

## TERMS AND CONDITIONS

### 1. General

- 1.1 The Supplier agrees to provide the Supplies to Geocon and Geocon agrees to purchase the Supplies in accordance with the terms of the Contract.
- 1.2 These Terms and Conditions will govern any future work undertaken by the Supplier for Geocon, or the future supply of goods or services by the Supplier to Geocon, unless new Terms and Conditions are issued by Geocon to the Supplier.
- 1.3 Any work undertaken by the Supplier, or goods or services provided by the Supplier, prior to the date of this Contract with respect to the Supply are deemed to form part of the Supply, and will be governed by this Contract.

### 2. Contract documents

- 2.1 The Contract between Geocon and the Supplier comprises the Purchase Order and the Terms and Conditions.
- 2.2 The Supplier agrees that any terms and conditions which it may generally apply to its supply of goods and/or services to other parties do not apply to the supply of Goods or Services pursuant to the Purchase Order, notwithstanding any invoice, receipt or other document issued to Geocon which states otherwise.
- 2.3 If there is any inconsistency between documents constituting the Contract, an earlier document listed in clause 2.1 will prevail over a later document to the extent of any inconsistency.

### 3. Definitions

- 3.1 In the Contract terms have the meaning set out in Purchase Order or as follows:

**Authority** means any government, statutory, public or other authority, body or department of any kind;

**Background Material** means Material owned by the Supplier that is included, embodied in or attached to the Contract Material or Supplies or used as part of the performance of the Contract but does not include Contract Material;

**Confidential Information** means information that:

- (a) is by its nature confidential; or
- (b) is designated by Geocon as confidential; or

- (c) the Supplier knows or ought to know is confidential,

but does not include information that is or becomes public knowledge otherwise than by breach of the Contract or any other confidentiality obligation of the parties;

**Contract** means the Terms and Conditions and the Purchase Order;

**Contract Material** means any Material created by the Supplier on or following the issue of a Purchase Order, for the purpose of, or as a result of performing its obligations under the Contract;

**Corporations Act** means the *Corporations Act 2001* (Cth);

**Geocon** means the entity listed in the "Deliver To" field of the Purchase Order and if no entity is listed then Geocon Group Pty Ltd ACN 165 918 356;

**Geocon Material** means any Material provided by Geocon to the Supplier for the purposes of this Contract;

**Goods** mean the articles, goods, Material or parts thereof (if any) to be supplied as specified the Purchase Order under 'Description';

**GST** has the same meaning as in the GST Act;

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**Insolvency Event** means, in respect of the Supplier, any of the following:

- (a) the Supplier being a corporation, there is any change in the direct or indirect beneficial ownership or control of the Supplier;
- (b) the Supplier disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business, ceases to carry on business or ceases to be able to pay its debts as they become due;
- (c) where the Supplier is a body corporate:
- (i) a step is taken for the Supplier to become an externally administered body corporate in accordance with the Corporations Act; or
- (ii) a step is taken to have a controller (as defined by the Corporations Act) appointed

for any of the Supplier's assets.

- (d) the Supplier being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors; or
- (e) any analogous event occurs.

**Intellectual Property Rights** means all intellectual property rights, including:

- (a) copyright, rights in relation to inventions, patents, trademarks (including goodwill in those marks), designs, plans, domain names, trade secrets, know how, rights in relation to circuit layouts and any right to have confidential information kept confidential;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,

whether or not such rights are registered or capable of being registered;

**Invoice Delivery Method** means the delivery via email to accounts@geocon.com.au.

**Material** includes property, information, documentation, or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions and the subject matter of any category of Intellectual Property Rights;

**Personal Property Securities Register** means the register established under the *Personal Property Securities Act 2009* (Cth);

**Price** means the 'Total Lump Sum Price' specified in the Purchase Order;

**Purchase Order** means the written purchase order issued by Geocon to the Supplier for the Supply;

**Security Interest** means a security interest as defined in the *Personal Property Securities Act 2009* (Cth);

**Services** mean the services (if any) to be performed as specified in the Purchase Order under 'Description';

**Site** means the 'Deliver To' address specified in the Purchase Order.

**Supplier** means the entity to which the Purchase Order is addressed;

**Supplies** means the Goods and/or Services;

**Supply** means the supply of the Goods and/or Services to Geocon.

**Supply Date** means the date or dates on which the Supplier is to make the Supply as specified in the Purchase Order under 'Due Date'.

