

## 1. INTERPRETATIONS AND GENERAL MATTERS

### 1.1 Definitions

"Customer" means Ventia Utility Services Pty Limited and Downer Utilities Australia Pty Ltd trading as Gold Coast Infrastructure Solutions ("GCIS") ABN 55 334 258 862.

"day" means a calendar day.

"FOT" means, in relation to delivery of the Goods, free on truck (or other transport) and includes the responsibility (and associated costs) for packing, loading, transportation and insurance (for the full replacement value of the Goods) to the nominated delivery point for the Goods.

"Goods" means all goods, equipment, materials, articles, or any other property or parts to be provided to the Customer by the Supplier under the Purchase/Service Order and includes, without limitation, all ancillary activities such as design, manufacture, inspection, testing, expediting, quality assurance and control, painting, packing and delivery as specified or required hereunder.

"[Mandatory Safety Rules](#)" means the following rules:

1. Always verify and tag or lock all energy isolations.
2. Never remove another person's Danger Tag or Personal Lock without written authorisation.
3. Always operate equipment and machinery within defined safety limits.
4. Never begin a skilled task or operate equipment and machinery unless qualified.
5. Always obtain authorisation before entering a confined space.
6. Never disable or override a safety device without written authorisation.
7. Always protect against falling where you can fall more than 2 metres.
8. Never work or travel under a suspended load.
9. Always wear seatbelts when a vehicle is in motion.
10. Never consume or be under the influence of alcohol or illicit drugs while at work.

"Purchase/Service Order" means the purchase order and/or service order (with a unique reference number) issued by the Customer to the Supplier as evidenced by the documents listed in the Purchase/Service Order Form.

"Purchase/Service Order Form" means the section of the Purchase/Service Order to be completed by the Customer, which identifies the Supplier and includes but is not limited to a brief description of the Services and/or Goods and a list of the documents comprising the Purchase/Service Order.

"Supplier" means the person performing the Services and/or providing the Goods, as identified in the Purchase/Service Order Form.

"Services" means the services as set out and further detailed in the Purchase/Service Order Form.

"Warranty Period" means:

- (a) in relation to Services, the period commencing on the date of completion of the Services and lasting for a period of one (1) year thereof;
- (b) in relation to Goods, the date of the final supply of the Goods to the nominated delivery point and

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lasting for a period of one (1) year thereof.

## 1.2 Interpretations

Words importing the singular are deemed to include the plural and vice versa. Headings and subheadings are inserted for convenience only and must not be used to interpret the text. Words denoting a natural person shall include a corporation and vice versa.

## 1.3 Supplier to Inform Itself

The Supplier shall be deemed to have carefully examined all documents furnished by the Customer and fully satisfied itself regarding all the conditions, risks, contingencies and other circumstances which might affect the performance of the Services and/or the supply of the Goods. No increase in the Purchase/Service Order price will be allowed for the Supplier's failure to ensure that it is fully informed regarding all the circumstances relating to the Purchase/Service Order.

## 1.4 Order of Precedence

Unless otherwise stated, the order of precedence of any of the following documents listed in the Purchase/Service Order Form, will be as follows:

- i) The Purchase/Service Order Form
- ii) Special Terms and Conditions
- iii) General Terms and Conditions
- iv) Specification(s)
- v) Drawing(s)

## 1.5 Ambiguities

If the Supplier discovers any ambiguity in the Purchase/Service Order it shall immediately notify the Customer in writing. The Customer will then determine the correct interpretation of the Purchase/Service Order. The determination of the Customer will be final and binding on the Supplier and have no effect on the Purchase/Service Order price.

## 1.6 Use of Documentation

Documents prepared in relation to, or ancillary to the Purchase/Service Order, must not be copied or used for any other purpose than the performance of the Services and/or supply of the Goods by the Supplier to the Customer, without the prior written approval of the Customer.

