

## GENERAL CONDITIONS OF PURCHASE ORDER

### 1. DEFINITIONS AND INTERPRETATION

1.1 **Acceptable** means the Goods and/or Work (if any) are substantially in accordance with the requirements and specifications of the Purchase Order except for minor defects, which do not adversely affect the normal use and operation of such Goods and Work (if any) and have been delivered/installed in accordance with this Purchase Order.

1.2 **Builder** means PS Structures Pty Ltd (ABN 66 114 690 381);

1.3 **Claim** includes any claim, proceeding, action, cause of action or demand made in connection with the Supply, at law or in equity;

1.4 **Completed Supply** means:

(a) In relation to the Supply of Goods, when the Builder has given written notice to the Supplier that the Goods are Acceptable; and

(b) In relation to Work, when the Defects Liability Period has come to an end.

1.5 **Purchase Order** means the agreement between the Supplier and the Builder as documented by the cover page, these terms and conditions and (if attached or incorporated by reference) the specifications, drawings, schedules or other documents relating to the Goods and/or Work;

1.6 **Defects Liability Period** means a period of 12 months (unless stated differently on front page), extended for an equivalent period following rectification of defects carried out under clause 19, commencing at 4.00pm:

(a) if under this Purchase Order the Supplier supplies Goods only and not Work, on the date the Builder provides notice to the Supplier that the Goods are Acceptable, or

(b) if under this Purchase Order the Supplier supplies Work, or Goods and Work, on the date of Practical Completion.

1.7 **Delivery Address** means the Delivery Address specified on the cover page.

1.8 **Delivery Date** means the date specified on the Purchase Order cover sheet, as may be varied only in accordance with the terms of this Purchase Order, time being of the essence, by which Goods are to be delivered to the Delivery Address, or if the Purchase Order concerns Work, the date by which the Work is to achieve Practical Completion.

**Goods** means the goods described on the cover page, the specifications and drawings including all things ancillary to and necessarily required to be provided together with the Goods and also any drawings, specifications or other material with respect to the Goods that are to be delivered as described on the cover page.

1.9 **Price** means the sum specified on the Purchase Order cover sheet, as revised strictly in accordance with this Purchase Order; which shall include all costs and charges to the Delivery Address, including but not limited to manufacturing and delivering the Goods, performing the Work, attending meetings, and providing reports.

1.10 **Practical Completion** means:

(a) The Work, or Goods and Work are, in the opinion of the Builder acting as a reasonable and prudent person in accordance with good industry practice, Acceptable; and

(b) All necessary certificates and approvals from relevant authorities have been obtained and supplied, if applicable; and

(c) All tests of the Work or Goods and Work required by the Builder have been carried out and passed and the confirming test results provided to the Builder; and

(d) All documents, necessary training, and other information essential for the use, operation and maintenance of the Goods and/or Work (such as operating manuals and product warranty cards) has been supplied.

1.11 **Remittance Advice** means a certificate issued by the Builder to the Supplier pursuant to clause 14 of this Agreement and takes into account progress of the Work, and is a "payment schedule" as provided for by the SOP Act;

1.12 **Retention** means the amount, or the percentage of the Price, which shall be retained by the Builder and applied in accordance with clause 15 of this Purchase Order;

1.13 **Retention Money Trust Account** means a trust account established by the Builder in accordance with section 74(4) or 74(5) of the SOP Act and money held in that account shall be held on the basis required by the SOP Act and its subordinate Regulations;

1.14 **Receipt** means when the Builder receives the Goods at the Delivery Address (but the act of receiving the Goods does not affect or limit any other right of the Builder including a right to subsequently reject the Goods).

1.15 **Site** means the work site where the Delivery Address is located, unless otherwise specified on the cover sheet.

1.16 **SOP Act** means the Building and Construction Industry (Security of Payment) Act 2021 (WA);

1.17 **Supplier** means the party identified as the Supplier on the Purchase Order cover sheet.

1.18 **Supplier's Liability** means any liability by the Supplier to the Builder under any provision of the Purchase Order;

1.19 **Supply** means the provision of Goods and/or Work in accordance with this Purchase Order.

1.20 **Variation Order** means a written statement given by the Subcontractor to the Builder setting out the detailed scope of a proposed variation, breakdown of proposed price for that variation in accordance with clause 17 of this Purchase Order.

