

LANDMARK STANDARD PURCHASING TERMS & CONDITIONS ("TERMS")

1 ACCEPTANCE OF THESE TERMS AND CONDITIONS

- (a) Subject to paragraph (b), these terms and conditions (as amended by Landmark from time to time) (Terms) will apply to each supply of goods and/or services to Landmark Operations Limited (Landmark) in accordance with their terms, and each supplier of Goods and/or Services to Landmark (each a Supplier) will, in making such supply, be deemed to have agreed to be bound by these Terms;
- (b) These Terms are in addition to any terms and conditions for the supply of Goods and/or Services agreed separately in writing between the Supplier and Landmark (Separately Agreed Terms) and, if these Terms are inconsistent with any Separately Agreed Term, the Separately Agreed Term will prevail to the extent of the inconsistency;
- (c) Each Supplier acknowledges that Landmark may in its absolute discretion vary these Terms with immediate effect.

2 SCOPE OF SUPPLY AND TERM

- (a) The Supplier must supply the Goods and/or Services:
 - (i) to the reasonable satisfaction of Landmark;
 - (ii) in accordance with all relevant standards of the Standards Association of Australia, any Specifications, and the law; and at the reasonable times directed by Landmark.
- (b) If the Supplier discovers any inconsistency, ambiguity or discrepancy in or between the Purchase Order or Quote and any Specifications, the Supplier must immediately seek Landmark's direction as to the interpretation to be followed.
- (c) The Supplier must supply at its own cost everything necessary to supply the Goods and/or Services to Landmark.
- (d) The Supplier may employ or engage others to supply the Goods and/or Services to Landmark. Use of sub-contractors does not relieve the Supplier from liability under the Agreement.
- (e) The Supplier agrees and acknowledges that:
 - (i) nothing in these Terms or otherwise requires Landmark to purchase a particular quantity or minimum quantity of any Goods or Services within any period;
 - (ii) any estimate or forecast as to consumption of or requirements for any Goods or Services does not bind Landmark; and this is not an exclusive supply arrangement and Landmark may purchase goods or services from other suppliers, whether for trial purposes or otherwise.

3 WARRANTIES

- (a) The Supplier warrants that:
 - (i) any Goods will be fit for the purpose for which goods of the same kind are commonly supplied and for any other purpose made known to it by Landmark, meet all applicable safety performance requirements and will be suitable, new and free of defects;
 - (ii) any Services will be carried out in a proper and skilful manner and performed by appropriately qualified and trained personnel and must be fit for the purpose for which those type of services are commonly bought and for any other purposes made known to it by Landmark;
 - (iii) it holds all licences required to supply the Goods and/or Services;
 - (iv) the provision of any Goods or Services by it will not infringe the rights (including without limitation intellectual property rights) of any third party; and
 - (v) it has complete ownership of any Goods free of any liens, charges and encumbrances and Landmark will be entitled to clear, complete and quiet possession of the Goods.
- (b) The Supplier must, at its own cost, make good any work that does not conform with the requirements of this Agreement before the end of the warranty period.
- (c) Landmark may direct the Supplier to correct, remove or replace any non-conforming Goods and/or Services at any time during the warranty period.
- (d) If the Supplier does not comply with such a direction, Landmark may have those Goods and/or Services supplied or carried out by others and the cost is a debt due and payable by the Supplier to Landmark.

4 INSURANCE

- (a) The Supplier must take out on or before the date of the Agreement, and maintain until completion of the Agreement, the following:
 - (i) product public liability insurance to an amount not less than \$5,000,000 each occurrence;
 - (ii) comprehensive motor vehicle insurance for all vehicles used to provide the Goods and/or Services;
 - (iii) workers compensation or any like insurance as required by law;
 - (iv) except as set out at paragraph (b) below, personal accident and disability insurance to an amount not less than \$2,000,000 each occurrence.
- (b) Paragraph 3(a)(iv) does not apply where the Supplier does not personally carry out any part of the supply on the Site; and
- (c) The Supplier must, when asked by Landmark, produce certificates of currency of any required insurances.

