

# QCCS PURCHASE ORDER TERMS AND CONDITIONS

## **1. SUPPLYING GOODS AND SERVICES (SUPPLIES)**

1.1 In consideration of payment of the Price by QCCS, the Supplier must supply the Goods or perform the Services (Supplies) to QCCS in accordance with, and as specified in, this Purchase Order (which includes these Purchase Order Terms and Conditions).

1.2 To the extent permitted by Law and to the extent the Supplier's terms and conditions are supplied to QCCS in respect of the Supplies (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect and will not constitute part of this Purchase Order (even if any representative of QCCS signs those terms and conditions or annexes the terms and conditions to this Purchase Order).

1.3 Where this Purchase Order relates to Supplies the subject of a contract between the Supplier and QCCS signed by both parties, the terms of that contract apply to the extent of any inconsistency with these Purchase Order Terms and Conditions.

1.4 The Supplier agrees this Purchase Order does not prevent QCCS from entering into arrangements or agreements with third parties for the purchase of any goods or services which are the same as or similar to the Supplies.

1.5 The Supplier and QCCS acknowledge that the health and safety of all persons affected by the performance of the Purchase Order is at all times the paramount consideration in the undertaking and completion of the supply or performance of the Supplies.

1.6 The Supplier must, in providing or performing the Supplies:

(a) not interfere with QCCS's activities or the activities of any other person at the Delivery Point or the Site;

(b) be aware of and comply with, and ensure that the Supplier's Personnel are aware of and comply with:

(i) all applicable Laws, including but not limited to Heavy Vehicle National Law (HVNL), WH&S Law and Mine Safety Law;

(ii) all Site Standards and Procedures, to the extent that these documents are applicable to the supply or performance of the Supplies by the Supplier; and

(iii) all lawful directions and orders given by QCCS's representative or any person authorised by Law to give directions to the Supplier;

(c) ensure that the Supplier's Personnel entering the Site provide or perform the Supplies in a safe manner and in a way that does not prejudice safe

working practices, safety and care of property and continuity of work at the Site;

(d) provide all such information and assistance as QCCS reasonably requires in connection with any statutory or internal health and safety, environment or community investigation in connection with this Purchase Order and the supply or performance of the Supplies;

(e) obtain, at the Supplier's expense, any necessary licences, permits, qualifications, registrations and other statutory requirements necessary for the performance of its obligations under this Purchase Order;

(f) leave QCCS's and the Principal's premises secure, clean, orderly and fit for immediate use having regard to the condition of premises immediately prior to the supply or performance of the Supplies; and

(g) on request by QCCS, provide to QCCS and its Personnel any information and assistance required to identify, evaluate, implement and report on any matter required by Law in respect of anything used, produced or created in connection with the performance of the Supplier's obligations under this Purchase Order.

(h) ensure that all Supplier's Personnel while performing the Services:

(i) do not represent in any way that they are employees of QCCS or the Principal;

(ii) act diligently, ethically, soberly and honestly and perform their duties with due care, skill and diligence;

(iii) do not act in any manner that could be reasonably expected to disrupt or adversely affect QCCS's or the Principal's business reputation, interests or goodwill;

(iv) ensure that all Supplier Personnel while performing the Services on the Principal's premises:

(A) comply with all security arrangements and arrangements in relation to access to any restricted areas of the Principal's premises;

(B) promptly comply with all requests from the Principal (or any contractor providing security services to the Principal) to open for inspection any bag, package or item which is in their possession when entering, leaving or at any time while at the Principal's premises, and any locker made available by the Principal;

(C) do not take, use, or be under the influence of, alcohol or any drug, unless prescribed by a medical practitioner or lawfully available without prescription and used in accordance with directions;

(D) do not sexually harass any person or unlawfully engage in any discriminatory behaviour;

(E) carry and display at all times appropriate identification; and

(F) maintain a high standard of presentation, grooming and professional behaviour.

1.7 The Supplier acknowledges and agrees that time is of the essence for the supply and performance of the Supplies.

## **2. WHERE PROVIDING GOODS**

2.1 The Supplier must:

(a) deliver the Goods (and copies of all Documentation and relevant instruction manuals relating to the Goods) to the Delivery Point by the Expected Date;

(b) provide QCCS with 48 hours prior notice of the time the Goods will be delivered to the Delivery Point; and

(c) mark each package with the Purchase Order number, item number, Delivery Point, contents, quantity, date and method of dispatch and weight of each package.

