

AZURA Ocean Technology Pty Ltd trading as EHL Group (Australia) or AZURA Ocean Technology. For the purposes of this document any reference to 'EHL Group' is by association and ownership a direct and inclusive association with AZURA Ocean Technology and EHL Solutions within the Australian legal jurisdiction under which the below Terms and Conditions framework are enacted.

**1 Payment**

The Customer must pay in full for all Products supplied by EHL Group by the 30th of the month following the date of the invoice (30 days).

**2 Interests and Costs**

EHL Group may, in its absolute discretion, charge the Customer interest on all amounts (including legal costs on a solicitor and own client basis, charges and expenses) not paid within the specified credit period at a rate equivalent to the reference rate charged by ANZ (Australia and New Zealand Banking Group) from the invoice date until payment of the debt.

**3 GST**

Each amount payable by the Customer under these Terms in respect of a Taxable Supply by EHL Group is a GST exclusive amount and the Customer must, in addition to that amount and at the same time, pay the GST payable in respect of that supply. "Taxable Supply" and "GST" have the meanings set out in the A New Tax System (Goods and Services) Act 1999

**4 Withdrawal or Variation of Credit**

EHL Group may at any time vary or withdraw any credit granted to the Customer without being liable to any third party. Credit limits may be imposed by EHL Group in its absolute discretion. EHL Group reserves the right to modify any credit limit at any time without any liability whatsoever to the Customer.

**5 Property**

- a) Property in the Products does not pass until the Customer has paid all monies owing to EHL Group in full. Risk in the Products passes to the Customer at the time of delivery.
- b) Until payment of all monies owed by the Customer to EHL Group, the Customer holds the Products as fiduciary, Bailee and agent for EHL Group and must keep the Products physically separate from all other goods of the Customer, and clearly identified as owned by EHL Group.
- c) If an Event of Default occurs, then without prejudice to EHL Group's other rights including any rights EHL Group may have pursuant to any security of payments legislation applicable in the relevant State or Territory, EHL Group may without notice to the Customer enter any premises occupied by the Customer or any other place where the Products may be and recover possession of them. If the Customer sells any of the Products while money is owed to EHL Group, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.
- d) If the Customer uses the Products in some manufacturing or construction process of its own or of some third party, then the Customer must hold such part of the proceeds of such manufacturing or construction process as relates to such Products in trust for EHL Group. Such part is deemed to equal in dollar terms the amount owing by the Customer to EHL Group and at the time of payment of such proceeds the Customer's obligation to pay the amount owed for such Products will be discharged.
- e) If the Products are resold, or goods using the Products are manufactured and resold by the Customer, the Customer holds all of the book debts owed in respect of such sales and proceeds of such sales in trust for EHL Group. Such part of the book debts and proceeds is deemed to equal in dollar terms the amount owed by the Customer to EHL Group at the time of the receipt of such book debts.
- f) The Customer consents to EHL Group registering a security interest in relation to Products supplied to the Customer, and the Customer will provide all assistance reasonably requested by EHL Group facilitate this registration

**6 Charge over Customer's Property**

- a) To further secure the payment of all moneys payable by the Customer, the Customer hereby charges in favor of EHL Group all the right, title, estate and interest which it now has or may later acquire in any freehold or leasehold property.
- b) The Customer further agrees that if demand is made by EHL Group the Customer will immediately execute a mortgage in registrable form or other instrument of security, as required by EHL Group, and if it fails to do so General Terms and Conditions within a reasonable time of being so requested, the Customer irrevocably and by way of security appoints any secretary, director, manager or attorney engaged by EHL Group to be its true and lawful attorney to execute and register such instruments.