**Term** means the period for which this Contract is intended to continue in accordance with clause 4;

**Terms and Conditions** means these terms and conditions;

**Third Party Material** means Material owned by a third party that is included, embodied in or attached to the Contract Material, or Supplies or used as part of the performance of the Contract; and

**Warranty Period** means the period of 24 months (or the period of the Supplier's standard warranty period if longer) from the date the particular item of Goods is accepted by Geocon.

- 3.2 In the Contract, unless the context otherwise requires: a reference to A\$, SA or \$ is to Australian currency; a reference to time is to Canberra, Australia time; and the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.

## 4. Term

- 4.1 The Contract commences on the Order Date.
- 4.2 Unless terminated earlier in accordance with clauses 13 and 14, the Contract will operate for a period of twelve (12) months until either party gives the other party not less than four (4) weeks written notice that the Contract is not being renewed and shall terminate.

## 5. General obligations of the Supplier

- 5.1 The Supplier must provide and deliver the Supplies:
  - (a) on the Supply Date, at the place, and in the manner specified in the Purchase Order, without delay, or as otherwise directed by Geocon;
  - (b) to the reasonable satisfaction of Geocon;
  - (c) in accordance with the Contract, including achieving the timeframes, milestones and deliverables specified in the Purchase Order or otherwise as agreed by Geocon and the Supplier;

- (d) with the due skill, care and diligence of a professional person experienced in providing the same or similar Supplies;
- (e) in accordance with all plans, specifications and standards relating to the Supply;
- (f) using only qualified, experienced and competent personnel;
- (g) in accordance with all applicable laws (including but not limited to laws in relation to work health and safety and the environment) and relevant Australian standards and best practice guidelines.
- 5.2 The Supplier must, for the Price, supply everything necessary for the proper provision and delivery of the Supplies.
- 5.3 The Supplier must comply with any requirements relating to the provision of Supplies as stated in the Purchase Order and all Supplies must conform to any specifications relating to the Supplies as stated in the Purchase Order.
- 5.4 If at any time the Supplies are not in accordance with the Contract, Geocon may, without limiting any other right or remedy of Geocon, direct the Supplier to correct or vary those Supplies at no cost to Geocon.
- 5.5 At any time prior to the last Supply Date, Geocon may amend the Supply Date or Supply Dates by notice to the Supplier, and the Supplier must comply with the amended Supply Date or Supply Dates at its cost (and without any claim against Geocon).
- 6. Supply of Goods – additional provisions**
- 6.1 The Supplier must ensure that the Goods:
- (a) are packed, marked and labelled to ensure their safe delivery and safe handling by Geocon after delivery and, if specific packing, marking or labelling is required under the Purchase Order, comply with those requirements.
- (b) are free of any Security Interest and that no Security Interest is registered on the Personal Property Securities Register.
- (c) delivered to the Site be left secure or as directed by Geocon at the time of delivery.
- 6.2 Geocon accepts risk for loss of or damage to the Goods from the time Geocon takes delivery of the Goods, except to the extent that the loss or damage is caused or contributed to by the Supplier.
- 6.3 Title in the Goods passes to Geocon on acceptance.
- 6.4 Geocon may accept or reject the relevant Goods within 21 days after delivery of the Goods to Geocon. An item of Goods will be deemed to have been accepted by Geocon if Geocon does not issue a notice under this clause 6.
- 6.5 Geocon may reject the Goods where the Goods do not comply with the requirements of the Contract including any acceptance tests specified in the Purchase Order.
- 6.6 If Geocon rejects any Goods, the Supplier must, without limitation to Geocon's rights otherwise arising under the Contract or a law, comply with a requirement of Geocon to:
- (a) replace, without cost to Geocon, the rejected Goods with Goods complying in all respects with the Contract;
- (b) refund any payment for the rejected Goods; or
- (c) repair the Goods, on Site or otherwise, so that the Goods comply in all respects with the Contract,
- and, in the case of (a) and (c) remove the rejected Goods at the Supplier's expense.
- 6.7 Geocon will not be liable to pay for any rejected Goods or for any damage or costs arising from inspection or rejection of Goods.
- 6.8 If Geocon requires the Supplier to submit samples of Goods, the Supplier must:
- (d) deliver the samples to Geocon for inspection, without additional cost to Geocon; and
- (e) not proceed to bulk manufacture until Geocon has approved the samples.
- 7. Warranty**
- 7.1 Without limiting any other warranty given by the Supplier, the Supplier represents and warrants that:
- (a) the Supplies are fit for the specified purpose, or if no purpose is specified, the Supplies are fit for the purpose for which goods or services similar to the Supplies are normally acquired;
- (b) the Goods are of merchantable quality;

