



TERMS & CONDITIONS – GOODS & SERVICES ORDER

1. DEFINITIONS:

The following terms have these meanings in this Order unless the context requires otherwise:

- a) "Charges" includes all charges for packing, loading and transporting the Items to the Delivery Address.
- b) "Confidential Information" means information that is not publicly available.
- c) "DAO" means a duly authorised officer of Lead Plumb.
- d) "Delivery Address" means the place to which the Items are to be delivered or performed by the Suppliers as set out in this Order.
- e) "Lead Plumb" means Lead Plumb Pty Ltd
- f) "Good Industry Practice" means recognised practices, methods and acts together with the exercise of the degree of skill, diligence, prudence and foresight that reasonably would be expected of a person who is competent and experienced in the provision of the relevant services in light of the conditions known, or which ought reasonably to be known, at the relevant time and consistent with applicable laws, regulations, authorisations, consents and licences having regard to the need (as appropriate) for:
 - I) adequate materials;
 - II) suitable personnel;
 - III) safe operating procedures; and
 - IV) appropriate service procedures, and the keeping of appropriate and adequate records of activities undertaken.
- g) "GST" means any tax imposed by or through *the A New Tax System* (Goods & Services Tax) Act 1999.
- h) "Hire Period" has the meaning given to that term under clause 6b).
- i) "Items" means the goods and or services described in this Order.
- j) "Jurisdiction" means Queensland.
- k) "Order" means an order by Lead Plumb to Supplier for supply of goods or services signed by a DAO whether or not the order includes reference to these terms and conditions.
- l) "Price" means the cost of supplying the Items as specified in this Order.
- m) "Supplier" means the person, firm or corporation to whom this Order is addressed.
- n) "Taxable Supply" has the meaning given to that term by *A New Tax System* (Goods & Services Tax) Act 1999 and associated legislation as amended from time to time.

2. INTERPRETATION

The following rules of interpretation apply unless the context requires otherwise:

- a) The singular includes the plural and the converse also applies.
- b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- c) A reference to a clause, schedule or annexure is a reference to a clause of or a schedule or annexure to this Order.
- d) A reference to a party to this Order or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- e) A reference to dollars and \$ is to Australian currency.
- f) The mention of anything after "includes", "including", "for example" or similar expressions does not limit what else might be included.
- g) A reference to time is to the time in the capital city of the Jurisdiction.
- h) Headings are for convenience or reference only and do not affect interpretation.

3. TERMS

- a) The Supplier agrees to sell and Lead Plumb agrees to buy the Items for the Price.
- b) Lead Plumb is not obliged to make payment unless it has received a tax invoice from Supplier for the Items.
- c) The Supplier is solely liable for and must pay the Charges associated with this Order before the due date for payment of such Charges and indemnifies and holds harmless Lead Plumb against any expense or liability which Lead Plumb may incur by reason of the Supplier's failure to pay any Charges by the due date.
- d) Unless the Order is endorsed by Lead Plumb "plus GST" or words to that effect, the Price payable by Lead Plumb and any other consideration for any other Taxable Supply made under this Order will be deemed at all times to be inclusive of GST and/or any other applicable taxes, government charges, levies and/or imposts of any kind whatsoever – any and all of which must be paid by the Supplier.
- e) The Supplier must provide Lead Plumb with tax invoices and/or adjustment notes in relation to any Taxable Supply and do all things reasonably necessary to assist Lead Plumb to claim and obtain any input tax credit available to Lead Plumb in respect of the Taxable Supply.
- f) Lead Plumb will only be liable to pay for Items supplied in accordance with this Order.