**7 Suspension or Ceasing Supply**

- a) EHL Group may in its complete discretion and without incurring any liability to the Customer, cease or suspend supply of Products to the Customer or amend these Terms.
- b) Without limiting clause 7(a), if an Event of Default occurs or the Customer otherwise fails to comply with its obligations under these Terms, EHL Group may, without prejudice to its other rights: immediately terminate all agreements and arrangements with the Customer; call up monies owed to it by the Customer; retain all monies paid on account; cease further deliveries; recover from the

**8 Contra Arrangements**

If the Customer is also a supplier of goods and/or services to EHL Group, EHL Group may, in its absolute discretion, apply amounts owed by the Customer to EHL Group against amounts owed by EHL Group to the Customer (set-off) and/or receive goods and/or services from the Customer in full or part satisfaction of amounts owed by the Customer to EHL Group (contra arrangements) on the following terms:

- a) EHL Group may commence and/or cancel set-off/contra arrangements at any time and with immediate effect upon written notice to the Customer.
- b) EHL Group will not be liable for any loss or damage whatsoever suffered by the Customer as a result of a decision by EHL Group to commence and/or cancel set-off/contra arrangements.
- c) A decision by EHL Group to commence set-off/contra arrangements with a Customer on any occasion does not amount to a course of conduct or dealing on the part of EHL Group such that the Customer should expect that the set-off/contra arrangements will remain in effect indefinitely.
- d) The existence of any set-off/contra arrangements with the Customer does not amount to a waiver by EHL Group of any of its rights or remedies under these Terms, at law or in equity including, but not limited to, EHL Group's right to demand payment from the Customer of the full amount owing to EHL Group by the Customer at any time and the right to charge interest on any amounts not paid within the credit period.

**9 Liability**

EHL Group will not be liable for any loss or damage whatsoever suffered by the Customer as a result of any act, omission or statement made by EHL Group, its employees, contractors or agents whether negligent or not, except that nothing in these Terms limits any liability imposed by any statute unless or to the extent that it is lawful to do so.

**10 Certification**

A statement signed by an Officer certifying the amount of any moneys payable by the Customer or identifying any Products as "unpaid for" is, in the absence of manifest error, conclusive and binding on the Customer.

**11 Notification of Change of Details**

The Customer will notify EHL Group of any change in its structure or management, including any change of director, shareholder, unit holder or any change in partnership or trusteeship within 7 days of the date of change. Until the Customer notifies EHL Group of the change, the Customer remains liable for and hereby indemnifies EHL Group for all Products sold to the Customer pursuant to these Terms.

**12 Effect of Other Terms**

These Terms are in no way affected by any other express or implied terms contained in any terms of sale issued in relation to the sale of the Products. No terms of the Customer apply to any agreement between the Customer and EHL Group where inconsistent with these Terms.

**13 Expenses**

The Customer must pay to EHL Group any costs, charges and expenses (including all stamp duty and legal fees calculated on a full indemnity basis) incurred by EHL Group in connection with the entry into these Terms, the exercise or attempted exercise of any power, right or remedy under these Terms, and the failure of the Customer to comply with these Terms.

**14 Trusts**

Where the Customer is a trustee, the Customer shall be liable on the account and in addition the assets of the trust shall be available to meet payment of any monies due and owing to EHL Group.

**15 Severance**

Each clause and sub clause of these Terms is separate and independent. If any clause or sub clause is found to be invalid or ineffective, the other clauses or sub clauses or parts will not be adversely affected.

**16 Time**

Time is of the essence in respect of all the Customer's obligations under these Terms.

**17 Application of Laws**

The parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria, Australia and the law applying in that State or Territory is the proper law governing these Terms.

**18 Assignment**

The Customers agrees that EHL Group may by notice to the Customer assign any rights against the Customer to any third party.

**19 Definitions**

In these Terms unless the context requires otherwise:

- a) "Customer" means each and every person or corporation to whom EHL Group supplies Products or Service;
- b) "Event of Default" means any of the following events: (i) the Customer fails to pay for the Products; (ii) the Customer is in breach of these Terms; (iii) if the Customer is a company: an order is made or a resolution is effectively passed for winding up of the Customer; the Customer resolves to appoint a receiver or provisional liquidator or an administrator, or a receiver or provisional liquidator or an administrator is appointed; the Customer goes into liquidation or makes an assignment or an arrangement or composition with its creditors; the Customer stops payment or is deemed unable to pay its debts within the meaning of the Corporations Act 2001; if the Customer is a natural person, an order is made for the Customer's bankruptcy, or the Customer dies or becomes mentally or physically incapable of managing his or her affairs or an order is applied for or made to place the assets and affairs of the Customer under administration; the Customer ceases or threatens to cease carrying on business;
- c) "Officer" means each director, secretary, manager and authorized representative of EHL Group;
- d) "Products" means all goods supplied and all services rendered by EHL Group to the Customer;
- e) "Terms" means these General Terms and Conditions