- (c) the Goods and any Material used by the Supplier are suitable, new and free from defects;
  - (d) the Supplier has all necessary licences and approvals of any Authority or professional body to supply the Supplies;
  - (e) the Supplies meet all required Australian standards; and
  - (f) use of the Supplies will not cause Geocon to be in breach of any law.
- 7.2 Without limiting any other right or remedy of Geocon, if, during the Warranty Period, Geocon gives notice of any defect or omission in the Supplies which is a breach of warranty, the Supplier must correct that defect or omission without delay and at no cost to Geocon.
- 7.3 The Supplier represents and warrants that the provision of the Supplies was carried out in a safe manner and in compliance with work health and safety legislation.
- 7.4 The Supplier must meet all costs of, and incidental to, the discharge of warranty obligations, including any packing, freight, disassembly and reassembly costs.
- 8. Compliance with Geocon's policies**
- The Supplier must, when using Geocon's premises, Site or facilities comply with all reasonable directions of Geocon and all applicable laws and reasonable procedures and policies of Geocon, including but not limited to those relating to:
- (a) work health and safety requirements (including any requirements of the *Work Health and Safety Act 2011 (ACT)*); and
  - (b) security in effect at those premises, Site or in regard to those facilities,
- whether specifically drawn to the attention of the Supplier or as notified by Geocon or as might reasonably be inferred from the use to which the premises, Site or facilities are being put.
- 9. Inclusive price and GST**
- 9.1 The Price for the provision of the Supplies is the price set out in the Purchase Order. The Price stated in the Purchase Order is firm and fixed and includes:
- (a) subject to clause 9.2, all taxes, duties and other imposts for which the Supplier is liable;
  - (b) all insurance costs;
- (c) all amounts payable for the installation and/or use thereof (whether in the course of manufacture or use of Intellectual Property Rights);
  - (d) all charges for supply of the Supplies; and
  - (e) all charges for testing, inspection, packing, delivery or otherwise.
- 9.2 Where GST is imposed on any supply made by the Supplier and the Price of the Supplies is stated to be GST exclusive in the Purchase Order, Geocon will, in addition to the price payable for the Supplies pay, subject to receiving a valid tax invoice within the meaning of the GST Act, an amount equal to the GST payable in respect of that supply.
- 10. Payment**
- 10.1 Provided that the Supplies are delivered in accordance with the Contract, Geocon will pay to the Supplier the Price within 30 days from the date of receipt of a correctly rendered tax invoice.
- 10.2 An invoice will be deemed not to have been received until it has been delivered in accordance with the Invoice Delivery Method.
- 10.3 An invoice will be correctly rendered if it:
- (a) is addressed and issued in accordance with the Purchase Order;
  - (b) identifies the correct Purchase Order number;
  - (c) does not exceed the Price;
  - (d) is, where required by Geocon, accompanied by documentation substantiating the amount claimed; and
  - (e) is, where required by Australian law, a valid tax invoice within the meaning of the GST Act.
- 10.4 Where Geocon, acting reasonably, disputes:
- (a) the amount, or any part of the amount, to be paid to the Supplier; or
  - (b) the quality of the Supplies supplied,
- it will notify the Supplier and Geocon is not obliged to pay that invoice until the dispute is resolved, except Geocon may elect to pay any undisputed part of an invoice.
- 10.5 The Supplier must allow Geocon or its nominee access to its records to check the accuracy of the invoice and any other matter relating to the Supply.