2.2 Title and Risk

(a) Title to the Goods will pass from the Supplier to QCCS on the earlier of delivery to the Delivery Point or when QCCS pays for those Goods.

(b) QCCS bears all risk in the Goods when QCCS takes delivery of those Goods at the Delivery Point, provided however that the Supplier will be responsible for its acts and omissions.

(c) The Supplier warrants that QCCS will be entitled to free and clear legal and beneficial title to and free and quiet possession of the Goods at the time title passes in accordance with clause 2.2(a).

## **3. WHERE PERFORMING SERVICES**

3.1 The Supplier must in respect of Services, commence performance of the Services on the date of this Purchase Order and complete the Services by the date specified in the Purchase Order.

## **4. PRICE**

4.1 In consideration of the due and proper performance of this Purchase Order by the Supplier, QCCS will pay to the Supplier the Price.

4.2 Unless this Purchase Order expressly provides otherwise, the Price is:

(a) inclusive of all charges including insurance, premiums and costs, leave entitlements, freight, packaging, packing and delivery costs and Taxes;

(b) inclusive of the cost of any miscellaneous services of a kind which are commonly provided with the supply or performance of goods or services of the same or a similar nature to the Supplies and any miscellaneous items of a kind which are commonly used or supplied in conjunction with goods or services of the same or a similar nature to the Supplies; and

(c) not subject to rise and fall, escalation or review.

## **5. INVOICING AND PAYMENT**

5.1 On delivery of the Goods and/or completion of the Services, the Supplier must provide to QCCS an Invoice which meets all the requirements of a valid invoice for Consumption Tax purposes and must comply with clause 5.2.

5.2 A Supplier Reference Document or any Invoice provided by the Supplier must:

(a) refer to the Purchase Order including the line item numbers on the Purchase Order (if any);

(b) include a detailed description of the delivered Goods or Services completed, including the date of delivery, installation or completion in respect of which the Supplier Reference Document or Invoice relates and the relevant quantity;

(c) include an individual reference number for QCCS to quote with remittance of payment;

(d) detail the Price relating to the relevant Supplies, broken down to reflect the same Price components on the relevant Purchase Order;

(e) set out the amount of any applicable Consumption Tax; and

(f) state the QCCS contacts name.

5.3 The provision of a Supplier Reference Document or Invoice that complies with the requirements of clause 5.2 is a precondition to the Supplier's right to payment for the Supplies which are the subject of a Supplier Reference Document or Invoice.

5.4 If any Supplier Reference Document or Invoice does not contain the information required by clause 5.2 QCCS may at its option complete any missing information or return it to the Supplier, in which case the Supplier must submit a replacement compliant Supplier Reference Document or compliant Invoice.

5.5 If QCCS requests, the Supplier must provide QCCS with all relevant records to calculate and verify the amount set out in any Supplier Reference Document or any Invoice.

5.6 Subject to clause 5.7 and 5.8, QCCS shall pay all Invoices within 60 days EOM from date of receipt of Invoice, except where QCCS is required by Law to pay within a shorter time frame, in which case QCCS must pay within that time frame.

5.7 If QCCS reasonably disputes any Invoice or Supplier Reference Document:

(a) to the extent permitted by Law, QCCS may withhold payment of the disputed part of the relevant Invoice or Supplier Reference Document pending resolution of the dispute; and

(b) if the resolution of the dispute determines that QCCS must pay an amount to the Supplier, QCCS must pay that amount upon resolution of the dispute.

5.8 QCCS may reduce any payment due to the Supplier under this Purchase Order by any amount which the Supplier must pay QCCS, including costs, charges, damages and expenses and any debts owed by the Supplier to QCCS in relation to or in connection with this Purchase Order or the Supplies. This does not limit QCCS's right to recover those amounts in other ways.

5.9 A payment made pursuant to this Purchase Order will not be taken or construed as proof or admission that the Goods or Services supplied or performed, or any part thereof, were to the satisfaction of QCCS but will only be taken to be payment on account only.

5.10 QCCS will not be liable for any claim by the Supplier for payment of amounts in addition to those amounts already paid or accepted by the QCCS unless within 45 days (or such other time as is expressly provided for in any contract identified in clause 1.3) after the day on which the Supplier last provided the Supplies, the Supplier has given QCCS a fully substantiated claim which sets out the facts on which the Supplier relies and the precise sum claimed. Compliance by the Supplier with the time frames specified in this clause 5.10 (or such other time as is expressly provided for in any contract identified in clause 1.3) is a contractual precondition to any entitlement to a claim.