**EHL Australia Pty Ltd (ABN 35 608 259 794) (EHL Group)**

These terms and conditions (**Terms**) will apply to any works which includes either the supply of materials or an agreement to carry out work, tasks or a project or both (**Works**) described in EHL's Group's quotation (**Quotation**) and undertaken by EHL Group at the Customer's request. Expressions used in the Quotation have the same meaning in these Terms.

**1 Price and Payment**

- 1.1 Subject to these Terms, EHL Group will complete the Works for the Price agreed upon in writing.
- 1.2 Unless the Customer has entered into written terms of credit with EHL Group, the Price must be paid in full by the Customer to EHL Group before EHL Group is required to deliver any materials or commence the Works.
- 1.3 EHL Group may by notice to the Customer adjust the Price if:
  - 1.3.1 during the period between the date of the Quotation and the commencement of the Works, the cost of labour or materials has changed;
  - 1.3.2 the Works described in the Quotation are different from the work actually performed by EHL Group pursuant to the Quotation or as required by the Customer; or due to matters outside of EHL Group's reasonable control (for example, inclement weather, unsafe workplace, site restrictions, inadequate / inappropriate site preparation or delays by others), the Works take longer than reasonably anticipated by EHL Group.
- 1.4 EHL Group may charge for any materials ordered by the Customer where the Customer, without reasonable prior notice to EHL Group, refuses or is unable to accept delivery of the materials.
- 1.5 Any claim for alleged short delivery of material must be made by the Customer in writing within 7 days of delivery, failing which the quantity stated on the delivery docket will be deemed to be the actual quantity supplied, for which the Customer will be liable.
- 1.6 No deductions, retentions, back charges or set-offs are to be made by the Customer.

**2 Site and Access**

- 2.1 The Customer must:
  - 2.1.1 provide EHL Group with sufficient and safe access to and egress from the Site at all reasonable times, such that EHL Group can undertake the Works in a safe and uninterrupted manner, in accordance with relevant statutory requirements;
  - 2.1.2 procure all consents, approvals, licenses, permissions and permits required for Works, except those specified in the Quotation or entirely within the control of EHL Group as agreed upon work and/or supply;
  - 2.1.3 provide EHL Group with all information relevant to the Works including the location of utilities;
  - 2.1.4 mark the position of all services including pipes, drains, manholes, wiring and any obstacles in, under or about the Site; and
  - 2.1.5 inform EHL Group of any conditions or requirements affecting the Site or the Works which may impact upon the Works or EHL Group's quoted pricing or costs.
- 2.2 The Customer must ensure that the Site is:
  - 2.2.1 prepared and maintained as specified in the Quotation and in a manner, that is in all respects fit for the purpose and suitable for EHL Group's performance of the Works; and
  - 2.2.2 a safe workplace, such that EHL Group can undertake the Works without risk of injury, in accordance with local workplace statutory requirements.
- 2.3 Should EHL Group discover any:
  - 2.3.1 material inconsistency between the existing position of the services, Site conditions and obstacles; and the information provided or marked by the Customer; or
  - 2.3.2 any services, conditions and obstacles affecting the Site or the Works so as to render it reasonably impracticable for EHL Group to continue with the Works,
  - 2.3.3 EHL Group may suspend the Works and immediately notify the Customer of such suspension. If, after 7 days of the suspension, the parties have not agreed in writing to recommence the Works, EHL Group may terminate this contract, in which case EHL Group will have no liability to the Customer for any loss or damage of any nature in no way connected with the Works, the contract or as a result of the suspension or termination. The Customer will be liable to EHL Group for payment for the Works carried out prior to suspension or termination and for costs, losses and damages associated with the suspension and termination, including indirect and consequential losses.
- 2.4 Where EHL Group's equipment or labor stands idle because Site conditions do not permit the use of equipment or labor, EHL Group may charge the Customer at the applicable rate for that equipment and/or labor.
- 2.5 If the Customer requires that any employee, sub-contractor or representative of EHL Group undertake any form of induction or screening in addition to the procedures normally required by EHL Group, EHL Group may charge the Customer at the applicable standby rate for the period of time that individuals and equipment are not available to progress the Works, plus any extra over costs.