## 1.7 Confidentiality

Any information provided by the Customer to the Supplier, which is noted as, or which is by its nature, confidential, must not be disclosed to any third party without the prior written consent of the Customer. The obligations under this Clause shall be continuing obligations and shall survive the completion or termination of the Purchase/Service Order for a period of 2 years from the completion or termination of the Purchase/Service Order.

The Supplier must not issue any information which includes details about the Services and/or the Goods and/or the Purchase/Service Order, for publication in any news or communication media, without the prior written approval of the Customer.

## 1.8 Privacy

If the Supplier is provided with, or has access to, personal information under the Customer's control, the Supplier must:

- (i) comply with the provisions of the Privacy Act 1988 (Cth);
- (ii) use or collect the personal information for the sole purpose of providing the Services and/or Goods;
- (iii) protect the personal information from misuse and loss and from unauthorised access, modification or disclosure; and
- (iv) destroy or permanently de-identify the personal information if that information is no longer needed to provide the Services and/or Goods.

## 1.9 Waiver

No failure or delay on the part of the Customer in exercising any of its rights under the Purchase/Service Order shall be construed as constituting a waiver of any such rights.

## 1.10 Subcontracting and Assignment

The Supplier must not subcontract nor assign all or any part of the Purchase/Service Order without the prior written approval of the Customer. The Supplier must provide for the approval of the Customer full particulars of any work to be subcontracted together with details of the proposed subcontractor prior to entering into any subcontract.

Approval of the Customer to any subcontract will in no way relieve the Supplier of any of its obligations under the Purchase/Service Order.

## 1.11 Entire Agreement

The Purchase/Service Order constitutes the entire agreement between the Customer and the Supplier. The parties shall not be bound by or liable for any statement, representation, promise or understanding not set forth herein. Nothing contained in proposals, correspondence, discussions or negotiations prior to the date of the Purchase/Service Order has any effect on the Purchase/Service Order unless specifically incorporated herein.

## 1.12 Communications

Any notice or other communication required under the Purchase/Service Order shall be delivered in writing and shall be in a form which can be read, copied and recorded conveniently. Verbal instructions or directions from the Customer shall be confirmed in writing to the Supplier within a reasonable time. The notice shall take effect from the time when it is delivered to or received at the nominated address of the parties.

## 1.13 Licences and Laws

The Supplier shall comply with all applicable laws, by-laws, ordinances, regulations, proclamations, orders and rules and with the lawful requirements of public authorities and other authorities in any way related to the supply of the Goods and/or the performance of Services, including without limitation all occupational health and safety laws.

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## 2. INSURANCE

2.1 In relation to the Services, the Supplier shall effect and maintain:

- (v) public liability insurance to the value of \$10million;
- (vi) workers compensation insurance as required by law;
- (vii) motor vehicle third party damage insurance;
- (viii) motor vehicle insurance including death or injury cover as required by State and Federal legislation;
- (ix) marine transit insurance covering all insurable risks of physical loss or damage to the Goods, and/or merchandise or any other property in which GCIS has an insurable interest occurring at any time while in transit or in storage in the ordinary course of transit up to the agreed Place and
- (x) such other insurances required by the Customer or required by law, upon terms acceptable to the Customer.

2.2 In relation to the Goods, the Supplier shall effect and maintain any policies of insurance specified in the Purchase/Service Order Form or required by law.

## 3. INDEMNIFICATION, LIABILITY

3.1 The Supplier must indemnify and keep indemnified the Customer and its officers, employees and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses suffered by the Customer and its officers, employees and agents arising as a result of any act, neglect or default of the Supplier, its employees or agents related to its obligations under the Purchase/Service Order.

3.2 The Customer will not be liable to the Supplier for any indirect or consequential loss under the Purchase/Service Order, in tort, in equity or otherwise at law.

3.3 The maximum sum for which the Customer may be liable to the Supplier under the Purchase/Service Order, in tort, in equity or otherwise at law, is limited to the price.