5.11 Clause 5.10 does not apply to the extent it is contrary to applicable legislation (including subordinate legislation), or would annul, exclude, modify, restrict or otherwise change the effect of any applicable legislation (including subordinate legislation) in a way that is not permitted by Law.

## **6. TAXES**

6.1 Except where otherwise provided by Law, the Supplier must pay all Taxes to the relevant Authority. If the Supplier pays any Taxes on behalf of QCCS, the Supplier must provide QCCS with documentary evidence of the payment of those Taxes.

6.2 Where QCCS reasonably believes in good faith that it is required by Law to withhold or deduct any Withholding Amount from any payment due to the Supplier, the Supplier authorises QCCS to withhold or deduct the Withholding Amount and acknowledges and agrees that when QCCS pays the Withholding Amount to the relevant Authority, QCCS is

deemed to have paid an amount equal to the Withholding Amount to the Supplier.

6.3 All amounts, consideration, supply and transactions referred to in, or made under or in connection with, this Purchase Order are exclusive of Consumption Tax, unless expressly indicated otherwise.

6.4 If Consumption Tax is payable by the supplier, the recipient will pay to the supplier an amount equal to the Consumption Tax at the rate applicable from time to time relevant to the supply provided that such amount will only be required to be paid once the supplier provides the recipient with a valid Invoice for Consumption Tax in relation to that amount.

6.5 If a payment to satisfy a claim under or in connection with this Purchase Order (for example, under an indemnity) gives rise to a liability to pay Consumption Tax then the payer must pay, and indemnify the payee on demand against, the amount of that Consumption Tax (subject to the issue of a valid tax invoice by the supplier to the recipient, or documentation analogous thereto required under the applicable Consumption Tax Law).

## **7. CONDITIONS AS TO QUALITY OF THE SUPPLIES**

7.1 The Supplier must ensure that:

(a) the Supplies provided or performed by the Supplier match the description of the Goods and Services in this Purchase Order;

(b) if the Supplier gave QCCS a sample of the Goods before QCCS issued this Purchase Order, the Goods correspond with the sample;

(c) if the Supplier provided QCCS with a demonstration of the Services before QCCS issued this Purchase Order, the Services correspond in nature and quality with the services demonstrated;

(d) if the Supplier showed QCCS a result achieved by the Services before QCCS issued this Purchase Order, the Services correspond in nature and quality with the services that achieved that result;

(e) the Services are performed with the professional skill, care and diligence expected of a skilled and experienced professional Supplier;

(f) the Supplies are fit for the purposes set out in, or which an experienced professional Supplier would reasonably infer from, this Purchase Order;

(g) the Goods are new and of merchantable quality;

(h) the Supplies are free of Defects;

(i) to the extent that the Services are design Services, the works being designed will be fit for their intended purpose as described in this Purchase Order;

(j) any items which the Supplier uses or provides in conjunction with the Services are of merchantable quality and comply with any standards specified in this Purchase Order and are fit for their usual purpose and any purpose described in this Purchase Order; and

(k) QCCS has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Supplier must pursue any manufacturer's warranties on QCCS's behalf if QCCS so requests).

## **8. DEFECTS**

8.1 The Supplier must promptly rectify all Defects in the Supplies at its cost until the end of the Defects Correction Period.

8.2 If, at any time prior to the expiry of the Defects Correction Period, QCCS finds any Defect in the Supplies, QCCS may give the Supplier written notice of the Defect and require the Supplier to rectify the Defect within a reasonable period stated in the notice. However, if, in QCCS's view, the relevant Defect creates a circumstance or condition that is unsafe and which requires prompt rectification, then QCCS is not obliged to give the Supplier an opportunity to make good the Defect before QCCS rectifies, or engages others to rectify, the Defect at the Supplier's risk, and all reasonable costs and expenses incurred by QCCS will be a debt due and payable from the Supplier to QCCS.

8.3 The Supplier must, at its cost, promptly rectify the Defect notified by QCCS pursuant to clause 8.2 in the time and manner specified by QCCS (and if no time or manner is specified, then within a reasonable time and manner) and to the satisfaction of QCCS.