### **3 Delivery, Property and Risk**

- 3.1 Property in any materials supplied by EHL Group to the Customer does not pass, and the Customer is prohibited from registering any security interest in any materials delivered by EHL Group, until the Customer has made full payment for the Works. Risk in materials passes to the Customer at the time they are tendered to the Site for delivery.
- 3.2 At the time of delivery the Customer or its agent will sign EHL Group's docket to acknowledge receipt of the materials delivered. If the Customer does not make itself or its agent available to sign EHL Group's docket, the Customer appoints EHL Group as the Customer's agent with authority to sign the delivery docket.
- 3.3 Where unloading of materials is not completed within 20 minutes of tender, EHL Group may charge the Customer at EHL Group's standard rates in respect of any unloading time exceeding of 20 minutes.
- 3.4 Until payment of all monies owed by the Customer to EHL Group, the Customer holds the materials as fiduciary bailee and agent for EHL Group and must keep the materials physically separate from all other goods of the Customer, and clearly identified as owned by EHL Group. If the Customer breaches this contract in a material way (including non-payment) or EHL Group determines (acting reasonably) that there is a material risk that the Customer may not be able to discharge its obligations under this contract, then without prejudice to EHL Group's other rights (including any rights EHL Group may have pursuant to any applicable security of payments legislation), EHL Group may without notice to the Customer enter any place where the materials are located (including the Site and premises occupied by the Customer) and recover possession of them. If the Customer sells any of the materials while money is owed to EHL Group, or goods incorporating the materials are manufactured and / or resold by the Customer, the Customer must keep the proceeds of the manufacturing process and / or sale in a separate account and all book debts owed in respect, and proceeds, of such sales will be held in trust by the Customer for EHL Group.
- 3.5 Unless specified in the Quotation, the Customer is responsible for any incidental damage caused to existing pavements, footpath crossings and other structures, surfaces and utilities associated with the Works. EHL Group will not be responsible for maintenance and repair costs related to damage or contamination to applied surface treatments caused by others.
- 3.6 Unless specified in the Quotation, the Customer will be responsible for the:
- 3.6.1 establishment of appropriate traffic control signage prior to the commencement of the Works;
  - 3.6.2 erection of aftercare signage at the completion of the Works;
  - 3.6.3 provision of suitable facilities, including toilet and messing facilities;
  - 3.6.4 removal of surplus and loose aggregate; and
  - 3.6.5 application of temporary and final line-marking.

### **4 Materials**

- 4.1 Where the Works require EHL Group to supply materials, the Customer is to provide at its cost a clean and secure site, which is suitable for mechanical loading and within 3 kilometers of the Site. If the secure site is more than 3 kilometers from the Site, the Customer is to pay any excess haulage costs incurred by EHL Group at EHL Group's applicable rate.
- 4.2 If EHL Group is unable to supply sufficient materials both to complete the Works and fulfil its obligations to other customers, EHL Group may, in its absolute discretion, apportion the available materials between customers (including the Customer) and in doing so EHL Group will not incur any liability, including for any loss or damage (consequential or otherwise) to the Customer as a result of being unable to obtain sufficient materials.
- 4.3 If, at the Customer's direction or request, excess materials have been delivered to Site and must be removed, the Customer will be liable (and may be required to pay in advance) for the costs of EHL Group transporting the excess materials from the Site, at EHL Group's applicable rate. Re-stocking fees may also apply.
- 4.4 EHL Group undertake to notify the Customer of any 'force majeure' conditions as soon as possible.