1.21 **Work** means any and all work to be performed by the Supplier in accordance with the Purchase Order; and where Goods are Supplied, any and all work in connection with the supply, installation, and commissioning of the Goods.

### INTERPRETATION

1.22 'Days' means calendar days.

1.23 'Business Days' means a day other than a Saturday, Sunday, public holiday, or any other day between 22 December in any year and 10 January in the following year;

1.24 Reference to a 'party' is a reference to either the Builder or the Supplier, or where the context permits, both of them, including their employees, agents and contractors.

1.25 Headings shall not affect the interpretation of this Purchase Order.

1.26 Provision(s) in this Purchase Order must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Purchase.

### 2. SCOPE

- 2.1 The Supplier shall supply the Goods and/or perform the Work for payment of the Price in accordance with the terms and conditions of the Purchase Order.
- 2.2 Save as otherwise expressly provided for under the Purchase Order, the Supplier shall provide everything necessary for the proper and timely performance of its obligations and liabilities under the Purchase Order.
- 2.3 The Supplier's acceptance by performance of the Purchase Order constitutes acceptance of the Purchase Order as the entire and complete contract between the parties and no representations or statements by any person not expressly covered by this Purchase Order shall be binding on the Builder. Further, any terms and conditions provided by the Supplier shall be of no legal effect and shall not form part of this Purchase Order.
- 2.4 It is a term of the essence of this agreement that the Goods and Work (if any) must comply strictly with any specifications provided to the Supplier under this Purchase Order.
3. **THE PRICE**
- 3.1 The Price is the Supplier's sole entitlement to payment in respect of the Supply and the performance of its obligations under the Purchase Order, shall be fixed and firm, shall not be subject to rise and fall or changes in labour or material costs, shall be in Australian dollars and shall be unaffected by exchange rate fluctuations.
- 3.2 Save for GST, which the Builder shall pay the Supplier subject to provision of a valid tax invoice, all sales tax, stamp duty, customs duty or other duties, taxes or fees, or any fluctuations of such taxes or duties and exchange rate fluctuations are included in the Price and shall be paid by the Supplier.
4. **DOCUMENTATION**
- 4.1 The Builder shall make available to the Supplier an electronic copy of any documents (such as drawings, specifications or schedules) referred to in the Purchase Order cover sheet.
- 4.2 The Supplier is to promptly draw to the Builder's attention in writing any ambiguity, error, omission, discrepancy, inconsistency or other fault in the documents provided, to allow the Builder to investigate and to issue a written clarification to the Supplier; and the Builder shall not be responsible for, or reimburse any additional costs and expenses that may be incurred by the Supplier as a result of any ambiguity, error, omission, discrepancy, inconsistency or other fault in the documents.
5. **SUPPLIER'S WARRANTIES**
- 5.1 The Supplier warrants that it:
- (a) Has allowed for everything necessary to perform its obligations under the Purchase Order;
- (b) Has the skill, equipment and personnel (including suitable supervision) to perform its obligations under the Purchase Order;
- (c) Will at all times ensure compliance with any applicable Building Code or Australian Standard.