5 PRICE

- (a) Landmark will pay the Supplier the Price.
- (b) Unless any Separately Agreed Term provides otherwise, the Price is inclusive of:
 - (i) all charges for packing, packaging, insurance and delivery of the Goods in accordance with this Agreement;
 - (ii) the cost of the Services; and
 - (iii) all taxes including GST.
- (c) The Price may not be increased, without the parties' prior written consent.

6 INVOICING AND PAYMENT

- (a) Unless otherwise agreed, the Supplier must provide an invoice upon delivery of the Goods and/or upon completion of the Services.
- (b) All invoices must include all relevant records to enable Landmark to confirm the amount of the invoice, together with the number of the Agreement.
- (c) Landmark will pay all invoices rendered to it within the trading terms specified in the Purchase Order and agreed with the Supplier except where:
 - (i) it retains part of the Price as provided in the Agreement; or
 - (ii) it disputes the invoice, in which case Landmark will withhold payment of the full invoice amount until the dispute is resolved.
- (d) Landmark may reduce any payment due to the Supplier under this Agreement by any amount for which the Supplier is liable to it, including costs, charges, damages and expenses. This does not limit Landmark's right to recover those amounts in other ways.
- (e) If required, the Supplier must give Landmark, as a precondition to payment, a signed statutory declaration that all its subcontractors and employees have been paid all amounts then due for work under a supplier contract.
- (f) Landmark may withhold payment until the Supplier gives Landmark an appropriate statutory declaration regarding payment of all workers

compensation premiums and payroll tax in connection with the Agreement.

- (g) Subject to clause (i), should any Taxes be levied on, in respect of, or in relation to, the Goods and/or Services these will be to the Supplier's account. The Supplier will be responsible for the payment of those Taxes and will provide documentary evidence of the payment of those Taxes if made on Landmark's behalf.
- (h) Without limiting (g) above, the Supplier will be solely liable for income tax imposed on it in respect of income derived by it in connection with the provision of the Goods and/or performance of the Services.
- (i) Unless consideration for the supply of Goods and/or Services is stated to be inclusive of GST, if GST has application to any supply made by a supplier under or in connection with this Agreement, the supplier may, in addition to the consideration payable or to be provided for the supply, subject to issuing a Tax Invoice recover from the recipient an additional amount on account of GST, such amount to be calculated by multiplying the amount of consideration payable or to be provided for the supply by the prevailing GST rate.
- (j) If it is determined on reasonable grounds that the amount of GST paid or payable by the recipient on any supply made under or in connection with this Agreement differs for any reason from the amount of GST recovered or recoverable from the recipient then the amount of GST recovered or recoverable from the recipient shall be adjusted accordingly.
- (k) Where the amount of GST recovered or recoverable from the recipient is adjusted pursuant to (j) above and this gives rise to an Adjustment from an Adjustment Event the supplier must provide an Adjustment Note to the recipient.
- (l) All amounts payable by Landmark to the Supplier by way of reimbursement of an amount paid or payable by the Supplier to any other person, or calculated on the basis of amounts incurred or to be incurred by the Supplier, shall be calculated on the basis of such amounts paid or payable by the Supplier, or costs incurred or to be incurred by the Supplier, excluding any applicable amount in respect of GST incurred by the Supplier to the extent to which the Supplier is entitled to an input tax credit in respect of such GST or amount.
- (m) If any Goods are supplied to Landmark on a consignment basis (Consignment Goods), then:
 - (i) Landmark will issue the Supplier with a Recipient Created Tax Invoice (RCTI) for the supply of the Consignment Goods;
 - (ii) Landmark will issue the RCTI within 28 days of determining the Price of the Consignment Goods to which the RCTI relates;
 - (iii) The Supplier will not issue any invoice for the Consignment Goods;
- (n) If the Supplier has not provided Landmark with an ABN, Landmark is entitled to withhold from any payment made to the Supplier such amounts as are required for Landmark to comply with the provisions of the Taxation Administration Act 1953 (Cth) and related legislation.
- (o) In this clause supplier (non-capitalised) means the party making the supply and recipient means the party to whom the supply is made.