8.4 If the Supplier does not rectify the Defect in accordance with clause 8.3, QCCS may:

(a) reject the Goods with the Defect and return them to the Supplier, in which case the Supplier must replace the Goods at its cost and reimburse QCCS for all costs and expenses QCCS incurs as a result of the Defect;

(b) reject the Services with the Defect, in which case the Supplier must re-perform the Services free of charge; or

(c) rectify or engage another supplier to rectify the Defect at the Supplier's risk, and all reasonable costs and expenses incurred by QCCS will be a debt due and payable from the Supplier to QCCS.

8.5 If the Supplier does not replace the Goods pursuant to clause 8.4(a) or re-perform the Services pursuant to clause 8.4(b) and QCCS has:

(a) paid the Supplier for the Supplies with the Defect, the Supplier must within 10 Business Days repay QCCS the Price for those Supplies rejected under clause 8.4(a) and 8.4(b); or

(b) not paid the Supplier for the Supplies with the Defect, QCCS is not liable to pay the Supplier for those Supplies rejected under clause 8.4(a) and 8.4(b).

8.6 Where the Supplier has made good any Defect under this clause, those Supplies will be subject to a Defects Correction Period commencing on the date the Supplier rectified the Defect.

8.7 The Supplier will not be liable for any Defect caused by the negligence of QCCS or QCCS's Personnel.

8.8 QCCS's rights under this clause 8 do not in any way affect:

(a) the Supplier's obligations under this Purchase Order; or

(b) any of QCCS's other rights under this Purchase Order or at Law, including the right to claim for any damage or loss it may suffer because of the Supplier's failure to fulfil any of its obligations under this Purchase Order.

## **9. ENDING THIS PURCHASE ORDER**

9.1 QCCS may, in its absolute discretion and for any reason whatsoever, and without being obliged to give any reasons, end this Purchase Order at any time by giving written notice to the Supplier.

9.2 QCCS may immediately end this Purchase Order by notice in writing to the Supplier if:

(a) the Supplier does not carry out (in whole or in part) a material obligation at the time and in the manner required under this Purchase Order and either:

(i) QCCS, acting reasonably, does not believe the breach of the material obligation is capable of remedy; or

(ii) QCCS has provided a notice of default and the Supplier fails to remedy that default within the time specified in the notice of default; or

(b) the Supplier is insolvent.

9.3 If QCCS terminates this Purchase Order under clause 9.1 QCCS may engage other persons to supply or perform the Supplies, and must, as the Supplier's sole and exclusive remedy in respect of QCCS terminating this Purchase Order:

(a) in respect of any Services, subject to clause 5, pay the Supplier:

(i) for the Services performed prior to the date of termination (and not yet paid); and

(ii) the relevant portion of the Purchase Order Price allocated for demobilisation;

(b) in respect of any Goods:

(i) subject to clause 5, pay the Supplier the Price for the Goods delivered to the Delivery Point

prior to the date of termination and not yet paid; and

(ii) if the Supplier has shipped any Goods before the termination but the Goods have not been delivered to the Delivery Point at the time of termination, QCCS may at its option either:

(A) subject to clause 5, accept those Goods when delivered to the Delivery Point, and pay the Purchase Order Price for them; or

(B) return the Goods to the Supplier with the freight charges at QCCS's expense.

9.4 If QCCS terminates this Purchase Order pursuant to clause 9.2, then QCCS is entitled to recover from the Supplier any costs, losses, damages and liabilities incurred or suffered by it as a result of, or arising out of, or in any way in connection with, the termination or any preceding breach.

9.5 Except as set out in this clause 9, the Supplier will not be entitled to make, and QCCS will not be liable for, any further claim, including for any loss caused by the termination of the Purchase Order.

## **10. CONFIDENTIAL INFORMATION**

10.1 The Supplier must not advertise or issue any information, publication, document or article (including photographs or film) for publication or media releases or other publicity relating to the Supplies, this Purchase Order or Confidential Information without the prior written approval of QCCS.

10.2 The Supplier must not, and must ensure that the Supplier's Personnel do not, without the prior written approval of QCCS:

(a) Use Confidential Information other than as necessary for the purposes of fulfilling the Supplier's obligations under this Purchase Order; or

(b) disclose the Confidential Information, other than to the Supplier's Personnel who need the information to enable the Supplier to provide Supplies under this Purchase Order, to the Supplier's legal advisors, accountants or auditors, or where disclosure is required by Law.