- 5.2 The Supplier represents, warrants and guarantees that the Goods and Work (if any) shall be free from all defects of any kind (including but not limited to defects in workmanship or materials), shall comply with the terms and conditions of this Purchase Order (including but not limited to all incorporated specifications and drawings), shall be fit for express and intended purposes, of merchantable quality and use new materials/components (unless specified to the contrary) (**Warranty**).
- 5.3 During the Defects Liability Period the Builder, in its absolute discretion, reserves the right to return to the Supplier the Goods and/or Work (if any) or any part thereof that does not meet the Warranty or require the Supplier to promptly repair/replace the Goods and/or Work (if any) or any part thereof that do not comply with the Warranty. Any returns, repairs or replacement of the Goods and/or Work (if any) or any part thereof shall be to the Supplier's account, including all necessary costs ancillary to such return, repair or replacement. The Builder may assign the benefits and rights under the Warranty to its nominees at any time without consent of the Vendor and such nominee may enforce the Warranty.
6. **DUE DILIGENCE AND PHYSICAL CONDITIONS**
- 6.1 The Supplier acknowledges that it has not entered into this Purchase Order in reliance on any representation or warranty made by the Builder regarding the Site, extent of the Work (if any), the timing of the Supply or the effect of any provision in this Purchase Order.
- 6.2 If the Supply includes installation of Goods, or Work done on Site or to any surface of sub-base:
- (a) The Supplier acknowledges that, prior to entering into this Purchase Order, it inspected the Site, performed its own tests and make its own assessments of the risks associated with that Site and its surrounds; and satisfied itself that all documents provided or made available under this Purchase Order are complete.
- (b) The Supplier is responsible for the inspection of the physical conditions and characteristics of any sub-base or surface to which any Goods and/or Work are to be fixed or applied, prior to commencement of any Supply.
- (c) If the Supplier considers the sub-base or surface is unsatisfactory or unsuitable, the Supplier shall give written notice to this effect to the Builder in sufficient time for the Builder to rectify such conditions or characteristics, absent which the Supplier is deemed to have accepted the physical conditions and characteristics of the sub-base or surface and assumes all risks associated with the suitability or otherwise of those matters.
- (d) On receipt of such notice, the Builder will promptly investigate the matter and issue appropriate instructions to the Supplier before commencement of any Work affected by such conditions or characteristics.
7. **DELIVERY**
- 7.1 The Goods shall be delivered to the Delivery Address by the Delivery Date. The Goods shall be delivered in one consignment unless the Builder gives prior written approval for delivery in multiple consignments.
- 7.2 Prior to transport for delivery, the Supplier shall pack the Goods such that they are safe and suitable for transport and shall mark the packing appropriately, including displaying the Purchase Order number, title and other details stated in this Purchase Order for identification.
- 7.3 Goods and Work (if any) shall be tested by the Supplier as specified in this Purchase Order as well as pursuant to the Supplier's documented quality control standards and the Price is deemed to include the costs of such tests. The Supplier shall provide test reports upon request. In addition, the Builder may request additional testing at any time and the Supplier shall comply with such requests and make all applicable facilities available to the Builder for such purpose. The costs of such additional tests shall be to the Builder's account unless the tests highlight a defect in the Goods or Work (if any).
8. **ACCEPTANCE OR REJECTION OF GOODS**

