

Clause 1 – Interpretation

(a) In this agreement, except where the context otherwise requires:

“**Acceptable**” means the Goods;

- (i) are in accordance with the requirements of the Conditions except for minor Defects which do not:
- I. prevent the Goods from being reasonably capable of being used for the intended purpose ; and/or
 - II. adversely affect the normal use or application of the Goods;
- (ii) satisfy acceptance testing where the Conditions requires; and
- (iii) manuals, documents and other information required under the Conditions have been supplied.

“**Conditions**” means the provisions of this agreement and the Purchase Order, or any other document listed on a Purchase Order, or related attachment, including variations to this agreement or the Purchase Order.

“**Date for Delivery**” means the date stated on a Purchase Order, or attached to these Conditions.

“**Defects**” means any inconsistency, deficiency or defect that effect the quality of the Goods or render the Goods substandard,, not of merchantable quality or fit for purpose.

“**Defects Liability Period**” has the meaning referred to in any Head Contract.

“**Delivery Place**” is the place stated by the Purchaser in a Purchase Order, or an attachment.

“**Direction**” includes any agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement of the Purchaser.

“**Goods**” means those items stated on a Purchase Order, or schedule delivered or to be delivered by the Supplier to the Purchaser.

“**Price**” means the price payable for the Goods provided for on a Purchase Order, or any attached schedule.

“**Intellectual Property Right**” means any patent, registered design, trademark or name, copyright or other protected right;

“**Purchaser**” means Daracon Engineering and its related entities.

“**Purchase Order**” means any written request for supply and/or delivery of Goods by the Purchaser.

“**Supplier**” means the entity that supplies the Goods pursuant to the Purchase Order

- (b) The agreement contains the entire understanding of the parties and specifically excludes and supersedes any other agreement, conditions, statement, warranty, and representation, whether oral or in writing, between the parties made or dated prior to or after the date of the Purchase Order.
- (c) Any items and/ or conditions attached to or embodied in the Supplier's tender or request for pricing are deemed to be withdrawn in favour of the provisions of these Conditions. By acceptance of a Purchase Order, the Supplier expressly acknowledges that the Purchaser's terms and conditions supersede and override any inconsistent terms and conditions provided by the Supplier to the Purchaser whether or not the Supplier's terms and conditions are executed by the Purchaser either before or after the execution of these Conditions by the Supplier.
- (d) Nothing in the Conditions will be read or applied so as to purport to exclude, restrict or modify, or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods or services under these Conditions of all or any of the provisions of the Trade Practices Act 1974, as amended and in force from time to time or any relevant State Act or Territory Act.
- (e) The Conditions will not be construed adversely to a party only because that party was responsible for preparing it.
- (f) This agreement shall be construed and governed in all respects in accordance with the laws of the State of New South Wales as applied from time to time. The Parties submit to the exclusive jurisdiction of the Courts in that State and its appellate Courts.

(g) Headings are for convenience only and do not effect the interpretation of the agreement.

(h) A clause or part of a clause of the Conditions that is illegal or unenforceable may be severed from the Conditions and the remaining clauses or parts of the Conditions shall continue in force.

Clause 2 – Performance

In accordance with the requirements of the Conditions:

- (a) the Supplier shall supply and deliver the Goods in quantities ordered in accordance with the Conditions or as requested by the Purchaser pursuant to a Purchase Order or otherwise; and
- (b) the Purchaser shall accept the Goods and pay the Supplier the Price as adjusted by any variations made pursuant to the Conditions.

Clause 3 – Purchaser Order

The Purchaser may order further supply of the Goods by Purchase Order. Each Purchase Order shall be given to the Supplier in writing or by electronic data transmission and shall include:

- (a) The Goods required;
- (b) The required quantity of those Goods;
- (c) The Price;
- (d) The time and Date for Delivery;
- (e) The Delivery Place; and
- (f) Any job specific requirements.

The terms of these Conditions will apply to each Purchase Order requested by the Purchaser.

Clause 4 – Assignment

Neither party shall assign this agreement without the other party's written approval, which will not be unreasonably withheld, or any part or any other right, benefit or interest herein. The Supplier shall not mortgage, charge or encumber any supply under these conditions, or any Purchase Order for any benefit or monies or interests there under without the written consent of the Purchaser.

