

**1. Agreement to Sell Goods and/or Services.**

1.1 The Supplier agrees to sell and Ingal Civil Products agrees to buy the Goods and/or the Supplier agrees to perform the Services which Ingal Civil Products agrees to accept, on and subject to these terms and conditions.

1.2 Ingal Civil Products will issue a Purchase Order to the Supplier outlining the Goods to be purchased or Services to be accepted. Unless otherwise agreed in writing by Ingal Civil Products, no order from or other document issued by the Supplier amounts to a Purchase Order or may be relied upon as containing the details of any Goods or Services.

1.3 Unless and until Ingal Civil Products has issued a Purchase Order or otherwise accepted in writing the supply of the Goods or Services, no binding agreement has been formed regarding the supply of the Goods or Services and Ingal Civil Products may, in writing, withdraw from negotiations and withdraw any offer it has made.

**2. Delivery, Acceptance and Title - Goods**

2.1 The Supplier must deliver the Goods to the Delivery Point by the Delivery Means on the Delivery Date (or earlier with Ingal Civil Products prior written consent).

2.2 Each delivery must be accompanied by delivery dockets marked with the Order number, product description and the quantity of Goods.

2.3 Title to and risk in the Goods will pass from the Supplier to Ingal Civil Products on Delivery of the Goods.

2.4 Notwithstanding clause 2.3, Ingal Civil Products is not deemed to have accepted any Goods delivered until:

- (a) Ingal Civil Products advises the Supplier in writing that the Goods have been accepted (but signing for delivery does not constitute acceptance);
- (b) Ingal Civil Products has not rejected the Goods within 7 days of Delivery of the Goods (provided that Ingal Civil Products may only reject the Goods if any of the Warranties relating to the Goods are untrue or have been breached or the Goods do not comply with these terms and conditions); or
- (c) Ingal Civil Products uses the Goods in a manner that materially changes their condition (other than by the removal of packaging as required to inspect the Goods).

2.6 If Ingal Civil Products rejects the Goods under clause 2.4(b):

- (a) the rejection must be made in writing;
- (b) from the giving of the rejection, title to and risk in the Goods returns to the Supplier;
- (c) the Supplier is at liberty to collect the Goods at the Supplier's cost;
- (d) Ingal Civil Products will not be liable to the Supplier or any third party in relation to any storage costs or other fees pertaining to delivery of the Goods or their return to the Supplier; and
- (e) any monies paid by Ingal Civil Products on account of the Goods including but not limited to:

- (i) any payments made to the Supplier, whether on account of the purchase price (including a deposit) or delivery fees and charges or any other matter in relation to the Goods; and
- (ii) any other costs incurred by Ingal Civil Products in relation to the Goods including but not limited to holding or storage costs, import fees and charges and any costs paid on behalf of the Supplier to any port authority or delivery courier to deal with the Goods after rejection; must be immediately refunded or paid (as the case may be) by the Supplier to Ingal Civil Products, unless otherwise agreed in writing by Ingal Civil Products.

2.5 Ingal Civil Products acceptance of the Goods will not preclude or prejudice any rights, powers or remedies Ingal Civil Products may have as a result of a breach of any of the Warranties or any other provision of these terms and conditions.

**3. Performance of Services**

3.1 The Supplier must perform all Services in accordance with an Order and these terms and conditions by the Completion Date stated in the Order or if no Completion Date is stated then as soon as reasonable practicable after the making of the Order.

3.2 Ingal Civil Products may in writing instruct the Supplier to vary the scope (but not the general nature) of the Services. The Supplier must comply with that instruction subject only to agreeing a reasonable variation to the Purchase Price referable to the Services prior to commencing any work associated with the variation. No additional amount or sum is payable by Ingal Civil Products in respect of a variation unless agreed before the work associated with the variation is performed.

**4. Purchase Price and Invoicing**

4.1 The Purchase Price includes, unless otherwise specified in the Order:

- (a) for Goods, all freight costs up to the Delivery Point, transit insurance and all other charges payable in connection with the sale of the Goods; and
- (b) for Services, all costs and expenses associated with the provision of the Services, and all taxes (except GST), duties, imposts and levies payable under the laws of any relevant jurisdiction.