- 8.1 The Builder must, once it has had a reasonable period of time after Receipt to inspect the Goods and to inspect any test results, provide notice to the Supplier that the Goods are either Acceptable or rejected (**Receipt Notice**). Payment or the signing of delivery receipts shall not constitute acceptance of the Goods.
- 8.2 If the Builder is satisfied, in its absolute discretion, that the Goods are Acceptable, then the Receipt Notice may specify the minor defects, if any, to be rectified by the Vendor under clause 19.
- 8.3 If the Builder rejects the Goods or any part thereof, then the Receipt Notice must specify the reasons for the rejection and may direct the Supplier to replace or repair the Goods or any part thereof; or notify the Supplier that it elects to accept the Goods and claim damages and/or a reduction in the Price.
9. **INSURANCE**
- 9.1 If under this Purchase Order the Supplier supplies Work, or Goods and Work, the Supplier will effect and maintain until Completed Supply the following insurances, and provide certified copies of the relevant Certificates of Currency whenever requested to do so:
- (a) Public Liability insurance of not less than \$20 million;
- (b) Workers' Compensation insurance; and
- (c) Insurance for the Goods, for replacement value, against loss or damage.
- 9.2 The Supplier must promptly notify the Builder in writing of any occurrence that may give rise to a claim being made under any of the above Insurance policies, and keep the Builder updated on the progress of that claim thereafter. The Subcontractor shall pay any excess due on that claim.
10. **SITE MANAGEMENT AND COORDINATION**
- 10.1 This clause 10 applies if the Supply entails any attendance on Site.
- 10.2 The Supplier shall comply with, and ensure that its personnel while on the Site comply with, the rules and regulations of the Site, the safety regulations of the Builder, the reasonable directions and orders of the Builder, all applicable laws and the Builder's policies (such as health and safety policies, and alcohol and drug policies) as in force from time to time. The Supplier may obtain copies of such policies from the Builder upon request.
- 10.3 The Supplier must regularly liaise with the Builder and others on Site to coordinate access to, and movement around, the Site and to ensure safety and minimum disruption and the availability of all necessary working space and laydown areas. In the event of a difference or dispute between the Supplier and any other party or third party regarding access, movement or availability, the Builder will be the umpire and direct the procedure or order of work. The Builder's decision will be final and binding and no extension of time or additional costs will be awarded to the Supplier.
- 10.4 The Supplier must ensure that all delivery drivers comply with the Builder's site induction and safety obligations. Delivery drivers must report to the Site Managers office. No deliveries are to commence without approval from the Site Manager and the Site Manager's approval of an agreed lay down area.
- 10.5 The Supplier must place all rubbish in the bins provided, and must keep the Site areas affected by any Supply neat and tidy to the satisfaction of the Builder. The Builder may, if it considers necessary, clean and tidy the Site areas affected by any Supply without notice to the Supplier and the Supplier will be liable to the Builder for the cost of such cleaning.
- 10.6 The Supplier enters the Site at its own risk and is liable for and indemnifies the Builder against any loss, damage, claims or liability arising directly or indirectly out of the performance of the Work or presence on the Site including claims against the Builder whether alleging negligence on the part of the Builder or otherwise.
- 10.7 Where damage to adjoining services or other works is reasonably foreseeable from the nature of the Supply, the Supplier will provide and maintain adequate protection to prevent damage occurring and will on completion of the Supply or as directed by the Builder remove such protection. The Supplier shall immediately notify the Builder of any existing damage to adjoining services or other works prior to commencing the Supply, and shall immediately notify the Builder of any damage caused to adjoining services or other works in the course of performing the Supply, and will indemnify the Builder against any liability, loss, Claim or proceeding arising from such damage.
11. **TITLE AND RISK**
- 11.1 Title to and property in the Goods immediately passes to the Builder upon payment of the Price (whether in part or in full) or upon Receipt (whichever occurs first). Title and property in the Goods must pass to the Builder (and remain) free of all encumbrances, liens and charges.
- 11.2 After title passes to the Builder, if the Goods (or any part thereof) are in the Supplier's possession, then:
- (a) The Supplier shall hold the Goods on trust for the Builder, conspicuously mark the Goods as being the property of the Builder, and keep the Goods separate from goods of the Supplier or others; and
- (b) For the purposes of the Personal Property Security Act 2009 (**PPSA**), this Purchase Order constitutes a Security Agreement in favour of the Builder to the extent of any Supplier's Liability over all Goods and any proceeds of sale of the Goods and the Supplier agrees to do at its own expense anything which the Builder asks and considers necessary for the purposes of ensuring that the security interest is enforceable, perfected and otherwise effective; and/or enabling the Builder to apply for any registration, complete any financing statement, financing change statement or give any notification, in connection with the security interest; and/or the Builder exercising its rights in connection with the security interest. The Supplier waives any rights it may have to receive notices under sections 95, 118, 121(4), 129, 130, 132(3)(d), 132(4), 134(1) and 135 of the PSSA; and under sections 142 and 143 of the PPSA; and the parties agree that sections 96 and 117 of the PPSA do not apply to these terms and conditions.
- 11.3 Risk in the Goods remains with the Supplier until Completed Supply.
12. **SUPERVISION OF WORK**
- 12.1 The Supplier is responsible for supplying continuous supervision of any Work, and supervisors shall be fluent in written and spoken English. The Builder will be entitled to recover and the Supplier will be liable to pay the Builder all losses, costs, expenses or Claims arising from the Supplier failing, in the Builder's opinion, to provide competent or sufficient superintendence.
13. **DELIVERY OF WORKS, AND RATE OF PROGRESS**
- 13.1 This clause 13 applies if the Supply includes Work.
- 13.2 The Supplier will coordinate with the Builder and others so that any Work is completed at the earliest practically possible date and in any event strictly by no later than the Delivery Date.