## 4. PERFORMANCE AND QUALITY

### 4.1 Materials and Workmanship

All Services and/or Goods shall be suitable for the purpose for which they are required. The Supplier must use new and undamaged materials, unless otherwise specified in the Purchase/Service Order and the workmanship must be of a high quality and standard. The work must be carried out in accordance with good engineering practice and comply with all applicable Australian standards and/or other referenced codes, the requirements of the relevant statutory authorities and all applicable laws, including without limitation all statutory obligations in relation to occupational health and safety. Goods supplied must meet all applicable Australian standards and/or other referenced codes, the requirements of the relevant statutory authorities and all applicable laws, including without limitation all statutory obligations in relation to occupational health and safety.

### 4.2 Supplier Qualifications

The Supplier represents and warrants to the Customer that it has the necessary skills, resources and experience to successfully perform the Services and/or supply the Goods in accordance with the requirements of the Purchase/Service Order.

## 4.3 Testing and Inspection

The Goods and/or Services must be tested in accordance with the requirements of the Purchase/Service Order, including any Specification. Unless otherwise stated in the Purchase/Service

Order, any tests and the costs thereof will be the responsibility of the Supplier. The results of tests shall be promptly supplied to the Customer in writing.

The Customer will have the right to inspect, expedite and monitor performance of the Services and/or the delivery of the Goods and the Supplier must give the Customer access to the Supplier's premises for such purpose during its normal working hours. The Services and/or Goods will not be accepted by the Customer until inspected and approved by the Customer. Any inspection by the Customer will not relieve the Supplier from its obligations to comply with the requirements of the Purchase/Service Order and will in no way impair the Customer's right to require subsequent correction or re-performance of non-conforming Services and/or Goods.

## 4.4 Quality Standards

The Supplier must comply with the standards of quality specified in the Purchase/Service Order. If no standards are specified the Supplier must comply with the best practice industry standards applicable to the Services and/or Goods concerned.

All Goods supplied and Services performed, by the Supplier to Downer are supplied under these Purchase Order Terms and Conditions unless a separate written contract is entered into by Downer and the Supplier which expressly excludes these Purchase Order Terms and Conditions.

## 4.5 Defects and Warranty

The Supplier warrants that the Goods shall:

- i) Be free from liens, charges, encumbrances, mortgages or other defects in title.
- ii) Be new and made to the specified quality.

The Supplier warrants that the Services & Goods shall

- iii) Be free from defects in design, materials and workmanship.
- iv) Conform to the conditions and specifications of the Purchase/Service Order.
- v) Conform to all applicable laws and regulations to which the Services or Goods are subject.
- vi) Be performed in accordance with any performance standard specified in the Purchase/Service Order.

The Supplier warrants that it will comply with any of the Customer's policies notified by the Customer to the Supplier from time to time, including without limitation, the Customer's [Code of Conduct](#) and the [Mandatory Safety Rules](#).

The warranties noted in clause 4.5 above are in addition to any statutory warranties applicable to the Services and/or Goods.

During the Warranty Period, the Customer may give written notice to the Supplier of any failure or defect in the Services and/or Goods. The Supplier must without delay and at no cost to the Customer:

- i) correct any defect in the Services covered by the warranty, by way of re-performance of the Services in a manner acceptable to the Customer; or
- ii) correct any defect or failure in the Goods covered by the warranty, by way of repair, replacement,

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modification or other means acceptable to the Customer.

If the Supplier fails to correct any defects and failures, of which it has been notified by the Customer, within the time specified in the notice (which must not be unreasonable), the Customer will have the right to rectify the Services and/or Goods itself or have the rectification undertaken by a third party. All costs so incurred will be a debt due and payable by the Supplier to the Customer which may be deducted from moneys otherwise owing to the Supplier by the Customer.

Any Services re-performed or rectified and/or any Goods repaired under warranty may be subject to a further full Warranty Period, if required by the Customer, commencing on the date of completion of any such re-performance, rectification or repair.