Clause 5 – Intellectual Property Rights

The Supplier warrants that, unless otherwise provided in the Conditions, any design, materials, documents and methods of working, each provided by the Supplier, shall not infringe any Intellectual Property Right.

Except as otherwise provided in the Conditions, ownership of Intellectual Property Rights (other than third party Intellectual Property Rights) associated with the Goods and any documentation provided by the Supplier pursuant to the Conditions is vested and shall vest in the Supplier.

The Supplier grants the Purchaser a royalty free, non-exclusive, transferable, perpetual license to use Intellectual Property Rights associated with the Goods and any documentation provided pursuant to the Conditions for the installation, use, support, repair, maintenance or alteration of the Goods by or on behalf of the Purchaser.

Clause 6 – Warranties

The Supplier warrants that the Goods supplied pursuant to the Conditions:

- i. are of merchantable quality and fit for purpose; and
- ii. do not infringe any Intellectual Property Right.
- iii. are supplied free and clear of any equitable liens and encumbrances whatsoever; and
- iv. that the Supplier has a good and marketable title to the Goods.

The Supplier shall, from the manufacturer of each item of the Goods, obtain for the benefit of the Purchaser such warranties as are given by the manufacturer in the ordinary course of its business for each of the Goods and appropriate licenses or permits for use.

Clause 7 – Quality Assurance

In respect of the Goods, the Purchaser may direct the Supplier to:

- (a) supply particulars of the mode and place of manufacture, the source of supply of materials and other components,

the performance capacities and other related information;
and

- (b) arrange reasonable inspection at such place or sources by the Purchaser or persons authorised by the Purchaser.

If the Conditions elsewhere requires further quality assurance, the Supplier shall:

- (a) plan, establish and maintain a conforming quality system;
and
- (b) ensure that the Purchaser has reasonable access to the quality system of the Supplier and its subcontractors so as to enable monitoring and quality auditing.

Any such quality system shall be used only as an aid to achieving compliance with the Conditions and to document such compliance. Such systems shall not discharge the Supplier's other obligations under the Conditions.

Clause 8 – Suppliers Indemnity

The Supplier forever indemnifies the Purchaser (including all direct and consequential losses and legal costs on a full indemnity basis) against:

- (a) Any claims by third parties relating to breach of any warranty or obligation of the Supplier pursuant to the Conditions.
- (b) loss of or damage to property; and
- (c) claims in respect of personal injury or death or loss of, or damage to any property

arising out of or as a consequence of the Supplier's performance of the Conditions or the use or application of the Goods, but the indemnity shall be reduced proportionately to the extent that the act or omission of the Purchaser may have contributed to the injury, death, loss or damage.

Clause 9 – Insurance

9.1 Insurance of the Goods

The Supplier shall insure the Goods for their replacement value against loss or damage, including loss or damage in transit to the Delivery Place, and if the Conditions requires the Supplier to unload the Goods, also such unloading.

The policy or policies under this sub-clause shall:

- (a) be maintained until title and risk in the Goods passes to the Purchaser under the Conditions;
- (b) cover the parties' respective rights, interests and liabilities;
and
- (c) If required by the Purchaser, be in the joint names of the parties.

9.2 Public and Product Liability Insurance

Before commencing performance of the Conditions, the Supplier shall effect and maintain public and product liability insurance in the amount of not less than \$10,000,000 in respect of any one occurrence.

Policies shall:

- (a) cover:
- i. the respective rights and interest; and
 - ii. the liability to third parties;
- of the Supplier and the Purchaser from time to time, whenever performing obligations under the Conditions;
- (b) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by clause 9.1 and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy));

- (d) be with an insurer and otherwise in terms both approved in writing by the Purchaser.

9.3 Insurance of Employees

Before commencing performance of the Conditions, the Supplier shall have in place and maintain during the period of the agreement a policy of Workers Compensation insurance insuring against statutory and common law liability for death of or injury to all persons employed by the Supplier.

The Supplier shall ensure that all subcontractors used in the performance of the services under these Conditions have similarly insured their employees.

9.4 Proof of Insurance

Whenever requested in writing by the Purchaser, the Supplier shall provide satisfactory evidence of any all insurances affected and maintained by the Supplier pursuant to this clause 9 or otherwise.