10.3 The Supplier must, within 10 Business Days (or any other period agreed in writing by the Parties) after a direction by QCCS to do so, return or destroy all Confidential Information in the Supplier's possession, custody or control.

10.4 Where the Supplier is a natural person, nothing in this clause prohibits, or requires approval for, the reporting of violations of Law to a governmental entity where permitted by applicable Laws. This provision is not intended to waive any applicable legal privilege or to affect the Parties' rights and obligations under clause 12.

10.5 The rights and obligations under this clause 10 continue after the termination of this Purchase Order.

## **11. PRIVACY**

11.1 Where the Supplier Processes Personal Information in connection with this Purchase Order, the Supplier will comply with all applicable Data Privacy Laws and take all appropriate technical and organisational measures against unauthorised or unlawful Processing of Personal Information and against accidental loss, disclosure or destruction of, or damage to, Personal Information.

## **12. INTELLECTUAL PROPERTY**

12.1 Subject to the terms and conditions of this clause 12, the Supplier's Background IP remains vested in the Supplier and QCCS's Background IP and all Intellectual Property Rights in QCCS's Technical Material remains vested in QCCS.

12.2 The Supplier:

(a) grants QCCS a worldwide, non-exclusive, perpetual, royalty-free, irrevocable, transferable licence to Use the Supplier's Background IP (including the right to assign and sub-license the Supplier's Background IP), to the extent necessary to use the Supplies and the Project IP; and

(b) assigns to QCCS all Project IP upon the creation of that Project IP.

12.3 QCCS grants the Supplier a non-exclusive, royalty-free, revocable, non-transferable licence to use the Project IP and QCCS's Background IP to the extent required to perform the Supplier's obligations under this Purchase Order.

12.4 If the Supplier engages an individual, whether an employee, subSupplier or volunteer, to perform work under the Purchase Order the Supplier must, prior to allowing that individual to commence work in respect of the Supplies, obtain from that individual who is to create Technical Material under the Purchase Order:

(a) all consents, permissions and assignments necessary to enable QCCS to exercise the Intellectual Property Rights granted under the Purchase Order in full, without impediment or cost to QCCS; and

(b) without limiting clause 12.4(a), a consent from the individual to any act or omission by QCCS in the exercise of the Intellectual Property Rights in the Technical Material granted under the Purchase Order that might otherwise constitute an infringement of the person's moral rights.

## **13. INDEMNITY AND INSURANCE**

13.1 The Supplier indemnifies QCCS (and QCCS's Personnel) against any claims, damages, losses cost, expenses or other liability arising in connection with:

(a) property loss or damage, personal injury or death (including to your employees) or environmental damage arising from or in connection with you providing the Supplies (except to the extent QCC's negligence has caused the loss, damage, injury or death); or

(b) any breach by the Supplier of this Purchase Order or any Law.

13.2 Save for any liability arising from:

(a) a deliberate breach by it of this Purchase Order or any Wilful Misconduct; or

(b) damage to the property of a third party, personal injury or death of any person or infringement of the Intellectual Property Rights of a third party caused by its breach or negligent act or omission,

neither Party will be liable to the other Party for any Consequential Loss suffered or incurred by the other Party in connection with this Purchase Order.

13.3 Unless agreed otherwise in writing, from the Purchase Order date, the Supplier must effect and maintain the following insurances:

(a) Public and Products Liability insurance in the amount of \$20 million per occurrence which names QCCS as an insured party;

(b) Professional Indemnity insurance in the amount of \$5 million per claim, where the Supplier is providing any design, specification or other professional services in connection with the Supply, until at least 6 years after the Defects Correction Period;

(c) Motor Vehicle insurance while the Supplier continues to have any obligations to provide the Supplies which will involve the use of a motor vehicle, third party property damage and bodily injury insurance in the amount of \$20 million per occurrence.

(d) Workers Compensation insurance as required by law.

(e) Plant, Material and Goods (including Transit) insurance in respect of any plant, equipment, material or goods including in or in connection with the Supplies during transit to and unloading at the Delivery Point and while in storage off-site for at least the amount of the value of the plant, equipment, material or goods.

13.4 The Supplier must provide QCCS with evidence of all policies of insurance required to be maintained by the Supplier and copies of the conditions applying to the insurance when requested.

## **14. ASSIGNMENT AND SUBCONTRACTING**

14.1 The rights under this Purchase Order are personal to the Supplier and the Supplier cannot assign, transfer, charge or otherwise dispose of (including by way of declaration of trust) any of

its rights, interests or obligations in respect of this Purchase Order without the prior written consent of QCCS.