## 5. DELIVERY/DELAY

**5.1** Unless otherwise specified in the Purchase/Service Order, Goods must be delivered FOT, adequately packaged and protected to ensure safe delivery, to the delivery point and by the delivery date(s) specified in the Purchase/Service Order Form. The cost of delivery of the Goods to the delivery point (including all transport costs and reasonably appropriate insurance cover), and all packing, loading and unloading is included in the Price for the Goods.

**5.2** The Goods will become the property of the Customer upon delivery of the Goods to the Customer, as evidenced by the signature on the delivery docket of a duly authorised representative of the Customer. Such signature is not, and will not be deemed to be, an acknowledgement of the acceptability of the Goods. This applies notwithstanding any terms and conditions appearing on any such acknowledgement of delivery. Notwithstanding that the Customer has taken delivery of the Goods, the Supplier will remain responsible for any loss or damage to the Goods, which may have occurred prior to delivery, and for any non-compliance of the Goods with the requirements of the Purchase/Service Order.

**5.3** The Supplier must take all reasonable steps to minimise or prevent any delay in the performance of the Services or the delivery of the Goods. The Customer may grant an extension of time to the nominated delivery date provided or in the performance of the Services provided:

- i) the delay is caused by any reason completely beyond the control of the Supplier, including any Statewide or National industrial disputes, acts of God, war, riot, fire, storm or flood.
- ii) the Supplier has notified the Customer in writing within seven (7) days of the delay occurring (or such other time as may be specified in the Purchase/Service Order) of its claim for an extension of time. The Customer shall not be liable for any extension of time claim that is not lodged in writing with the Customer within seven (7) days of the delay occurring.

**5.4** If the Supplier fails to perform the Services in a timely fashion or fails to deliver the Goods by the specified delivery date(s), the Customer may terminate the Purchase/Service Order either in whole or in part for default, in accordance with the provisions of Clause 7.2 and/or deduct from monies due to the Supplier as liquidated damages, representing a genuine pre-estimate of the Customer's damages and not as a penalty, the amount specified in the Purchase/Service Order Form, for each week or part thereof in which the non-performance continues or delivery exceeds the specified delivery date.

**5.5** The Customer is not obliged to accept early Delivery of the Goods. If the Customer does not accept early Delivery of the Goods, the Supplier must, at its cost, hold the Goods in store until the delivery date. The Customer is not obliged to accept any Goods in excess of the quantity specified in the Purchase Order.



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- 5.6** The Supplier must deliver all applicable material safety data sheets (MSDS) and operation and maintenance documents with the Goods.

## 6. VARIATIONS

- 6.1** The Customer may vary the work under the Purchase/Service Order or any condition thereof and the Supplier must carry out any such variation as directed by the Customer. The Supplier's price (addition or reduction) for any variation and any effect on the delivery date(s) of the Services and/or Goods will preferably be agreed between the Customer and Supplier prior to the Supplier carrying out any such variation. However, if agreement cannot be reached, the Customer will determine the price for the variation and its effect on the date of performance of the Services and/or the delivery date(s) of the Goods.
- 6.2** The Supplier must not vary the work under the Purchase/Service Order or any condition thereof, except as directed and approved by the Customer in writing. No variation will invalidate the Purchase/Service Order.

## 7. SUSPENSION/TERMINATION

### 7.1 Suspension

The Customer may, at any time by written notice, suspend all or part of the Purchase/Service Order for any reason whatsoever. Upon receipt of a notice of suspension, the Supplier will cease work in accordance with the directions of the notice. The Supplier must recommence the work under the Purchase/Service Order within forty eight (48) hours of being directed to do so by the Customer.

### 7.2 Termination by Default

(a) Subject to clause 7.2 (b), in the event of a substantial breach by the Supplier of any of the terms and conditions of the Purchase/Service Order, which in the opinion of the Customer may significantly delay the completion of the Purchase/Service Order and which is not remedied within seven (7) days of the Customer notifying the Supplier in writing of any such breach ("Remedy Notice"), the Customer may terminate the Purchase/Service Order in whole or part.