## 11. Geocon Material

The Supplier must ensure that Geocon Material is used:

- (a) only for the purpose of the Contract; and
- (b) strictly in accordance with any conditions notified by Geocon in the Purchase Order (if any).

## 12. Intellectual property

12.1 All Intellectual Property Rights in the Contract Material vest in Geocon.

12.2 To the extent that Geocon needs to use any of the Background Material or Third Party Material provided by the Supplier to receive the benefit of the Supplies, the Supplier grants to Geocon a perpetual, world- wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute and communicate that Background Material or Third Party Material.

## 13. Termination for convenience

13.1 Geocon may at any time for any reason by giving at least 14 days' notice in writing to the Supplier terminate the Contract or reduce the scope of the Supplies.

13.2 On receipt of the notice, the Supplier must cease or reduce work as specified in the notice and take all steps possible to mitigate losses.

## 14. Termination for default

14.1 Without limiting any other rights or remedies the parties may have against the other arising out of or in connection with the Contract, the non-defaulting party may terminate the Contract effective immediately by giving written notice to the defaulting party if:

- (a) the defaulting party breaches a provision of the Contract where that breach is not capable of remedy;
- (b) the defaulting party breaches any provision of the Contract where that breach is capable of remedy and the party fails to remedy the breach within 30 days after receiving written notice requiring it to do so; or
- (c) subject to sections 415D, 434J and 451E of the Corporations Act (as the case may be), an Insolvency Event occurs.

## 15. Payments after termination or reduction in scope

15.1 Subject to clause 15.2, where, before termination of the Contract, Geocon has made any payment in advance on account of the Price to the Supplier, the total amount of that payment must be repaid by the Supplier to Geocon on termination and if not repaid is recoverable by Geocon from the Supplier as a debt.

15.2 If the Contract is terminated or the Supplies reduced in scope in accordance with the provisions of clauses 13 or 14 Geocon will be liable only for:

- (a) in the case of termination, payments under the payment provisions of the Contract for the Supplies rendered in accordance with the Contract before the effective date of termination; and
- (b) in the case of termination under clause 13 only, reasonable costs incurred by the Supplier and directly attributable to the termination of the Contract or reduction of scope of the Supplies.

15.3 If the scope of the Supplies is reduced, Geocon's liability to:

- (a) pay the Price payable under the Contract; and
- (b) comply with its obligations under the Contract,

abates in accordance with the reduction in the scope of the Supplies.

15.4 The aggregate of any compensation and any sums paid or due or becoming due to the Supplier under clause 15.2 will not exceed the total Price payable under the Contract.

15.5 The Supplier is not entitled to compensation for loss of prospective profits.

## 16. Consequences of termination

16.1 In the event of termination for any reason, the Supplier must cease to use the Contract Material and Geocon Material in any manner whatsoever. The Supplier must deliver up to Geocon all copies of the Contract Material and Geocon Material in the possession, custody or control of the Supplier.

16.2 Termination of the Contract does not affect any accrued rights or remedies of a party.

## 17. Survival

Clauses 5, 6, 7, 8, 9, 11, 12, 13.2, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27 and 31, survive expiry or termination of the Contract.

## 18. Confidentiality

18.1 The Supplier must keep confidential all Confidential Information which the Supplier receives or comes across in the process of performing its obligations under the Contract, unless:

- (a) such disclosure is required by law or consented to by Geocon;
- (b) the information is disclosed to the Supplier's employees or professional advisers on a need to know basis solely for the purposes of the Contract.

18.2 If the Supplier is required by any law to disclose Confidential Information, the Supplier must:

- (a) notify the receiving person that the information is Confidential Information;
- (b) not provide the information unless the receiving person agrees to keep the information confidential; and
- (c) promptly (and in any case prior to disclosure) notify Geocon in writing of the information and reasons for disclosure.