TITLE, RISK AND DELIVERY

- (a) Title to and risk in any Goods does not pass to Landmark until the Supplier has delivered the Goods to the Site and Landmark has acknowledged receipt in writing.
- (b) The Supplier must deliver all Goods in accordance with the Purchase Order, and must comply with all Commonwealth, State and municipal laws and regulations.
- (c) The Supplier is responsible for ensuring that any Goods are properly marked, packed and delivered, by the delivery date(s) and to the point of delivery, in compliance with all laws.
- (d) Landmark may return any Goods delivered greater than that specified in any Purchase Order to the Supplier at the Supplier's sole risk and expense. The Supplier must collect any excess quantities of the Goods from Landmark as soon as possible after receiving written notification.

PERFORMANCE ON SITE

- The Supplier must, in supplying the Goods and/or Services:
 - (a) use its best efforts not to interfere with any activities of Landmark or of any other person on any Site;
 - (b) be aware of, comply with, and ensure that all its employees, agents or subcontractors comply with:
 - (i) all appropriate laws, regulations and industrial awards and agreements, including all applicable EEO, safety, health and environment laws and regulations;
 - (ii) all safety, health and environment guidelines, rules and procedures applicable to the Site; and
 - (iii) all directions and orders given by Landmark representatives.

HEALTH AND SAFETY

- (a) The Supplier must, whenever carrying out the supply of Goods or performing the Services, ensure that:
 - (i) no person (whether or not employed by the Supplier or Landmark) is exposed to any risk to their health and safety; and
 - (ii) the Goods are supplied and the Services are performed using a safety management system.
- (b) The Supplier agrees that except for those Services it provides to the Sites, and unless expressly agreed in writing, for the purposes of the relevant occupational health and safety legislation, the Supplier is the principal contractor for all sites where it performs Services.

DAMAGE AND SITE CLEANING

- (a) The Supplier must, when present on a Site, keep the Site and property (of any person) on the Site in good order and condition.
- (b) The Supplier is responsible for:
 - (i) any damage caused by the Supplier and its agents or employees;
 - (ii) keeping the Supplier's areas clean at all times; and
 - (iii) the removal of its tools, plant and equipment, and if required the removal of debris and refuse, arising out of the supply of Goods and/or Services.
- (c) If the Supplier fails to comply with paragraph 10(a), Landmark may rectify the breach and the cost is a debt due and payable by the Supplier to Landmark on demand.

LIABILITY AND INDEMNITY

- (a) The Supplier is liable for and indemnifies Landmark against:
 - (i) loss or damage to any property (including the Goods);
 - (ii) claims in respect of personal injury or death to any Landmark employee, agent, subcontractor or any third person, arising out of, connected to or as a consequence of the Supplier:
 - (1) carrying out or failing to carry out the supply of Goods and/or Services;
 - (2) breaching this Agreement;
 - (3) conducting any activity on a Site; and
 - (4) any negligent act or omission of its employees, agents or subcontractors

- except to the extent that any liability, loss or damage is solely and directly caused by the wilful misconduct or gross negligence of Landmark.
- (b) The Supplier acknowledges that, to the extent permitted by law, it and its employees, agents or subcontractors enter each Site at its own risk and except as otherwise provided in this Agreement, Landmark is not liable to the Supplier for any matter including (without limitation) any direct, indirect or consequential loss or damage, any loss of actual or anticipated savings, opportunity, revenue, profit or good will, or other economic loss, or for any claim, action or proceedings by a third party against the Supplier (or any loss, damages or liability, incurred or suffered by the Supplier as a result of any such claim, action or proceeding).
- (c) Each indemnity under this paragraph is a continuing obligation and survives termination of this Agreement.

DEFAULT

- A party is in default of this Agreement if it:
 - (a) is in breach of this Agreement;
 - (b) becomes insolvent, bankrupt or makes an assignment of that party's estate for the benefit of creditors;
 - (c) makes an arrangement or composition with creditors; or
 - (d) being a company, goes into liquidation.

ASSIGNMENT

The Supplier may not assign or sub-contract the rights and/or obligations under this Agreement without Landmark's prior written consent.

TERMINATION AND RENEWAL

- (a) If a party remains in default after the other party has given it a written notice requiring the default to be remedied then, without prejudice to any other rights or remedies, the other party may, by giving a further written notice, end the Agreement.

INDEPENDENT CONTRACTOR

Both parties acknowledge that the Supplier is the contractor of Landmark and not it's employee or agent.