4.2 The Supplier may only issue tax invoices for Goods after Delivery of those Goods and for Services after completion of those Services (in all cases in accordance with the Order) and must only send one copy of each tax invoice to Ingal Civil Products. All such tax invoices must be issued to the contact person nominated by Ingal Civil Products in the Order (or as otherwise notified by Ingal Civil Products) and include at least the Order number, description of the Goods and/or Services, the quantity of Goods and date of Delivery of the Goods or performance of the Services and be dated the date the invoice is sent to Ingal Civil Products.

4.3 Unless specified otherwise in an Order, Ingal Civil Products must pay the Purchase Price by cheque or electronic funds transfer to the Supplier within 62 days after the end of the month in which the Supplier's invoice issued in accordance with clause 4.2 is received by Ingal Civil Products or, in the case of Goods, the month in which Ingal Civil Products accepts the Goods under clause 2.3.

4.4 If GST is payable in respect of any supply by the Supplier under an Order then the invoice supplied by the Supplier must be a tax invoice that complies with the requirements of the GST Law and any other legal requirements for the issue of tax invoices in Australia. Ingal Civil Products is not obliged to pay GST in respect of Goods and/or Services unless a valid tax invoice has been provided to it.

**5. Supplier Obligations - Goods**

5.1 The Supplier must:

- (a) properly carry out all testing and quality assurance procedures, and provide to Ingal Civil Products all test certificates, required by the Order or as otherwise reasonably requested by Ingal Civil Products;
- (b) properly pack and protect the Goods to prevent damage during transit and upon Delivery;
- (c) ensure that all packaging and protective coatings are safe and will not in any way affect the condition of the Goods;
- (d) ensure that all packaging, labelling and transport of the Goods complies with all laws of any relevant jurisdiction, and where applicable, with relevant Australian and other recognised standards;
- (e) ensure that the Goods (and each sub-package of the Goods) are clearly addressed to the Delivery Point and that each sub-package is marked with the product description and quantity of the Goods contained in it;
- (f) enclose one copy of the packing list within each package of the Goods;
- (g) clearly state whether any Goods contain asbestos or other hazardous substances and, prior to delivery of any such goods, provide Material Safety Data Sheets in respect of such goods in the form required by Ingal Civil Products from time to time; and
- (h) on reasonable notice provide and procure for Ingal Civil Products (and its representatives) full access to all premises and locations to allow Ingal Civil Products to inspect the Goods at any time prior to their Delivery.

5.2 The Supplier must ensure that the Goods comply with the Warranties provided under these terms and conditions and other requirements of any Order.

**6. Supplier Obligations - Services**

6.1 The Supplier must:

- (a) perform the Services:
    - (i) at the Services Location;
    - (ii) in a competent, proper and workmanlike manner in accordance with good industry practice;
    - (iii) exercising a high standard of skill, diligence, knowledge, judgement and care;
    - (iv) in a manner that is safe to both people and the environment assessed against the higher of industry best practice and legislative requirements;
    - (v) (except as expressly provided in the Scope of Services) using its best endeavours so as not to interfere with any activities of any other person at any Ingal Civil Products premises or the Services Location; and
    - (vi) so as to minimise delays in the performance of the Services;
  - (b) supply and maintain, at its own cost, everything the Supplier requires in order to provide the Services in accordance with the Order including all personnel, goods, materials and authorisations;
  - (c) where the Supplier provides the Services through its employees, agents or permitted subcontractors, ensure that such personnel are suitably qualified and competent;
  - (d) ensure that all equipment used by the Supplier in performing the Services is maintained in a reasonable condition and complies with and is used in accordance with all relevant laws, regulations and other governmental requirements; and
  - (e) pay all of the Supplier's employees and subcontractors on time.
- 6.2 The Supplier must notify Ingal Civil Products on completion of the Services.