## 19. Indemnity

19.1 The Supplier indemnifies Geocon and its officers, employees and agents against any liability or losses arising out of or as a consequence of:

- (a) any unlawful, wilful or negligent act or omission or breach of the Contract by the Supplier, its officers, employees, agents or subcontractors;
- (b) an infringement or an alleged infringement, of the Intellectual Property Rights of any person, which occurred by reason of an act done by Geocon, or its sub- licensees within the scope of Geocon's Intellectual Property Rights and licences under the Contract, in relation to any part of the Supplies,

except to the extent that any negligent act or omission by Geocon or its officers, employees and agents contributed to the relevant liability.

## 20. Audit and access

20.1 Geocon may at reasonable times and on giving reasonable notice to the Supplier conduct audits relevant to the performance of the Supplier's obligations under the Contract.

20.2 The Supplier must provide Geocon with:

- (a) access to its premises and relevant records; and
- (b) any reasonable assistance,

necessary for Geocon to exercise its rights under this clause 20.

## 21. Privacy

21.1 The Supplier must:

- (a) comply with all privacy laws;
- (b) use or disclose any personal information provided by Geocon or collected as part of supplying the Supplies for the purpose for which it was collected and only for the purposes of carrying out its obligations under this Contract; and
- (c) protect personal information held in connection with the Contract and the Supplies from misuse, loss, unauthorised access or disclosure.

21.2 The Supplier must ensure that personal information relating to Geocon's customers and employees is protected against loss or unauthorised access, use, modification, disclosure or misuse.

21.3 In this clause 21 'Australian Privacy Principles' has the same meaning as in the *Privacy Act 1988* (Cth), 'personal information' has the same meaning as in the *Privacy Act 1988* (Cth) and 'privacy laws' means the *Privacy Act 1988* (Cth) (including the Australian Privacy Principles) a registered Australian Privacy Principle code and any other law or regulation relating to privacy or the use or disclosure of personal information.

## 22. Insurance

22.1 The Supplier must have and maintain:

- (a) all insurances required by any law; and
- (b) insurance cover sufficient to cover any loss or costs that may be incurred and for which the Supplier is liable in connection with the supply of the Supplies, including, as applicable:
  - (i) product liability insurance for a minimum of \$10 million;

- (ii) public liability insurance for a minimum of \$10 million;
- (iii) professional indemnity insurance for a minimum of \$10 million; and
- (iv) workers compensation insurance as required by law.

22.2 The Supplier must maintain, for seven years following the expiry or termination of this Contract, valid and enforceable insurance policies for professional indemnity and products liability (as applicable).

22.3 The Supplier must provide evidence of the existence and currency of the insurance required under clause 22.1 at the request of Geocon.

### **23. Dispute resolution**

The parties must use reasonable endeavours to resolve any dispute under the Contract by mediation or other alternative dispute resolution method before they commence legal proceedings (except proceedings for interlocutory relief).

### **24. Assignment and subcontracting**

The Supplier must not, without the prior written consent of Geocon, assign or novate its rights and obligations under the Contract or subcontract any part of the performance of the Contract.

### **25. Waiver**

Waiver of any provision of, or right under, the Contract:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

### **26. Variation**

Subject to clause 5.5, the Contract may be varied only in writing signed by each party.

### **27. Entire understanding**

The Contract contains the entire agreement and understanding between Geocon and the Supplier on everything connected with the subject matter of the Contract and supersedes any prior agreement or understanding on anything connected with that subject matter.

### **28. Severability**

A term or part of a term of this Contract that is illegal or unenforceable may be severed from this Contract and the remaining terms or parts of the terms of this Contract continue in force.

### **29. No merger**

The rights and obligations of the parties under this Contract do not merge on completion of any transaction contemplated by this Contract.

### **30. Relationship**

The Contract does not create a relationship of employment, agency or partnership between the parties and the parties must not represent themselves as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.

### **31. Governing law and jurisdiction**

The Contract is governed by the law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