Any insurances held will not limit the Supplier's liabilities or obligations under the provisions of the Conditions.

If after being so requested, the Supplier fails to promptly provide satisfactory evidence that the Supplier has the insurance in place pursuant to the Conditions, the Purchaser may take out the insurance and the cost shall become immediately due and payable as a debt due from the Supplier to the Purchaser. This clause does not effect the Purchaser's other rights under the Conditions. The Purchaser may refuse payment until evidence is produced by the Supplier.

The Supplier shall ensure that each insurance policy taken out in respect of these Conditions requires their insurer to inform both parties whenever;

- (a) the insurer gives notice to a party in relation to the policy;
- (b) whenever there is a notice of claim made on the insurer;
- (c) whenever the insurer provides a notice in relation to cancellation of the policy.

A party must as soon as practicable inform the other party in writing of any occurrence that may give rise to a claim under an insurance policy pursuant to these Conditions.

Any insurance required to be effected in joint names in accordance with the Conditions shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term "insured" as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased).

Clause 10 – Directions

The Purchaser may give a Direction orally but shall as soon as practicable confirm it in writing.

Clause 11 – Suspension

The Purchaser may direct the Supplier to suspend supply or delivery of the whole or part of the Goods for such time as the Purchaser thinks fit, if the Purchaser acting reasonably is of the opinion that it is necessary.

As soon as the Purchaser becomes aware that the reason for suspension no longer exists, the Purchaser shall direct the Supplier to recommence the suspended supply or delivery as soon as reasonably practicable. The Supplier shall recommence the supply or delivery within a reasonable time after notice from the Purchaser.

The Purchaser shall not be liable for any cost incurred by the Supplier arising from the suspension.

Clause 12 - Extension of Time

A party becoming aware of anything which would probably

cause delay to the supply or delivery of the Goods shall within 7 days after becoming aware of the cause of delay give the other party written notice of that cause and the estimated delay.

The Purchaser at its discretion may provide the Supplier with an extension of time to supply the Goods after consideration of the cause of the delay. If an extension of time is granted by the Purchaser the Supplier is not entitled to any delay damages by reason of any grant of an extension of time and the Purchaser may recover any reasonable costs incurred by reason of the delay if it is caused by the Supplier.

Clause 13 – Testing

The Purchaser may direct that any of the Goods be tested before acceptance. Such acceptance testing shall be completed by the dates required by the Purchaser. The testing is to be conducted at the Supplier's cost.

The testing is to be carried out by a person nominated by the Purchaser. Results of tests shall be made promptly available to each party.

The Supplier shall ensure that any test certificates and/or certification is supplied in accordance with the drawings and specifications under these Conditions and/or Purchase Order. The Goods will not be accepted or Acceptable until all relevant certificates are provided to the Purchaser.

Clause 14 - Delivery

The Supplier, when specified in the Conditions, at its expense, shall deliver the Goods on the Date for Delivery to the Delivery Place.

The Supplier shall promptly and safely unload the Goods at the Delivery Place.

The Purchaser may direct the Supplier to change the Date for Delivery, and any costs associated with such change shall be borne by the Supplier.

The Supplier shall include a delivery note with each consignment of the Goods to the Purchaser. Each delivery note shall be in writing and shall state in respect of the Goods supplied:

- (a) the date of consignment
- (b) description and quantity of goods
- (c) the Delivery Place;
- (d) the Date for Delivery;
- (e) the Purchase Order ordering the Goods so consigned; and
- (f) any variance from the Purchase Order and the Conditions.
- (g) quality assurance documents as required by the Purchaser

Deliveries of hazardous substances and/or dangerous goods must be accompanied by a current Material Safety Data Sheet.

Clause 15 – Ownership and Risk of the Goods

All Goods shall be at the Suppliers risk until such items have been accepted as Acceptable by the Purchaser in accordance with the Conditions.

If ownership of the Goods has passed to the Purchaser pursuant to this clause and the Purchaser rejects the Goods pursuant to the Conditions, then ownership of the Goods shall revert to the Supplier upon the Supplier's delivery to the Purchaser of the replacement Goods.

