 The Goods and/or Services must:

- a) match the description referred to in the PO;
- b) be fit for the purpose for which goods and/or services of the same kind are commonly supplied or bought and for any other purpose E25 has made known to the Contractor; and
- c) be of merchantable quality and, unless otherwise specified in the PO, must be new.

6.2 Without limiting any other provision of this Agreement, if the Contractor gave E25 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.

6.3 In addition to clause 6.1, to the extent the Services to be performed involve the repair and/or maintenance of E25's equipment, the Contractor must perform the Services such that:

- a) the equipment is of "as new" quality, subject to a reasonable allowance for the age or usage of the equipment or any part of it;
- b) the equipment is free from any defects in design, materials or workmanship;
- c) the equipment is in good working order and condition;
- d) any components or parts replaced in the equipment are of merchantable quality and, unless otherwise specified in the PO, are new;
- e) the equipment is fit for the use and purpose intended; and
- f) the equipment complies with all relevant codes and standards in Australia.

### 7.0 WARRANTY PERIOD AND DEFECTS

7.1 If, during the Warranty Period, any of the Goods or Services are found to be Defective, E25 may:

- a) return the Defective Goods to the Contractor and/or reject the Defective Services; or
- b) 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 E25; or failing which
- c) 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.

7.2 If E25 returns any Defective Goods or rejects any Defective Services, E25 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 E25 may have against the Contractor under this Agreement or otherwise.

7.3 If E25 repairs, re-performs or makes good any Defective Goods and/or Services, the Contractor must reimburse E25 for the cost of that repair, re-performance or making good within a mutually agreed timeframe but no more than 30 days of receipt of a notice from E25 setting out the amount owing.

7.4 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 7 and will be provided to E25 (as required by clause 4.2(c)) in addition to E25's rights under this clause 7.

7.5 E25 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 this clause 7.5 relieves the Contractor from any of its obligations under this Agreement.

### 8.0 INVOICE AND PAYMENT

8.1 The Contractor:

- a) may provide E25 with a Tax Invoice at the end of each month during which the Goods were delivered and/or the Services were performed and/or Progress Payments have been agreed to, for all Goods delivered or Services performed or Progress Payments during that month; and
- b) must provide E25 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.

8.2 All Tax Invoices must state the relevant PO number.

8.3 Provided that the Contractor has complied with clauses 8.1 and 8.2 and has submitted a valid Tax Invoice within 5 working days following the end of the month of delivery of Goods or Services, E25 will pay the Tax Invoice at the end of the month following the month in which the Goods or Services have been delivered.

8.4 Clause 8.3 shall only apply to undisputed Tax Invoices or parts of Tax Invoices.

8.5 E25 may reduce any payment due to the Contractor under this Agreement by any amount which the Contractor must pay to E25, including costs, charges, damages and expenses and any debts owed by the Contractor to E25 on any account whatsoever. This does not limit E25's right to recover those amounts in other ways.

### 9.0 TERMINATION AND FORCE MAJEURE

9.1 E25 may terminate this Agreement (without prejudice to any rights that E25 may have under this Agreement or otherwise):

- a) 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;
- b) 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
- c) if the Contractor is in breach of any of its obligations under this Agreement:
  - i. if the Goods and/or Services include one or more items and/or services that are (at E25's sole discretion) critical to E25's business - by 1 day's prior notice to the Contractor; or
  - ii. otherwise - immediately upon such breach not being remedied within 7 days of the receipt of a notice from E25 requesting the breach be remedied.
- d) If the Contractor does not deliver the Service or the Goods on the agreed date, E25 shall have the option to either cancel the PO forthwith or give the Contractor notice to rectify the breach within 48 hours. If the breach has not been rectified, E25 shall have the right to cancel the PO immediately.

9.2 If this Agreement is terminated under clause 9.1, E25 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 E25 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.