(b) A breach by the Supplier in its performance of Services/provision of Goods of the Customer's [Code of Conduct](#) or [Mandatory Safety Rules](#) may – subject to the findings of an investigation – lead to termination of the Purchase/Service Order in whole without any need for the Customer to serve a Remedy Notice.

### 7.3 Termination for Insolvency

If, in the opinion of the Customer, the Supplier is unable to effectively perform its obligations under the Purchase/Service Order due to insolvency, bankruptcy or related reasons, the Customer will be entitled to terminate the Purchase/Service Order.

### 7.4 Termination at Customer's Option

Notwithstanding any other provisions of the Purchase/Service Order, the Customer may terminate the Purchase/Service Order by giving fourteen (14) days written notice to the Supplier.

## 7.5 Supplier's Rights and Obligations on Suspension /Termination

In the event of suspension of the Purchase/Service Order, the Supplier will not be entitled to payment by the Customer for any costs it may incur as a result of any such suspension.

In the event of insolvency of the Supplier or its default under Clause 7.2, the Customer shall immediately suspend any further payment to the Supplier. Any additional monies required by the Customer to complete the Purchase/Service Order in excess of what the Customer would have paid under the Purchase/Service Order shall be a debt due and payable by the Supplier to the Customer.

In the event of termination by the Customer under Clause 7.4, and provided the Supplier is not in default, the Customer shall pay the Supplier for work carried out prior to termination and all reasonable costs associated with the cancellation of any orders placed by the Customer prior to termination. The Customer shall not otherwise be liable for any other costs of the Supplier in respect of the termination.

## 8. PRICE AND PAYMENT

- 8.1** Unless otherwise stated in the Purchase/Service Order, prices shall be fixed and not subject to any variation, including but not limited to variations in the cost of labour, material or exchange rates.
- 8.2** The Supplier shall be responsible for the payment of all relevant Australian (Federal, State and Local Government) and overseas taxes, goods and services taxes, PAYG taxes, duties and charges payable with respect to the Goods and/or Services. The Purchase/Service Order price will be deemed to be inclusive of all such taxes, duties and charges.
- 8.3** Unless otherwise specified in the Purchase/Service Order, invoices for payment must be submitted to the Customer for payment following delivery of the Goods or following performance of the Services, and payment of the approved amount will be made by the Customer no later than forty five (45) days from the first day of the month after the month in which the invoice is dated. It is a pre-condition for payment that the Purchase/Service Order reference number must be quoted on all invoices. Invoices that do not quote a Purchase/Service Order reference number will be returned to the Supplier for rectification and resubmission.
- 8.4** (a) To the extent that any Taxable Supply occurs under the Purchase/Service Order then:
- (i) the party who is the supplier will, be entitled to increase the consideration for the Taxable Supply identified in the Purchase/Service Order ("net consideration") by the amount of any applicable GST calculated in accordance with the Act; and
  - (ii) the recipient shall pay such increased consideration.
- (b) The supplier must in any such case issue to the recipient at the time of claiming payment a valid tax invoice (in accordance with Act) for the purpose of obtaining an input tax credit for any GST so paid.
- (c) In clauses 8.4(a) and (b), "**Act**" means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and its associated legislation and regulations, "**GST**" means the goods and services tax imposed by the Act and "**Taxable Supply**" means a taxable supply under the Act
- 8.5** (a) In relation to a Supplier providing Services, the Supplier must include with each invoice required in clause 8.3, a statement that all remuneration or other amounts payable by the Supplier to any of its employees, consultants or subcontractors have been paid by law or under any industrial instrument in respect of the Services.