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## 7. Supplier Obligations - General

7.1 The Supplier must, in relation to the performance of the Services and the supply of Goods:

- (a) provide Ingal Civil Products with all reasonably requested information;
- (b) comply with all Ingal Civil Products safety, health and environmental policies made available to the Supplier from time to time;
- (c) comply with all applicable laws, regulations and other governmental requirements;
- (d) comply with (and ensure that all of the Supplier's officers, employees, agents and contractors comply with) all reasonable directions and requirements of Ingal Civil Products (including all site conditions made available by Ingal Civil Products) while the Supplier or any such people are on Ingal Civil Products premises;
- (e) remedy any environmental damage or degradation resulting from the Supplier's actions or omissions;
- (f) take reasonable care to protect against damage or loss to all property on the Services Location or other Ingal Civil Products premises and comply with Ingal Civil Products reasonable requirements relating to the protection of such property;
- (g) maintain and make available to Ingal Civil Products sufficient records to enable Ingal Civil Products to verify all invoices; and
- (h) ensure that the Warranties are and remain true and correct at all times.

7.2 The Supplier is responsible for all acts or omissions of the Supplier's officers, employees, agents and contractors in relation to the provision of the Services and supply of the Goods.

## 8. Warranties and Remedies

8.1 The Supplier warrants that:

- (a) the Supplier is the legal and beneficial owner of the Goods and has the right to sell the Goods to Ingal Civil Products free from all mortgages, charges, encumbrances, liens and other third party rights and claims;
- (b) the delivery of the Goods and performance of the Services complies with all applicable laws, regulations and other governmental requirements;
- (c) the Goods are new, free from defects, of merchantable quality and fit for the purposes for which the Goods would ordinarily be used and any other purposes notified by Ingal Civil Products to the Supplier;
- (d) the Goods conform with any specifications provided by Ingal Civil Products and the Services comply with Ingal Civil Products specified requirements; and
- (e) the Services are fit for the purposes for which they would ordinarily be required and any other purposes notified by Ingal Civil Products to the Supplier and will achieve any results specified in the Order.

8.2 The Supplier guarantees the correctness of the Warranties provided under this clause for a period of 12 months following delivery of the Goods or supply of the Services. Without limiting the rights of Ingal Civil Products under clause 2.4(a), if within 12 months of the later of the Delivery Date or date of the Order, the Supplier breaches any Warranties the Supplier must at the Supplier's cost and expense:

- (a) repair or modify the Goods to Ingal Civil Products reasonable satisfaction;
- (b) replace the Goods;
- (c) re-perform part or all of the Services; and/or
- (d) refund any amount paid by Ingal Civil Products to the Supplier in relation to the defective Goods and/or Services, as required by Ingal Civil Products.

## 9. Insurance

9.1 Without limiting the Supplier's liability under the Order, the Supplier must obtain and maintain, from solvent and reputable insurers approved by Ingal Civil Products acting reasonably, the following insurance policies:

- (a) public and products liability insurance in the amount of \$20 million for any one loss or occurrence which insurance indemnifies Ingal Civil Products for all indirect, special and consequential loss (from the date of the Order until the time when the Supplier has complied with all of its obligations under the Order);
- (b) where Services are being provided, professional liability insurance in the amount of \$5 million for any one loss or occurrence (from the date of the Order and for a period of 6 years after the Supplier has complied with all of its obligations under the Order); and
- (c) where Goods are to be delivered to Ingal Civil Products premises, third party motor vehicle insurance in the amount of A\$10 million for any one loss or occurrence (from the date of the Order until the time when the Supplier has complied with all of its obligations under the Order).

9.2 An Order may specify a variation to these requirements or any additional insurance requirements of the Supplier for the purpose of the subject Order, including as required for the purpose of compliance with the terms and conditions of any master supply agreement or master services agreement of which Ingal Civil Products is the supplier and for which the Goods and Services have been contracted. Unless otherwise provided in the Order, no additional payment is required to be made by Ingal Civil Products in relation to any increased insurance requirement.

9.3 If an event arises in respect of which an insurance claim under any insurance obtained by the Supplier can be made, the Supplier agrees to, at Ingal Civil Products request, promptly make and pursue such claim and employ the proceeds of the claim to remedy the damage or make payment of the liability (as the case may be) arising from the event.