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- g) Unless otherwise agreed in writing, the parties further acknowledge that the Order (together with any additions or alterations hereto agreed to in writing by a DAO) supersedes and overrides:
- I) all previous communications (either oral or written) by the parties; and
 - II) any supply terms or conditions provided by the Supplier before or after the date of this Order.
- h) In the event that the Supplier is not prepared to supply the Items in accordance with the provisions set out in this Order, but wishes to supply the Items on different terms, the Supplier must advise Lead Plumb by way of letter:
- I) that the letter is pursuant to the provision of the Order;
 - II) details of the provisions to which the Supplier objects; and
 - III) the alternative terms on which the Supplier would agree to supply the Items.
- i) Lead Plumb may, at its sole discretion, accept or reject the alternative terms proposed by the Supplier under clause 3h), and any such acceptance must be expressly communicated by Lead Plumb in writing before it takes effect.
- j) In the event that the Supplier is prepared to accept the terms and conditions set out in this Order, such acceptance may be effected in any form whatsoever (including by making the supply or any part of it). However if the form of acceptance contains provisions which are in addition to or in conflict with the provisions of this Order, then unless clauses 3h) and 3i) have been complied with, any such provisions will be disregarded and the form of acceptance will be deemed to be an unconditional acceptance of the provisions of this Order, and the provisions in the form of acceptance will not be part of the resulting contract.
- k) If the Items are supplied in connection with an agreement under which Lead Plumb provides goods or services to a government entity, then Lead Plumb is not obliged to pay the supplier for any Items deemed defective by the government entity.
- l) The Supplier warrants that any intellectual property used or provided by the Supplier in connection with the supply of the Items does not breach any third party intellectual property rights.
- m) Supplier must diligently undertake Items comprising services using Good Industry Practice and ensure those services conform with this Order and are fit for the purposes for which services of the same kind are commonly undertaken and for any other purpose Lead Plumb specifies.
- n) Where some or all of the Items include services and those services are to be supplied on Lead Plumb's premises or the premises of a third party, Supplier must procure that its officers, employees, contractors and agents attending the premises comply with all laws, regulations codes of practice and standards relating to health, safety and environment and with all of Lead Plumb's reasonable directions.
- o) Supplier must keep confidential all Confidential Information in respect of this Order. This paragraph does not apply to information which the law requires the Supplier to disclose (to the extent of that requirement only) or to an officer, employee, contractor or agent of the party who needs to know the Confidential Information for the purposes of performing this Order, provided the officer, employee, contractor or agent agrees to keep the information confidential as required by this Order.
- i) Lead Plumb may immediately terminate this Order by notice in writing to Supplier if: Supplier does not carry out its material obligations under this Order; Supplier becomes insolvent; Supplier or any of its personnel engages in conduct which constitutes serious misconduct, wilful neglect or incompetence; any other provision of this Order permits Lead Plumb to do so. Otherwise, Lead Plumb may terminate this Order by 14 days' notice to Supplier. Termination under this clause does not affect the rights and obligations of the parties under this Order accrued at the date of termination of under any contract entered into prior to the date of termination.
- p) This Order constitutes the entire agreement between the parties with respect to its subject matter and supersedes all earlier conduct and prior agreements between the parties in connection with the subject matter.
- q) Any provision of this Order that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Order nor affect the validity or enforceability of that provision in any other jurisdiction.
- r) Unless otherwise stated in this Order, the laws of the Jurisdiction apply to this Order and the parties submit to the non-exclusive jurisdiction of the courts of the Jurisdiction and courts of appeal from them for determining any dispute concerning this Order.
- s) The failure, delay, relaxation or indulgence on the part of any party in exercising any power or right under this Order does not operate as a waiver of the power or right, nor does any single exercise of any other power or right preclude any



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- g) The Supplier must vary the works as directed in writing by Lead Plumb and no such variation will vitiate this Order. The value of the variation will be agreed between the parties and the amount added to or deducted from the Price.
- h) In the event of any dispute arising hereunder or in any way in connection with the works, whether before or after practical completion or termination of this Order, then either party must notify the other party in writing of such dispute (**Dispute Notice**). At the expiry of seven days from the date of receipt of a Dispute Notice, then unless settled, the dispute must be referred to arbitration. The arbitrator must be appointed in accordance with the provisions of the arbitration legislation applicable in the State or Territory in which the works are performed.
6. PLANT HIRE CONDITIONS
- a) The terms and conditions set out in this clause 6 apply where the nature of the Items supplied under this Order constitute a contract for the hire of the specified Items.
- b) The hire period stated in this Order (**Hire Period**) excludes all time in transporting the Items to the specified delivery address and begins when the Items are delivered to the delivery address and available to Lead Plumb for use and ends when Lead Plumb advises the Supplier that it has no further use for the Items. Should Lead Plumb retain the Items beyond the Hire Period, the terms of this Order must be extended at rates to be agreed between the parties which must not exceed the rates stated in this Order.
- c) Lead Plumb must pay the hire charges for the Hire Period at the rate stipulated in this Order subject to any entitlement of Lead Plumb to deduct monies from the Supplier. The Supplier indemnifies Lead Plumb against any charges or costs incurred by Lead Plumb resulting from down-time due to the Supplier's acts or omissions. The Supplier must provide timesheets in the format required by Lead Plumb as and when requested by Lead Plumb.
- d) The Supplier must pay all transportation costs for the Items including but not limited to, loading and costs, insurance, storage, carriage, towage, salvage and demurrage costs, including all damage or loss, direct or indirect and consequential however caused while the Items are in transit and during the entire period of this Order.
- e) The Supplier must provide written certification that the Items have been properly serviced and maintained before their use on site. The Supplier must, at the Supplier's cost, maintain the Items in a good, safe and operational condition which includes the obligation to protect the Items against freezing, corrosion and all other exposures. All equipment, accessories and attachments not listed in this Order or necessarily included as part of the Items but necessary for the Supplier to perform this Order must be furnished by the Supplier at its own expense.
- f) If the Supplier is required by this Order to provide personnel to operate any of the Items, the Supplier must provide only competent, experienced, properly licensed and reliable personnel to operate those Items. The final rate stated in this Order is inclusive of labour including overtime unless specifically stated otherwise. The Supplier must pay all employee entitlements required by law.
- g) If any Item is damaged or made inoperable in any way during the Hire Period including as a result of normal wear and tear, then either party must immediately notify the other as soon as it becomes aware of the occurrence, specifying the extent and nature of the damage and the steps being taken to mitigate the problem. Each party must take all reasonable steps to prevent or minimise the impact of any damage to, or inoperability of, any Item on Lead Plumb, including the provision of substitute Items where necessary.
- h) The Supplier is liable for and must indemnify and keep indemnified Lead Plumb, Lead Plumb's employees and agents against any loss, damage, expense or other costs arising out of any liability, claim, demand or proceedings in respect of any injury or damage to any real or personal property, including the Items arising under any statute, regulation or ordinance or at common law or in equity arising in any manner out of the operation or use of the Items during the Hire Period.
- i) The Supplier must provide and maintain insurance to cover its liabilities defined in clause 6h) throughout the life of this Order and such insurance where permitted by law, must include Lead Plumb as a joint insured and when requested, the Supplier must furnish evidence to Lead Plumb that such insurances have been effected and the premium paid. The provision of this evidence does not relieve the Supplier of its obligations defined in clause 6h).
- j) The Supplier warrants that it has the right to hire the Items to Lead Plumb and that the Items comply with the requirements of this Order.
7. NATIONAL CODE OF PRACTICE FOR THE CONSTRUCTION INDUSTRY
- a) For applicable contracts, Lead Plumb complies with the National Code of Practice for the