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- (b) In relation to a Supplier who has performed Services:
  - (i) in NSW (or otherwise has liabilities which arise under the Payroll Tax Act 2007 (NSW)), the Supplier must include with each invoice required in clause 8.3, a statement by the Supplier in accordance with the requirements of clause 18 of Schedule 2 of the Payroll Tax Act 2007 (NSW); and
  - (ii) In NSW the Supplier must include with each invoice required in clause 8.3, a statement by the Supplier in accordance with the requirements of section 175B(4) of the Workers Compensation Act 1987 (NSW).
- (c) The Customer may withhold any payment due to the Supplier until it receives from the Supplier the relevant statements required by clauses 8.5(a) and 8.5(b).

## 9. RELATIONSHIP

In relation to the performance of Services, the Supplier will provide the Services as an independent contractor and nothing in the Purchase/Service Order will be construed so as to constitute the Supplier as an employee of the Customer or constitute a partnership between the parties or so as to constitute either party as the agent or legal representative of the other party.

## 10. INTELLECTUAL PROPERTY

Any intellectual property in any sketches, plans, drawings, designs, reports or documents prepared by the Supplier in the provision of the Services under the Purchase/Service Order, will upon its creation vest in the Customer. Any intellectual property owned by the Supplier prior to the execution of the Services under the Purchase/Service Order will remain the property of the Supplier, although such intellectual property may be used by the Customer pursuant to a royalty-free license whilst the Services are being performed.

## 11. DISPUTES

- 11.1** Disputes or differences arising between the Customer and the Supplier must be settled quickly and by negotiation.
- 11.2** In the event of any unresolved dispute between the Customer and the Supplier, the Supplier must ensure that the progress of the work under the Purchase/Service Order is continued without any effect on the specified delivery date.
- 11.3** The preferred method of determination of unresolved disputes will be by amicable agreement at the senior management level of the Customer and the Supplier.
- 11.4** If the parties cannot resolve a dispute within 21 days the dispute is first raised between the parties, the parties agree that the dispute must then be referred to the Australian Commercial Disputes Centre ("ACDC") for mediation. The dispute must be heard within 30 days after it is referred to the ACDC.
- 11.5** Neither party may litigate until the procedures in clauses 11.1 to 11.4 above have first been complied with.

## 12. APPLICABLE LAW

- 12.1** Unless otherwise specified, the Purchase/Service Order will be governed and construed in accordance with the laws in place in the State or Territory in which the Purchase/Service Order is issued. The Customer and the Supplier submit to the non-exclusive jurisdiction of the courts of the said State or Territory.

## 13. MODERN SLAVERY

- 13.1** In this clause, 'Secondary Subcontractor' means any of the Supplier's consultants, contractors, suppliers, service providers and any other person engaged by or on behalf of the Supplier in connection with this agreement.
- 13.2** The Supplier must take (and must ensure that each of its Secondary Subcontractors take) all reasonable steps to ensure that no modern slavery, human trafficking, servitude, forced labour, bonded labour, child labour, slavery or forced marriage or deceptive recruiting for labour or services (**Modern Slavery**) is present in the Supplier's, or its Secondary Subcontractors', supply chains, or in any part of their businesses.
- 13.3** The Supplier warrants that neither it nor any of its officers, employees or Secondary Subcontractors has been convicted of, or has been or is, the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any form of Modern Slavery.
- 13.4** The Supplier must implement a system (to a standard that is consistent with good industry practices) to assess, monitor, evaluate and remediate the risks of Modern Slavery in its, and its Secondary Subcontractors', supply chains and in any part of their businesses.
- 13.5** The Supplier must promptly notify GCIS as soon as it becomes aware of any actual or suspected Modern Slavery in its or any of its Secondary Subcontractors' supply chain which is connected to this Agreement (**Suspected Slavery**).
- 13.6** The Supplier must maintain records evidencing its compliance with this clause, and on request from GCIS (from time to time), provide all assistance and information reasonably necessary for GCIS to prepare a modern slavery statement and otherwise comply with its obligations at law, including giving GCIS access to the Supplier's records.