- 13.3 The Supplier acknowledges that the Builder may vary the Delivery Date and the Supplier shall comply at no extra cost and with no variation to the Price.
- 13.4 The Supplier must provide and maintain adequate labour on Site continuously until the Work reaches Practical Completion and a supply of materials sufficient to keep the labour on Site fully utilised and to comply with the Builder's site manager's reasonable instructions so long as any part of the Work remains incomplete. The Supplier's compliance with this clause or with instructions given by the Builder under this clause will not constitute acceleration or a direction to accelerate.
- 13.5 If the Supplier is at any time, in the Builder's opinion, in default of clause 13.4, or not maintaining a satisfactory rate of progress with the Work:
- (a) The Supplier must take all action available to it to remedy such default; and provide the Builder on demand with written evidence of the remedial action which the Supplier has taken and proposes taking to remedy that default.
- (b) The Builder may by written notice require the Supplier to make good its default, including specifying steps to be taken or milestones to be achieved and the dates by which those measures are to be completed.
- (c) If the Supplier fails to comply with a written notice given under the preceding subclause, the Builder may take over and complete the whole or any part of the Work remaining to be completed, use any of the Supplier's plant, materials or other things on Site, and/or insofar as may in the Builder's opinion be reasonably necessary, exclude the Supplier from the Site.
- 13.6 If the Builder exercises its rights under clause 13.5(c), the Supplier shall have no right to any compensation; and the Builder is entitled to recover the reasonable costs and expenses incurred in exercising those rights from the Supplier.
- 14. PAYMENT**
- 14.1 The Supplier may issue its invoice for payment of the Price in approved form to the Builder (issued to [psaccounts@psstructures.com.au](mailto:psaccounts@psstructures.com.au) and the Builder's Contract Administrator):
- (a) If the Supplier supplies Goods only and not Work, after Receipt of the Goods at the Delivery Address; or
- (b) If the Supplier supplies Work, or Goods and Work, after Practical Completion of the Work.
- 14.2 Each invoice must be fully supported with necessary details (including a detailed breakdown) and comply with section 24(1) of the SOP Act;
- 14.3 If the Supplier supplies Work, or Goods and Work, No amounts will be payable under an invoice if the Supplier has not:
- (a) Fully complied with clause 9 [Insurance],
- (b) Provided (prior to commencement of Works, for the Builder's approval) a Job Safety Analysis (JSA)/ Safe Work Method Statement (SWMS) that complies with all current safety laws and regulations,
- 14.4 If no amounts are payable under an invoice by virtue of clause 14.3, the Supplier may resubmit the invoice once the matters in clause 14.3 have been complied with.
- 14.5 The Builder shall within 15 Business Days of receipt of an invoice, issue to the Supplier a Remittance Advice evidencing the Builder's assessment of the amounts payable to the Supplier pursuant to that invoice and reasons for any difference, less any set-off, Subcontractor's Liability and/or Retention Fund monies withheld.
- 14.6 The Builder shall within 25 Business Days after an invoice is given, pay the Supplier the sum stated in the corresponding Remittance Advice as assessed under clause 14.5 above.
- 14.7 Neither a Remittance Advice nor a payment:
- (a) is evidence that the subject Work has been carried out satisfactorily or subject Goods are Acceptable. Payment other than Final Account payment shall be payment on account only; nor
- (b) shall constitute a waiver by the Builder of its rights under this Agreement including clause 14.3
- 14.8 At any time, the Builder may by a further Remittance Advice correct any error which has been discovered in any previous assessment by the Builder of sums due to the Supplier and any resulting adjustment may be applied when calculating amounts payable to the Supplier in respect of a subsequent invoice.
- 15. RETENTION**
- 15.1 The Builder will withhold 10% of each Progress Payment to be made to the Supplier until the amount so withheld totals five percent (5%) of the Subcontract Sum and shall be repaid to the Supplier as follows:
- (a) Half the amount of Retention shall be repaid to the Supplier at the end of the month after receipt of written request to do so, such written request not to be given until 14 days have passed since commencement of the Defects Liability Period; and
- (b) The balance of Retention shall be repaid to the Supplier at the end of the month after receipt of written request to do so, such written request not to be given until after expiry of the Defects Liability Period.
- 15.2 The Retention is security for the due and proper performance of the Supplier's obligations under this Purchase Order, and to provide for the bearing of the risk, by the Supplier, of financial burden during the time of any unresolved dispute or difference.
- 15.3 The Builder may have recourse to the Retention where entitled to exercise a right or power under the Purchase Order in respect of the Retention; where the Supplier is in default or breach of the Purchase Order; the Supplier has repudiated or given notice of an intention to repudiate the Purchase Order; or in relation to any Supplier's Liability.
- 15.4 To the extent required by the SOP Act and its subordinate Regulations, the Builder will hold the Retention Fund in a Retention Money Trust Account and in accordance with the provisions of that legislation.
- 16. SUPPLIER'S LIABILITY**
- 16.1 Without prejudice to any other rights the Builder may have under the Purchase Order or at law, the Supplier agrees that the Builder may, in its sole discretion:
- (a) Deduct or set off any Supplier's Liability (or any part of a Supplier's Liability) from any amount otherwise payable to the Supplier (whether under this Purchase Order or under another agreement between the Parties or otherwise); and/or
- (b) Take payment of any Supplier's Liability (or any part of a Supplier's Liability) from the Retention; and/or