Clause 16 – Acceptance or Rejection of Goods

If notice of acceptance of the Goods is given, the notice may state the minor Defects, if any, to be rectified by the Supplier. If notice of rejection of Goods is given the notice shall state the reasons for the rejection and a Direction that the Supplier replace the Goods at the Suppliers cost or notify the Supplier that the Purchaser elects to accept the Goods and claim damages.

Any claim for rejection of the Goods is to be made in writing within 7 days of delivery.

Any acceptance by the Purchase under this clause does not relieve the Supplier from any obligations or warranties under the Conditions or at law.

Clause 17 – Defects Liability

The Supplier's liability for Defects shall commence on that item's date of acceptance and shall be for a period of the Defects Liability Period or the manufacturer's warranty, whichever is the greater, notwithstanding any acceptance of the Goods.

The Supplier shall carry out rectification at the times and in a manner causing as little inconvenience to users of the Goods as is reasonably possible. As soon as possible after acceptance, the Supplier shall rectify all Defects existing as at the date of acceptance.

During the Defects Liability Period, the Purchaser may give the Supplier a Direction to rectify a defect which:

- a. shall identify the defect and the reasonable date for completion of its rectification; and

If the rectification is not commenced or completed by the agreed dates, the Purchaser may have the rectification carried out by others but without prejudice to any other rights and remedies the Purchaser may have. The cost thereby incurred shall be monies due and payable to the Purchaser.

Clause 18 – Variations

The Supplier shall not vary the Goods except as directed in writing by the Purchaser. Such variation shall be provided in writing providing at least 2 working days notice to any Date for Delivery.

The Purchaser shall not be liable for the cost of a variation unless it has provided written notice to the Supplier agreeing to the variation. The Supplier is barred from making a claim in any payment claim for the cost associated with a variation of the Goods so supplied.

The Purchaser may direct the Supplier to vary the quantity of the Goods as listed on a Purchase Order.

The Purchaser shall as soon as possible Price each variation using the following order of precedence:

- (a) prior agreement;
- (b) rates or prices previously paid to the Supplier to the extent that it is reasonable to use them; and
- (c) reasonable rates or prices.

The Supplier will have no entitlement to compensation for any reduction in quantity pursuant to this clause save for a reasonable amount for lost profit (but not overheads) in respect of Goods manufactured pursuant to an order prior to the notice of variation and incapable of being supplied to third parties in the market for such Goods.

Clause 19 – Payment

The Supplier shall render the Purchaser an invoice for monies then due to the Supplier pursuant to the Conditions. Each invoice shall include details of the Goods supplied and may include details of other monies then due to the Supplier pursuant to the Conditions.

If the Purchaser disputes the amount of the invoice, it shall provide a statement to the Supplier within 14 calendar days after receipt of the invoice, setting out calculations employed to arrive at the different amount and the reasons for the difference.

The Purchaser shall pay the Supplier the amount due to the Supplier pursuant to the agreed terms between the parties, that being no later than 45 days from the end of month of the date of invoice..

If a Supplier does not render an invoice, the Purchaser may issue a Recipient Created Tax Invoice.

Payment of monies under these Conditions shall not be evidence that the subject Goods comply with the Conditions.

Clause 20 – Work Health and Safety

The Supplier shall comply with all acts and regulations applicable to ensure the health and safety of all persons, in particular the NSW Work Health and Safety Act 2011 and the NSW Work Health and Safety Regulations 2017. For those employees of the Supplier who are required to attend the Delivery Place, the Supplier must;

- (a) show evidence of having completed a General WH&S Induction for Construction Work and be given a site specific induction by the Purchaser before starting any work or delivering the Goods on the site,
- (b) provide a task specific risk assessment (ie transport, handling and/or delivery of goods).
- (c) review the Daracon Alcohol and Other Drug Policy and Procedure, which applies to the Supplier, its subcontractors, visitors and persons working for and/or entering a Daracon-controlled site. This procedure incorporates a process of random and cause testing. Suppliers and subcontractors, their employees and subcontractors must be in a “fit for work” state at all times when working for or with Daracon.

It is an obligation upon the Supplier to ensure that their employees and subcontractors do not come to work affected by alcohol or other drugs. The possession, use, or sale of alcohol or other drugs on Daracon sites is strictly prohibited.