14.2 QCCS may assign its rights or delegate any obligation in respect of this Purchase Order or novate the Purchase Order to a party financially capable of meeting its obligations, and the Supplier irrevocably consents to such assignment, delegation or novation. If required by QCCS, the Supplier must enter into any document reasonably required to give effect to the assignment, delegation or novation.

14.3 The Supplier must obtain the approval of QCCS before appointing a subSupplier to perform any part of its obligations under this Purchase Order. The Supplier is liable to QCCS for the acts and omissions of any subSupplier as if they were acts and omissions of the Supplier.

14.4 The Supplier must ensure that all agreements entered into with subSupplier's contain terms which:

(a) oblige the subSupplier to perform its obligations in a way that ensures that the Supplier complies with its obligations under this Purchase Order;

(b) requires the subSupplier to provide to QCCS any warranties normally provided by suppliers, manufacturers and subcontractors for work similar to the Goods or Services.

14.5 The Supplier must ensure that each subSupplier agreement entered into by the Supplier contains a covenant which will entitle the Supplier to novate the subSupplier agreement to QCCS if the Purchase Order is terminated at no cost to QCCS.

14.6 If QCCS requests in writing, and the Supplier fails to novate the subSupplier agreement to QCCS within 5 Business Days of the Purchase Order being terminated, the Supplier irrevocable, jointly and severally appoints (for valuable consideration) QCCS and any authorised representative of QCCS to be the Supplier's attorney to execute, sign, seal and deliver all notices deeds and documents for the purpose referred to under this clause 14.6, and the Supplier ratifies anything done by the attorney under this clause 14.6.

## **15. SUPPLIER TO MAINTAIN BOOKS AND RECORDS**

15.1 The Supplier will keep and maintain accurate and reasonably detailed books and financial records as well as maintain appropriate internal controls in connection with its performance under, and payments made in connection with, this Purchase Order.

15.2 The Supplier will during the period of the supply of the Goods or performance of the Services, and for a further two (2) years, upon request permit an authorized representative of QCCS to audit and examine any books and

financial records which belong to the Supplier, or any of its employees, agents, contractors and or subcontractors, for the purposes of ensuring that the terms and conditions of the Purchase Order have been complied with and that all applications for payment have been made and are being made in accordance with these Purchase Order Terms and Conditions and for the verification of compliance with the Supplier's representations, warranties and undertakings.

15.3 The Supplier will provide any information and assistance reasonably required by QCCS to enable and facilitate the audit and examination under clause 15.2, including access to the Supplier's Personnel.

## **16. GENERAL**

16.1 Within 5 Business Days of issue of this Purchase Order, or prior to commencement whichever is earlier, the Supplier may request changes to this Purchase Order, by written notice to the QCCS contact specified in this Purchase Order, in response to which QCCS may issue a changed Purchase Order otherwise the Supplier is deemed to have accepted the Purchase Order. If QCCS is unable to accept the requested changes, QCCS will cancel this Purchase Order.

16.2 Each Party hereby warrants that, as at the date of this Purchase Order and on each subsequent occasion it performs obligations under this Purchase Order, it has not engaged in any Anti-competitive Behaviour in relation to the potential or actual terms and conditions of this Purchase Order, including the Price.

16.3 The Parties agree that 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 Purchase Order.

16.4 The Parties irrevocably agree that the Purchase Order will be governed by Queensland law, and accept the jurisdiction of the courts of Queensland to settle any dispute that arises out of or in connection with this Purchase Order or its subject matter or formation (including non-contractual disputes).

16.5 To the extent permitted by Law, this Purchase Order constitutes the entire agreement between the Parties.

16.6 An amendment to any term of this Purchase Order, or a waiver of any right arising under or in connection with this Purchase Order, must be in writing and signed by the Parties.

16.7 In consideration for QCCS issuing this Purchase Order, the Supplier in accepting this Purchase Order releases QCCS's Personnel from all claims, demands suits and actions which might in the future arise out of or in connection with the performance of their functions, the Purchase Order and the work under the Purchase Order.