## 10. Intellectual Property

10.1 If the Supplier is the manufacturer of the Goods and the Goods are required to be manufactured or fabricated to Ingal Civil Products specifications or special requirements (and are not goods of the type ordinarily manufactured by the Supplier) Ingal Civil Products will be entitled to all intellectual property rights of any kind that arise as a result of, or in the course of, the design of the Goods. The Supplier hereby transfers all intellectual property rights in such goods to Ingal Civil Products and agrees to execute any document reasonably required by Ingal Civil Products to effect, document or register the transfer.

10.2 The Supplier warrants that the supply of the Services and Goods to Ingal Civil Products and use of the Goods by Ingal Civil Products does not infringe the intellectual property rights of any person and Ingal Civil Products will not have to pay any licence fee, royalty or other amount to any person in connection with the Services or Goods.

## 11. Cancellation and Suspension

11.1 Ingal Civil Products may cancel an Order by written notice given to the Supplier if the Supplier breaches any provision of the Order and such breach is incapable of remedy (which shall include any Insolvency Event by the Supplier), or such breach is capable of remedy and the Supplier fails to remedy the breach within 14 days of receiving a notice from Ingal Civil Products requiring it to do so.

11.2 In addition to its rights under clause 11.1, Ingal Civil Products may at its option and without cause:

- (a) in relation to Goods, at any time up to 14 days prior to the Delivery Date cancel all or any part of an Order by notice in writing to the Supplier; and
- (b) in relation to Services, cancel all or any part of the Order or suspend the performance of the Services (or any part of them) for up to 6 months,
- (c) by notice in writing to the Supplier,
- (d) and upon such cancellation or suspension Ingal Civil Products has no obligations except for those set out in clauses 11.3 and 11.4.

11.3 For the purposes of clause 11.2:

- (a) in the case of a cancelled Order for Goods:
  - (i) if the Goods are goods ordinarily supplied by the Supplier, Ingal Civil Products will be under no obligation whatsoever to pay any money to the Supplier;
  - (ii) if the Goods have been manufactured or fabricated to Ingal Civil Products specifications or special requirements (and are not goods ordinarily supplied by the Supplier), then upon receipt of the notice of cancellation under clause 11.2 the Supplier must:
    - (1) immediately cease manufacture or fabrication of the Goods (unless otherwise instructed by written notice from Ingal Civil Products at or after the time of receipt of the notice of cancellation); and
    - (2) do everything possible to mitigate any cost incurred by the Supplier upon such cancellation; and
    - (iii) where the Goods are of the type referred to in clause 11.3(a)(i), Ingal Civil Products must pay to the Supplier, in full and final satisfaction of all of the Supplier's rights against Ingal Civil Products, the reasonable actual direct costs incurred by the Supplier in connection with the manufacture or fabrication of the Goods prior to the effective date of cancellation less any mitigated costs and resale proceeds;
- (b) in the case of a cancelled Order for Services, Ingal Civil Products will pay the Supplier a fair and reasonable amount calculated by Ingal Civil Products for the Services performed up to receipt of the notice of cancellation, taking into account the actual direct costs reasonably incurred by the Supplier to that time and reasonable demobilisation costs.

For the avoidance of doubt, Ingal Civil Products only liability in relation to the cancellation of any Order is under this clause and Ingal Civil Products is not liable to the Supplier for any indirect or consequential costs (including loss of profits or opportunity costs).

11.4 Title to any Goods (and any raw materials and unfinished Goods) in respect of which Ingal Civil Products makes any payment under clause 11.3(a)(ii)(2) passes to Ingal Civil Products on the making of that payment.

## 12. Miscellaneous

12.1 These terms and conditions apply to all Orders made by Ingal Civil Products to the Supplier and the terms of these terms and conditions and any Order override anything to the contrary in any terms and conditions of the Supplier including any disclaimers or other terms in any invoice, order form or other document issued by the Supplier, unless expressly agreed otherwise by Ingal Civil Products including as stated in the Order.