- (c) Recover any Supplier's Liability (or any part of a Supplier's Liability) in any court of competent jurisdiction as a current debt due and payable by the Supplier to the Builder.
- 16.2 The Builder may issue a Remittance Advice, together with supporting documents if available, as to the amount of any Supplier's Liability, and that Remittance Advice will be sufficient evidence of the amount of the Supplier's Liability unless it is proved to be inaccurate.
17. **VARIATIONS**
- 17.1 The Builder may from time to time vary the Goods or Work (if any) to be supplied by the Supplier by either adding to or omitting from the Purchase Order. The Subcontractor must not commence any variation work without first obtaining the Builder's Project Manager's prior written approval. The Subcontractor will not be entitled to any payment or to any adjustment of the Subcontract Sum for any variation work carried out without that prior written approval.
- 17.2 Subcontractors are not to proceed with dayworks unless written confirmation has been received from the Builder's Project Manager and the Subcontractor is not entitled to be paid for any dayworks unless that written approval has been given. Site Managers have no authority to approve variations or day works. The Site Manager's signature confirming hours and resources expended by or on behalf of the Subcontractor does not constitute acceptance that the works are extra to contract, but may be evidence that works have been carried out provided that they are recorded on the Builder's Daywork Sheets and signed by the Site Manager on the day those works were carried out.
- 17.3 Where the Builder gives the Subcontractor a direction under clause 17.1, the Subcontractor must submit a Variation Proposal in writing to the Builder for that proposed variation within the time specified by the Builder or, if no time is specified, within 5 days after receiving the direction. Any approved variation to the Price must be stated separately in the Supplier's invoices.
18. **EXTENSIONS OF TIME**
- 18.1 The Supplier shall be entitled to such extension of time of the Delivery Date as the Builder reasonably assesses, if the Supplier is delayed by:
- (a) Any act or omission of the Builder;
  - (b) A variation under clause 17;
  - (c) A suspension under clause 20; or
  - (d) Any act of war, natural disaster, fire, riot, severe flood or earthquake, which affects the whole of the site.
- 18.2 It is a condition precedent to the Supplier's entitlement to an extension of time under clause 18.1 that the Supplier must:
- (a) Within 3 days of becoming aware of the probable cause of delay, give notice in writing to the Builder detailing the cause and estimated time of the delay; and
  - (b) Within a further 7 days, give a written claim to the Builder for the extension of time, detailing the particulars of the delay (including copies of any documentary evidence which supports these particulars); and the number of days being claimed for the delay; and
  - (c) If the delay continues past the date of the notice in subclause (b), give a further notice in writing to the Builder of the particulars of the delay and the number of days being claimed each 7 days until the delay ceases.
- 18.3 If the Supplier fails to comply with clause 18.2 in respect of a cause of delay then the entitlement of the Supplier to an extension of time is extinguished; the Builder's liability in respect of that cause of delay is released; and the Supplier is barred from making any Claim against the Builder in respect of that cause of delay.
- 18.4 Within 28 days after receiving the Supplier's claim for an extension of time, the Builder will give to the Supplier its written assessment of the Supplier's claim. If the Builder fails to give its written assessment to the Supplier within this time, the Supplier may issue a notice of dispute to the Builder under the dispute provisions of this Purchase Order.
- 18.5 The Builder shall not be liable to the Supplier for any cost, expense, loss or damage suffered or incurred by the Supplier in connection with the Builder's grant or failure to grant an extension of time under this clause.
- 18.6 The Builder shall in any event be entitled to extend the Delivery Date at any time and for any reason; and the Supplier shall not be entitled to make any Claim or demand against the Builder by reason of the Builder's exercise of or failure to exercise this right.
- 18.7 The Supplier is not entitled to any payment whatsoever in respect of extensions of time; or any loss, costs or expenses incurred in connection with any delay or disruption unless directly caused by the Builder's deliberate breach of this Purchase Order.
19. **DEFECTIVE WORK**
- 19.1 If at any time up to the end of the Defects Liability Period the Builder determines in its reasonable opinion that the Goods or Work are defective or otherwise not in compliance with this Purchase Order, the Builder shall as soon as practicable give the Supplier written notice thereof and upon receipt, the Supplier must repair or replace the Goods and/or remediate the Work to the Builder's absolute satisfaction without delay or within the time reasonably prescribed by the Builder. The Defects Liability Period will recommence from the date of completion of such repair or replacement, but only in respect of that part of the Goods or Work replaced or repaired.
- 19.2 If the Supplier fails to comply with a written notice given under subclause 19.1, the Builder may, without further notice to the Supplier and without prejudice to any other right or remedy the Builder may have against the Subcontractor in connection with the defect, make good the Supplier's default at the Supplier's cost, and the Supplier shall also be liable for any other cost, loss or damage that is or may be suffered or incurred by the Builder in connection with the defective performance.
20. **TERMINATION OR SUSPENSION**
- 20.1 If the Builder for any reason whatever finds it necessary or considers it expedient to discontinue or suspend the Supply, the Builder may by notice in writing to the Supplier terminate or suspend the Purchase Order.
- 20.2 Upon termination or suspension the Supplier shall not be entitled to claim any loss, cost, expense or loss of profit; save that in the event of termination the Supplier will be entitled to such sum (including profit) as may be agreed or determined under the dispute resolution provisions of this Purchase Order in respect of any Work already completed; and any wasted expense already incurred by the Supplier for which the Supplier is legally bound to pay.
21. **SUBCONTRACTING AND ASSIGNMENT**
- 21.1 The Supplier may not under any circumstances subcontract out any part of the Supply or assign any benefits under this Purchase Order without prior written permission of the Builder. If subcontracting out is permitted by the Builder, the Supplier remains liable for the acts, defaults and omissions of its subcontractors.