16.8 The Supplier acknowledges that the release under clause 16.7 is made for the benefit of an may be enforced by the QCCS pursuant to any legislation permitting the enforcement of third party promises and at common law in accepting the release under clause 16.7 QCCS is acting as agent of QCCS's Personnel. QCCS has issued this Purchase Order in reliance of the Suppliers warranty and representation that the release under clause 16.7 of the Purchase Order accepted by the Supplier is binding and effective on the Supplier and that it shall make no claims of any nature against any of QCCS's Personnel.

16.9 Where this Purchase Order relates to Supplies the subject of a contract between the Supplier and QCCS, signed by both parties, the terms of that contract apply to the extent of any inconsistency with the Purchase Order Terms and Conditions.

16.10 Any provision of the Purchase Order which is found to be prohibited or unenforceable is ineffective to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of the Purchase Order.

## **17. DEFINITIONS**

17.1 In this Purchase Order (unless the context otherwise requires):

**Anti-competitive Behaviour** means any conduct (including entering into, or giving effect to, an agreement or any other form of coordination or cooperation), whether past, present or potential, that is unlawful or otherwise restricted or prohibited under any applicable competition Law.

**Authority** means any national, state, provincial, regional, territorial, local or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body, in each case with jurisdiction.

**Background IP** means any intellectual property owned or licensed by a party which that party makes available, contributes, brings to or uses in connection with this Purchase Order.

**Business Day** means a day that is not a Saturday, Sunday, a public holiday at the Site, nor 27, 28, 29, 30 or 31 December.

**Confidential Information** means:

- (a) the terms of this Purchase Order;
- (b) all information (in any form) relating to QCCS or the Principal made available to the Supplier at any time in connection with this Purchase Order;
- (c) any information that concerns the business, operations, finances, plans, Personnel or customers of QCCS or the Principal, which is disclosed to, or acquired by, the Supplier (including any information that is derived from such information); and

(d) includes QCCS and Principal Data,

but does not include information which:

(e) is or becomes public knowledge other than by a breach of this Purchase Order; or

(f) has been independently developed by the Supplier without breach of this Purchase Order or acquired by the Supplier from a source which was not subject to a duty of confidentiality to QCCS (but only if, to the Supplier's knowledge, the source is not prohibited from disclosing such Confidential Information to the Supplier).

**Consequential Loss** means loss of production, loss of profit or anticipated profit, or loss of opportunities or any special, exemplary or punitive damages.

**Consumption Tax** means value-added tax, goods and services tax or any tax analogous thereto, but excludes any statutory late payment interest or penalties.

**Data Privacy Laws** means all laws now or in the future relating to data protection, privacy and information security, including all applicable international, regional, federal, or national data protection laws, regulations and regulatory guidance.

**Defect** means any aspect of the Supplies not in accordance with this Purchase Order, or any damage, deficiency, fault or inadequacy in design, performance, workmanship, quality or makeup of the Supplies.

**Defects Correction Period** means:

(a) in respect of Goods, 24 months from the date of delivery of the Goods;

(b) in respect of Services, 12 months from the date on which the Services were last performed or 12 months from the date on which practical completion is awarded to QCCS by the Principal, whichever is later,

as adjusted in accordance with this Purchase Order.

**Delivery Point** means the Site, or such other place which is specified in the Purchase Order as the place for delivery of the Goods.

**Documentation** means all documentation reasonably necessary to effectively Use the Goods or Services, including the documentation specified in the Purchase Order and any amendments or updates to the documentation provided by the Supplier.

**Expected Date** means the delivery date specified on the Purchase Order.

**Goods** means the goods, if any, specified as such in this Purchase Order (including any part of the goods specified).

**GST** means goods and services tax applicable on any transaction under the GST Law and includes goods and services tax compensation cess.

**GST Law** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any related Act imposing such GST, and includes any subordinate legislation in respect of those Acts.

**Intellectual Property** means any subject matter, whether tangible or intangible, that attracts, or is susceptible to protection by, Intellectual Property Rights.

**Intellectual Property Rights** means all copyright and analogous rights (including moral rights), all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets), know-how, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields. These rights include all rights in all applications to register these rights and all renewals and extensions of these rights.

**Invoice** means an invoice submitted by the Supplier in accordance with clause 5 containing all particulars prescribed under the applicable Law including, the tax invoice requirements of the GST Law which meets all of the requirements of a valid invoice for Consumption Tax purposes.