12.2 The Order comprises the whole contract between the parties about its subject matter and the only terms implied are those implied by mandatory operation of law.

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12.2 Without limiting the provisions of clause 12.1, the Order prevails over any prior contract or obligation between the parties about its subject matter and over any terms and conditions put forward by the Supplier at any time.

12.2 No rule of construction applies to the disadvantage of a party because that party put forward the Order or any portion of it.

12.3 The Order is governed by the laws of the jurisdiction of the State or Territory of Ingal Civil Products address specified in the Order. The courts of that jurisdiction (and the courts exercising appellate jurisdiction over them) have jurisdiction in connection with the Order. The parties submit to the jurisdiction of those courts.

12.4 No changes or a variation to the Order is effective unless confirmed in writing by Ingal Civil Products.

12.5 Except as set out in an Order, the Supplier must not permit or allow any person to exercise any of the Supplier's rights or perform any of the Supplier's obligations under the Order without the prior written consent of Ingal Civil Products, which consent must not be unreasonably withheld.

12.6 If any person is appointed by the Supplier to perform any of the Supplier's obligations under the Order (which appointment must be in accordance with clause 12.5), whether by subcontract or otherwise, the Supplier is liable to Ingal Civil Products for all of the acts and omissions of such person.

### 13. Definitions

In the Order:

"Completion Date" means the date for completion of the Services specified in the Order;

"Delivery" or "Delivered" means delivery or delivered to the Delivery Point by the Delivery Means;

"Delivery Date" means the date for delivery specified in the Order or, if not so specified, the last day of the applicable lead time period,

"Delivery Means" means instructions for delivery specified in the Order;

"Delivery Point" means the unloading point specified in the Order;

"Goods" means any physical goods supplied by the Supplier to Ingal Civil Products or at Ingal Civil Products' request as specified in the Order or provided pursuant to an Order including any goods that may be supplied in the course of performing the Services;

"GST" means goods and services tax within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*;

"GST Law" means the *A New Tax System (Goods and Services Tax) Act 1999* and any other law in relation to the payment of GST as amended from time to time;

"Ingal Civil Products" means the Ingal Civil Products entity specified in the Order (or, where a business name is specified, the Ingal Civil Products entity that carries on business under that business name) and, where more than one Ingal Civil Products entity is party to the Order, includes all or any of them as appropriate;

"Insolvency Event" means:

(a) in relation to a Supplier who is a corporation:

(i) the appointment of an administrator or provisional liquidator about it;

(ii) its winding up (voluntary or involuntary);

(iii) a receiver, receiver and manager or trustee is appointed for the corporation or its property;

(iv) the corporation ceases or threatens to cease to carry on its business;

(v) the corporation is considered to be insolvent (unable to pay its debts as they fall due);

(vi) the corporation enters into or resolves to enter into any arrangement composition or compromise with or an assignment for the benefit of all or any class of its creditors;

(vii) the Supplier suffer any other event analogous to the above in the jurisdiction in which the Supplier carries on business.

(b) in relation to a Supplier who is an individual, that person becoming an insolvent under administration as defined in section 9 of the *Corporations Act 2001*(Cth) or otherwise becomes bankrupt or suffers an analogous event in the jurisdiction in which the Supplier carries on business.

"Order" means an order of Goods and/or Services under these terms and conditions pursuant to a Purchase Order or other written acceptance by Ingal Civil Products;

"Purchase Order" means a purchase order or document issued by Ingal Civil Products accepting or ordering Goods and/or Services from the Supplier.

"Purchase Price" means the amount specified in or calculated in accordance with the Order;

"Scope of Services" and any special conditions attached to these terms and conditions or referred to in that order form;

"Services" means services to be provided by the Supplier to Ingal Civil Products as specified in the Order or otherwise completed for the purpose of an Order including any Services that may be supplied in the course of providing Goods;

"Services Location" means the location for performance of the Services;

"Supplier" means the supplier of the Goods and provider of the Services; and

"Warranties" means the warranties provided by the Supplier to Ingal Civil Products under these terms and conditions together with any warranties implied by law.

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