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- 9.3 Where the Contractor removes any of E25's property from the Site, the Contractor grants to E25 an irrevocable licence to, in the case of termination of this Agreement, access any site or premises where the Contractor conducts its business for the purpose of repossessing that property.
- 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 9.2 and 9.3 shall survive any termination of this Agreement.
- 10.0 GENERAL LIABILITY**
- 10.1 Without limiting the Supplier's liability in any way, the Supplier is liable for:
- all loss and damage to property including to the property of E25 or its officers, employees, agents and contractors or to the property of Third Parties; and
  - all injury, illness and death to persons, including E25's officers, employees, agents and Third Parties; and
  - all other loss, damage, cost, fee, expense, fine or penalty; arising from or in connection with:
  - goods, including the supply and delivery of Goods; or
  - any breach of the Supplier's warranties or any breach of the Supplier's other duties or obligations under this Agreement; or
  - any act or omission of the Supplier or its officers, employees, agents or contractors;
- except to the extent to which the negligent acts or omissions of E25 or its officers, employees, agents or contractors (excluding the Supplier) caused or contributed to the loss, damage, injuring, illness or death.
- 11.0 INSURANCE**
- 11.1 The Contractor must procure and maintain from reputable insurers with a security rating of no less than A- during the term of this Agreement:
- all and any insurances that are reasonable in the circumstances;
  - where any or part of the Service is delivered on a E25 Site, at E25's discretion, the Contractor shall have:
    - Public Liability insurance cover of no less than \$20,000,000 each & every loss and in the aggregate in respect to products liability. The policy must include E25 as an additional insured and contain a cross liability clause and waiver of subrogation in favour of E25.
    - Workers Compensation Insurance as applicable as required by state legislation. The policy must include a Principals indemnity extension for act benefits and at common law and contain a waiver of subrogation in favour of the Principal.
    - Where the services involve the use of a motor vehicle, comprehensive motor vehicle insurance including third party property damage. The policy must include E25 as an additional insured in respect to any motor vehicle third party loss and include a waiver of subrogation in favour of E25.
  - where any Professional Services are required to be performed by the Contractor, Professional Indemnity insurance with a limit of liability to be agreed to between E25 and the Contractor on a case by case basis; and
  - all and any insurances that the Contractor is required to have by Law, and the Contractor must provide evidence, upon request from E25, of its compliance with this clause 10.1.
- 11.2 Without limiting clause 11.1, where the Contractor removes any of E25's property from Site, prior to such removal, at E25's discretion, the Contractor must arrange insurance with a reputable insurer for the full value of that property. This insurance must:
- be in the joint names of the Contractor and E25; and
  - remain in force at all times that the property is off the Site, and the Contractor must provide evidence, upon request from E25, of its compliance with this clause 10.2.
- 12.0 GENERAL INDEMNITY**
- 12.1 The Supplier indemnifies E25 and E25's officers, employees, agents and contractors, and shall keep them indemnified on a full indemnity basis, against and hold them harmless from all Claims by any person arising from or in connection with the liabilities of the Supplier and its officers, employees, agents or contractors set out in clause 10 or otherwise arising from any act or omission of the Supplier or its officers, employees, agents or contractors.
- 13.0 CONFIDENTIALITY**
- 13.1 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 E25's prior written approval (except to the extent necessary to comply with its obligations under this Agreement).
- 13.2 This clause 11 survives any termination of this Agreement.
- 14.0 INTELLECTUAL PROPERTY & NATIVE FILES**
- 14.1 To the extent that any Intellectual Property Rights form any part of the Goods and/or Services, the Contractor grants to E25 an absolute and irrevocable royalty-free licence to use, and unfettered right to assign, those Intellectual Property Rights.
- 14.2 The Contractor shall supply E25, at E25's request, with the native files for any Services provided.
- 15.0 GOODS AND SERVICES TAX**
- 15.1 If:
- GST is imposed on any supply made by the Contractor under or in connection with this Agreement; and
  - the Contractor has provided E25 with a Tax Invoice in respect of that supply, the Contractor may recover from E25 (in addition to the Price) an amount equal to the GST payable in respect of that supply.
- 16.0 MISCELLANEOUS**
- 16.1 The Contractor will perform its obligations under this Agreement as an independent contractor and not as an agent, partner, representative or employee of E25.
- 16.2 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. Special conditions to these Terms and Conditions shall be added as clauses 18 onwards and signed by both Parties.
- 16.3 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 PO which is signed by both parties).
- 16.4 Notwithstanding any other clause in this Agreement, the Contractor agrees E25 shall be entitled to novate the Agreement to a related body corporate of E25 (New Party) at any time and the Contractor's agreement to such novation shall not be unreasonably withheld. In this clause 14.4, the term "related body corporate" shall have the same meaning as that in section 50 of the Corporations Act 2001 (Cth). If E25 proposes to effect such a novation, it will provide the Contractor with a deed of novation, under which E25 is released from all liability under this Agreement and the New Party agrees to be bound by, and perform the obligations of E25 under this Agreement (Deed). The Contractor agrees to execute the Deed within 10 Business Days of receiving the Deed and do all other things reasonably necessary to effect the novation of this Agreement to the New Party.
- 16.5 This Agreement is governed by the laws in force in Western Australia and the Parties submit to the exclusive jurisdiction of the courts of that place.
- 16.6 The Parties agree that the Sale of Goods (Vienna Convention) Act 1986 (WA) does not apply to this Agreement.
- 16.7 All amounts referred to in this Agreement (including the PO) are in Australian dollars unless stated otherwise.
- 16.8 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 PO.
- 16.9 A notice sent by email shall only be regarded as given if the sender receives a return email confirmation from the receiver. Receipt confirmation excludes any automated email notification.
- 16.10 A notice delivered other than on a business day or after 4.00pm (recipient's time) is to be regarded as being received at 9.00am on the following business day and a notice delivered before 9.00am (recipient's time) is to be regarded as being received at 9.00am.
- 16.11 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.
- 17.0 DEFINITIONS**
- 17.1 In this Agreement, unless the contrary intention appears:
- Agreement** means the agreement between the Parties comprising:
- the PO;
  - these E25 PO Terms and Conditions.
- Contractor** means the party to whom the PO is addressed.
- Completion Date** means the date identified as such in the PO.
- 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 Date** means the date identified as such in the PO.
- Delivery Point** means the address identified as such in the PO.
- 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 PO; and
  - any goods which are incorporated into, or supplied to E25 as part of, any Services (including Services for the repair and/or maintenance of E25's equipment),
  - 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 (Cwlth)*.
- 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, POs, 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 E25 and the Contractor and "Party" means one of them.
- Price** means the price specified in the PO.
- Purchase Order (PO)** means an order for Goods and/or Services issued by E25 to the Contractor (whether the PO is placed through a form, by facsimile or electronically).
- Services** means all the services (if any) described in the PO, which may include services for the repair and/or maintenance of E25's equipment and consultancy services, and includes any part of those services.
- Site** means any place which is occupied, operated, controlled or owned by E25.
- Tax Invoice** has the meaning given to that term under the *A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)*.
- E25** means ELEMENT 25 LIMITED (ACN 119 711 929).
- 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 PO.