**Law** means:

(a) all legislation including regulations, bylaws, orders and other subordinate legislation;

(b) other than in circumstances where the Site is located in a civil law jurisdiction, common law; and

(c) any licence, permit, consent, authorisation, registration, filing, agreement, notice, notarisational, approval, determination, certificate, ruling, exemption from any Authority or under any Law which must be obtained or satisfied and includes any condition or requirement under the foregoing.

**Mine Safety Law** means the Mining and Quarrying Safety and Health Act 1999 (Qld), its associated regulations, the Coal Mining Safety and Health Act 1999 (Qld) and its associated regulations (as the case may be), and any Law made to replace or modernise these Laws.

**WH&S Law** means any applicable health and safety related Law, including a Law related to occupational health and safety, dangerous goods, chain of responsibility, mining, electrical health and safety, and any other industry specific Law, and any related codes of practice, standards, notices and directions issued by any Authority.

**Party** means QCCS or the Supplier, and Parties means both of them.

**Personal Information** means information and data which relates to a living individual who can be identified from that information or from that information in combination with other information reasonably likely to come into the possession of the same party, whether the information is recorded in a material form or not.

**Personnel** means directors, officers, employees, agents, Suppliers and subSupplier's, but a reference to QCCS's Personnel excludes the Supplier.

**Price** means the price, rates, unit costs and relevant totals specified as such in this Purchase Order.

**Processing** means, in relation to information or data, collecting, using or disclosing the information or data and any other operation which may be performed upon the information or data, and "process, processes and processed" will be interpreted accordingly.

**Project IP** means all Intellectual Property (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the performance of this Purchase Order and, for clarity, excludes the software.

**Principal** means QCCS's client who is the owner, or is engaged by the owner, of the Site.

**Purchase Order** means a document entitled "Purchase Order" which is issued by QCCS to the Supplier to order any Goods and/or Services. A Purchase Order incorporates the Purchase Order Terms and Conditions and any other document which is attached to, or incorporated by reference in, the Purchase Order or Purchase Order Terms and Conditions.

**Purchase Order Terms and Conditions** means these terms and conditions.

**QCCS** means QCCS Pty Ltd (ABN 67 149 611 996) named in the Purchase Order.

**QCCS and Principal Data** means any information or data relating to QCCS's business, or the Principal's business, including its operations, facilities, customers, employees, assets, products, sales and transactions, in whatever form the information exists, and includes any database in which data or information is contained, documentation or records related to data or information, products resulting from the use or manipulation of data or information and copies of any of the same.

**QCCS's Technical Material** means any Technical Material provided by QCCS to the Supplier for the purposes of this Purchase Order or which is copied or derived from Technical Material so provided.

**Services** means the services, if any, specified as such in this Purchase Order (including any part of the specified services and any ancillary services).

**Site** means the place described as such in this Purchase Order as the place for the use or storage of the Goods by QCCS or for the performance of the Services.

**Site Standards and Procedures** means all QCCS's and the Principal's standards, policies and procedures that are of general application at the Site in relation to matters concerning safety, health, the environment, industrial relations and personal conduct.

**Specifications** means the specifications for the Goods set out in or referred to in the Purchase Order.

**Supplier** means the person or entity named as such in this Purchase Order.

**Supplier Reference Document** means a delivery document, dispatch note, time sheet, claim form or such other document which evidences the delivery of the Goods or the performance of the Services.

**Supplies** means the:

(a) supply of the Goods; and/or

(b) performance of the Services,

as applicable.

**Tax** includes all present or future taxes, fees, levies, duties, imposts, assessment royalties, tariffs, fees and charges imposed or assessed in respect of this Purchase Order by all Authorities including income tax, payroll tax, statutory pension or superannuation contributions and workers' compensation payments and contributions, sales tax, customs duty, excise, and stamp duty, as well as interest, penalties and additions thereto; but does not include Consumption Tax.

**Technical Material** means the models, software, information, design concepts, audio, video, drawings (including "as built" drawings), programmes, schedules, manuals, diagrams, charts, specifications, records, concepts, plans, formulae, designs (including structural, mechanical, electrical and instrumentation designs) in any medium, methods and processes, including all copies of and extracts from them and data stored by any means.

**Use** includes using, installing, adapting, modifying, operating, exercising, maintaining, managing, testing, copying and supporting.

**Wilful Misconduct** means any act or omission which was deliberate and wrongful, or involved reckless disregard or wanton indifference to the harmful consequences.

**Withholding Amount** means the amount that QCCS is required by Law to withhold or deduct with respect to or which relates to any Tax.