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- b) Construction Industry (the Code), and the Implementation Guidelines for the National Code of Practice for the Construction Industry August 2009 (the Guidelines).
- c) The applicable contracts include contracts for the Australian Government, and for other government or semi-government bodies which adopt the Code.
- d) Where the Items are ordered for the purpose, in whole or in part, of use by Lead Plumb in connection with, or for incorporation by Lead Plumb in, such an applicable contract, the following provisions apply:

Where the Price of the Order is \$25,000 or less

- e) Where the Price of the Order is \$25,000 or less, Lead Plumb discloses, and the Supplier agrees that the Code and the Guidelines apply to the project to which the Items relate or for which the Items are purchased. By accepting the Order, the Supplier will be taken to have read, and agree to comply with, the Code and the Guidelines.

Where the Price of the Order is greater than \$25,000

- f) Where the Price of the Order is greater than \$25,000, the following provisions 7f) to 7p) shall form part of this contract. These provisions should be read in conjunction with Code and the Guidelines, and any capitalized terms have the same meaning as in the Code and the Guidelines. The Code and Guidelines can be downloaded from: deewr.gov.au/building.
- g) The Contractor must comply with the National Code of Practice for the Construction Industry (Code) and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, August 2009 (Guidelines). Copies of the Code and Guidelines are available at deewr.gov.au/building.
- h) Compliance with the Code and Guidelines shall not relieve the Contractor from responsibility to perform the Contract, or from liability for any defect in the works arising from compliance with the Code and Guidelines.
- i) Where a change in the Contract is proposed and that change would affect compliance with the Code and Guidelines, the Contractor must submit a report to the Commonwealth specifying the extent to which the Contractor's compliance with the Code and Guidelines will be affected.
- j) The Contractor must maintain adequate records of the compliance with the Code and Guidelines by:
 - i) the Contractor;
 - ii) its Subcontractors;

- iii) consultants; and
- iv) its Related Entities (see Guidelines for meaning including section 3.5 of the Guidelines).

- k) If the Contractor does not comply with the requirements of the Code or the Guidelines in the performance of this Contract such that a sanction is applied by the Minister for Employment and Workplace Relations, the Code Monitoring Group or the Commonwealth, without prejudice to any rights that would otherwise accrue, those parties shall be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Contractor or a related entity in respect of work funded by the Commonwealth or its agencies.
- l) While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders, the Contractor may give preference to subcontractors and consultants that have a demonstrated commitment to:
 - i) adding and/or retaining trainees and apprentices;
 - ii) increasing the participation of women in all aspects of the industry; or
 - iii) promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.
- m) The Contractor must not appoint a subcontractor or consultant in relation to the Project where:
 - i) the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations; or
 - ii) the subcontractor or consultant has had a judicial decision against them relating to employee entitlements, not including decisions under appeal, and has not paid the claim. Model Tender and Contract Documentation August 2009 15
- n) The Contractor agrees to require that it and its subcontractors or consultants and its related entities provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, with access to:
 - i) inspect any work, material, machinery, appliance, article or facility;
 - ii) inspect and copy any record relevant to the Project and works the subject of this Contract; and
 - iii) interview any person,