22. **CIVIL LIABILITY ACT 2002 (WA)**

- 22.1 To the extent permitted by law, the operation of the proportionate liability provisions of the *Civil Liability Act 2002 (WA)* (CLA) is excluded in relation to all and any rights, obligations and liabilities under this Purchase Order, whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

23. **DEFAULT**

- 23.1 All dates and time periods in this Purchase Order are of the essence.
- 23.2 In addition to any other remedy available to the Builder under the Purchase Order or at law, if the Supplier breaches any obligations under this Purchase Order it will be liable to the Builder on a full indemnity basis for any loss and damage thereby suffered by the Builder (including any consequential loss, and other incidental costs).

24. **DISPUTE RESOLUTION**

- 24.1 If any difference or dispute arises between the Parties in respect of or in connection with this Purchase Order, either party may give notice to the other party in writing (**Notice**) of the particular matter of difference or dispute, and the parties must then within 14 days in good faith with a view to resolving the difference or dispute.
- 24.2 If that meeting does not result in a resolution, the parties may jointly within a further 14 days appoint an independent mediator to facilitate a resolution. If the parties cannot agree upon a mediator, either party may request the President for the time being of the Master Builders Association of Western Australia to nominate a suitable person. Save for any claim of conflict, the parties agree to be bound by the President's nomination. In either case, the costs of the mediator shall be borne and paid equally by the parties.
- 24.3 If the parties do not agree to mediate, or if mediation does not result in a resolution, either party may commence legal proceedings in any Court of appropriate jurisdiction.
- 24.4 To the extent possible, the parties shall continue to perform their obligations under this Purchase Order while the dispute is being resolved.
- 24.5 Nothing in this clause prevents either party from seeking urgent injunctive, declaratory or other equitable relief or from exercising the rights available to them under the SOP Act..

25. **WAIVER**

- 25.1 None of the Builder's rights or the Supplier's obligations under this Purchase Order shall be waived, discharged or released, except with the written consent of the Builder in each instance, and the Builder shall be entitled to exercise any of its rights and remedies under this Purchase Order notwithstanding any delay or neglect in the Builder's exercise; or any previous waiver by the Builder of a similar right or remedy.

26. **APPLICABLE LAW AND FORUM**

- 26.1 This Purchase Order shall be governed by the laws in force in Western Australia, and the parties agree to submit to the non-exclusive jurisdiction of the Courts in Western Australia.