### **5 Specifications and Tests**

- 5.1 All Works performed by EHL Group will comply with the agreed Customer's specifications, as notified to and accepted by EHL Group in writing. If no Customer specifications are supplied, EHL Group will perform the Works in accordance with EHL Group's current specification applicable to the type of Works, the relevant Australian Standard or general industry practice, as determined by EHL Group.
- 5.2 EHL Group will not undertake any tests unless specified and priced in the Quotation and authorized in writing by the Customer.

### **6 Force Majeure**

- 6.1 EHL Group is not liable to the Customer for any loss or damage, consequential or otherwise, arising from any delay or failure by EHL Group in fulfilling its obligations under this contract where the cause of such delay or failure is beyond EHL Group's reasonable control including acts of God, events of war, riots, civil commotions, fires, natural disasters, extreme weather conditions, road or rail closures or the acts or omissions of any sub-contractor or supplier engaged by EHL Group.



**7 Indemnity**

- 7.1 The Customer indemnifies EHL Group, its related entities, sub-contractors and suppliers and each of their officers, employees, contractors and agents from and against all loss, cost, expense, demand, damage, claim or liability (collectively loss or claim) whatever and howsoever arising (whether in contract, tort, breach of statutory duty or otherwise) under or in connection with these Terms, the Works or the supply of materials, and including a breach of these Terms or the negligent act or omission of any person in connection with these Terms.
- 7.2 Without limiting the application of any of the foregoing, this indemnity includes an indemnity for any loss or claim by any person including the general public, the Customer or its personnel, any person located on the Site or other third parties for injury, death, property damage or otherwise.

**8 EHL Group's Liability**

- 8.1 To the fullest extent permitted by law and notwithstanding any other clause of this contract, the liability of EHL Group is limited, at EHL Group's option, to the replacement of defective materials or the repair of the Works or to providing the Works again or to the payment of the costs of having the Works provided again, provided that defects in the materials or the Works occur within 3 months of completion of the Works and is notified to EHL Group within 10 days of the occurrence of the defect.
- 8.2 EHL Group not be responsible for any loss of profit, penalties, expenditure, damages or losses (including, without limitation, any consequential, special, incidental or indirect loss or damages) incurred by the Customer arising out of any delay in delivery of the materials or performance of the Works, caused by or arising out of any use or dealing with the materials whether arising from any defect in the materials, unsuitability for the Customer's purposes, negligence by EHL Group or its employees, representatives, officers, agents, contractors or suppliers or in any other way or caused by any act, omission, failure, fault or negligence by them in performing the Works.
- 8.3 The parties agree and acknowledge that EHL Group lays materials and undertakes Works on supporting structures that are prepared by others and that, unless specified in the Quotation, EHL Group is not liable for defects in the Works attributable to the constitution, integrity and performance of the supporting structures.

**9 General**

- 9.1 The Quotation and these Terms constitute the entire basis upon which EHL Group will undertake the Works and any representations, warranties, explanations or commitments or other terms or conditions, express or implied, affecting the subject matter are superseded by this document and have no effect. If there is an inconsistency between these the Quotation and these Terms, the Quotation shall prevail.
- 9.2 The parties submit to the exclusive jurisdiction of the courts of the State of Victoria, Australia and the laws applying in that State are the proper law governing these Terms.
- 9.3 If any part of these Terms is unenforceable such part shall be severed and any unenforceability shall not affect any other part.
- 9.4 Where a dispute arises between the Customer and EHL Group as to the performance by either the Customer or EHL Group, as a result of which the Customer threatens or fails to make any payment claimed by EHL Group, EHL Group may immediately cease performance of the Works without incurring any liability of any nature whatsoever to the Customer pending settlement of the dispute.
- 9.5 After the Quotation is provided to the Customer, any order for Works or materials placed by the Customer is deemed to be an order incorporating these Terms notwithstanding inconsistencies which may be introduced in the Customer's order or acceptance unless expressly agreed to by EHL Group in writing. At all times, these Terms are to take precedence over any terms and conditions of the Customer.
- 9.6 The Quotation and these Terms may only be varied by agreement in writing signed by both EHL Group and the Customer.