CONFIDENTIALITY AND INTELLECTUAL PROPERTY

- (a) The Supplier agrees that it will not disclose any confidential information of Landmark to any third party at any time unless it has Landmark's prior written consent.
- (b) The Supplier agrees that Landmark is the owner of all intellectual property in any plans, designs, specifications, data, reports, accounts or any other material provided by Landmark to the Supplier and that Landmark retains all right title and interest in those materials.
- (c) The Supplier agrees that Landmark is the owner of any intellectual property in any material:
 - (i) developed by the Supplier; or
 - (ii) co-developed by the Supplier and Landmark,
 for the purposes of supplying the Goods and/or Services to Landmark.
- (d) In consideration of \$10 (receipt of which is acknowledged) the Supplier assigns all rights and interests in any intellectual property created by the Supplier in connection with the provision of Goods and/or Services under this Agreement.
- (e) Landmark grants the Supplier a non-exclusive licence to use any of its materials solely for the purpose of performing the Supplier's obligations under this Agreement.
- (f) The Supplier must not use or reproduce such materials in whole or in part, other than for the purpose of performing its obligations under this Agreement.
- (g) These obligations survive the expiry or sooner termination of this Agreement.

PRIVACY

The Supplier must at all times comply with the Privacy Act in relation to its handling of Personal Information in connection with these Terms and/or Separately Agreed Terms including Personal Information disclosed to it by Landmark, regardless of whether the Supplier is an organisation bound by the Privacy Act. In particular, the Supplier:

- (a) will not do, or omit to do, anything in respect of the Personal Information which results, or could reasonably result, in Landmark being in breach of the Privacy Act;
- (b) will not use or disclose the Personal Information other than for purposes connected with these Terms and/or Separately Agreed Terms, unless with the prior written consent of Landmark or otherwise in accordance with law;
- (c) will immediately notify Landmark if it becomes aware of a breach, or potential breach, of the Privacy Act with regard to the Personal Information;
- (d) will co-operate with any reasonable requests or directions of Landmark arising from or in connection with Landmark's obligations under the Privacy Act; and
- (e) will provide to Landmark or destroy the Personal Information upon Landmark's request or otherwise upon the termination of the Separately Agreed Terms.

GOVERNING LAW

- (a) This Agreement is governed by the laws of the State of Victoria in Australia. The United Nations Convention on Contracts for the International Sale of Goods (adopted at Vienna on 10 April 1980) does not apply in any respect to this Agreement.
- (b) Both parties agree to submit to the non-exclusive jurisdiction of the courts of the State of Victoria and the courts of appeal from them.

DEFINITIONS

In these Terms:

- "Agreement" means in relation to the supply of Goods and/or Services by a Supplier to Landmark, these Terms and the Separately Agreed Terms (if any) relating to such supply;
- "Goods" means those goods specified in a Purchase Order or Quote or supplied by the Supplier to Landmark from time to time;
- "GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and related Acts as amended from time to time;
- "Personal Information" means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not and whether the information or opinion is recorded in material form or not.
- "Price" means the price specified in any Purchase Order or Quote as the price payable by Landmark for the supply of Goods or provision of Services;
- "Privacy Act" means the Privacy Act 1988 (Cth), including the 13 Australian Privacy Principles, as amended from time to time.
- "Purchase Order" means a request by Landmark to the Supplier to provide Goods and/or Services which is accepted by the Supplier in writing or by performance.
- "Quote" means an offer by the Supplier to provide Goods and/or Services to Landmark that is accepted by Landmark in writing.
- "Services" means those services specified in a Purchase Order or Quote or provided by the Supplier to Landmark from time to time;

"Site" means any premises of *Landmark*;

"Specifications" means all product or services specifications for the Goods and/or Services to be supplied by the Supplier, contained in any Quote or Purchase Order relating to such supply;

"Taxes" means any taxes payable in relation to the under the GST Act in relation to the supply of Goods and/or Services;

"Warranty Period" means the period of twenty four (24) months from the date Goods are delivered to a *Site* or the *Services* are performed;

"Purchase Order" means a request by *Landmark* to the *Supplier* to provide Goods and/or *Services* which is accepted by the *Supplier* in writing or by performance.