In the event that an employee, or subcontractor, of the Supplier returns a positive test for alcohol or other drugs, the Supplier will be required to demonstrate remedial action has been implemented prior to the affected individual returning to work. Repeated breaches of the policy/procedure, or a failure to undertake remedial action, may result in termination of the supply of the Goods under clause 21.

A copy of the Daracon Alcohol or Other Drug Policy/Procedure is available upon request.

The Supplier is solely responsible for the adherence of the Goods to all applicable laws and standards in Australia related to the manufacture, quality and use of the Goods, including any safety instructions for operation and use of the Goods required to be provided to the Purchaser.

Clause 21 – Default and Termination

If the Supplier:

- (a) commits a breach of the Conditions; or
- (b) commits an act of insolvency,

the Purchaser may terminate the Supply of the Goods by providing the Supplier with 7 days written notice of such termination.

The Purchaser will not be liable to the Supplier for any losses associated as a result of the termination of the Supply of the Goods and shall only be liable to the Supplier for payment of Goods properly delivered under these Conditions.

In the event of a breach of this agreement and notwithstanding any accrued rights at termination or otherwise, the Purchaser may direct the Supplier to either;

- (a) assign to the Purchaser such rights, if any, as the Supplier has against the manufacturer; or
- (b) pursue any reasonable claim against the manufacturer.

Upon receipt of a written request from the Purchaser in respect of any such Goods, the Supplier shall provide the Purchaser with the name of the manufacturer, any terms of contract with the manufacturer which purport to limit the manufacturer's liability to the Supplier in respect of the Goods and any such other information as the Purchaser reasonably requests.

The operation of Part 4 of the Civil Liability Act 2002 (NSW) (“the Act”) is excluded in relation to all and any rights, obligations and liabilities under this Agreement whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at law.

The Supplier specifically agrees and undertakes that in the event of any proceedings arise out of a breach of this agreement to which the Act is applicable, it will not seek to rely on the provisions of the Act, other than as directly against any such concurrent wrongdoer in its own capacity.

The Supplier hereby forever indemnifies the Purchaser in respect of all losses, costs, damages (including non-recovery of damages) arising from any breach of this clause on a full indemnity basis including any legal or other associated costs incurred on a solicitor/client basis.

Clause 22 - Disputes

Any matters of dispute arising between the Purchaser and Supplier in connection with these Conditions shall be referred, in writing, to the Purchaser within seven (7) days of the occurrence, for determination by the Purchaser.

The Purchaser and Supplier shall elevate any dispute within the respective companies to their Senior Managers.

In the event that the dispute cannot be resolved within 14 days by direct negotiation between the parties, the dispute shall be determined by arbitration before a single arbitrator appointed by the Chairman of the Institute of Arbitrators Australia New South Wales Chapter. The Arbitrators determination shall be binding on the parties.

Clause 23 – Legislative Requirements

The Supplier shall satisfy all legislative requirements and if the Supplier finds that a legislative requirement has arisen during the period of the agreement which affects the Price, the Supplier shall give the Purchaser written notice within 14 days from becoming aware of the change.

Failure by the Supplier to give the Purchaser written notice within 14 days after it becomes aware that the Price will change, the Supplier is barred from making a claim for increase in any Price against the Purchaser.

Clause 24 - Waiver

The failure of the Purchaser to require full or partial performance of a provision of these Conditions does not affect the right of that Purchaser to require performance subsequently.

A right under the Conditions may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

Clause 25 - Confidential Information

The Supplier acknowledges that the Supplier, its employees, subcontractors and agents maybe given access to information of an actual potentially commercially sensitive nature (“the Confidential Information”) in the course of performing the requirements of this agreement.

The Supplier must;

- (a) keep strictly secret and confidential the Confidential Information;
- (b) ensure that its employees, subcontractors and agents are bound by the terms of their employment or appointment with the Supplier or otherwise to keep strictly secret and confidential the Confidential Information; and
- (c) not copy, publish, divulge or disclose in any manner whatsoever the Confidential Information to any person other than to those of its employees, subcontractors and agents directly involved in the performance of this agreement and only to the extent that such disclosure is required for the performance of the agreement;
- (d) the obligations on the part of the Supplier contained herein shall survive completion and/or termination of the agreement.