The following terms and conditions (Conditions) form part of the purchase order given by EHL Group (Purchase Order) to the Supplier to whom the Purchase Order is addressed (Supplier) to deliver the goods (Goods) or services (Services) specified in the Purchase Order (Goods or Services) to the site indicated in the Purchase Order (Site) for the price specified in the Purchase Order (Price). By accepting the Purchase Order, the Supplier accepts the Conditions and any other specific terms and conditions in the Purchase Order.

## **1 Acceptance of Conditions**

- 1.1 These Conditions and the Purchase Order apply to the exclusion of all prior discussions, representations, understandings and arrangements and all other conditions and other representations (contractual or otherwise), whether or not endorsed or delivered with or referred to in any order or other documents delivered by the Supplier to EHL Group. Where this Purchase Order describes a purchase that is within the scope of an existing master agreement, head contract or other framework agreement, the order of precedence stated in the master agreement, head contract or other framework agreement prevails.
- 1.2 In the event of any inconsistency between these Conditions and any specific conditions stated on the Purchase Order, the terms and conditions of the Purchase Order prevail.

## **2 Price & Payment Terms**

- 2.1 EHL Group purchases the Goods or Services for the Price. Unless expressly stated by EHL Group to the contrary, the Price is inclusive of GST and on a free-in-store basis.
- 2.2 EHL Group's payment terms are 45 days from the end of the month in which an invoice issued by the Supplier to EHL Group is dated following delivery of the Goods or Services to the Site and acceptance of the Goods or Services by EHL Group in accordance with clause 3 of these Conditions.
- 2.3 Payment by EHL Group of the Price does not affect EHL Group's right to dispute any invoice issued by the Supplier to EHL Group or to make any claim in respect of the Goods or Services supplied.
- 2.4 EHL Group reserves the right to deduct from the Price any monies owed to or claimed by EHL Group from the Supplier.
- 2.5 Any amount paid or payable by EHL Group to the Supplier in addition to the Price as reimbursement for, or calculated by reference to, any expenses or costs incurred by the Supplier that are agreed by EHL Group, shall be calculated net of any Input Tax Credits which the Supplier is entitled to in respect of the agreed expenses or costs.
- 2.6 For the purposes of these Conditions, "GST" and "Input Tax Credit" have the meanings given in A New Tax System (Goods and Services Tax Act 1999).

## **3 Inspection, Testing & Acceptance**

- 3.1 EHL Group has the right to inspect, examine and test all or part of the Goods or Services at any stage of engineering, manufacturing, installation or supply. Such inspection, examination or testing does not relieve the Supplier of its liability for any of its obligations under these Conditions, nor will it affect EHL Group's right to subsequently reject the Goods or Services.
- 3.2 At any time during the period 21 days after delivery of the Goods or performance of the Services, EHL Group may carry out any reasonable acceptance tests on the Goods and/or Services (in whole or part). Upon satisfactory completion of the acceptance tests, the Goods and/or Services shall be deemed to be accepted. If any of the Goods or Services fail any acceptance test the Supplier must, at its cost, immediately remedy any defect, fault or problem and may be required to assist EHL Group with testing (and re-testing) as and when requested.
- 3.3 Without prejudice to any other rights or remedies it may have, EHL Group reserves the right to reject the whole or any part of the Goods or Services if the Goods or Services do not conform with the description in the Purchase Order or are not in accordance with any drawings, designs or specifications.
- 3.4 Any rejected Goods may be returned, at the Supplier's cost, and EHL Group shall be immediately repaid or credited the cost of the rejected Goods. Goods rejected but held by EHL Group will be at the Supplier's risk.

## **4 Delivery & Completion**

- 4.1 Goods or Services must be delivered or supplied to the Site at the time (or times) specified in the Purchase Order.
- 4.2 The Supplier shall clearly mark all documents accompanying the Goods or Services with the reference, item number, unit of measurement, description, or other information specified in the Purchase Order, as applicable.
- 4.3 The Supplier must at its own cost, ensure that all Goods are suitably packed to minimize the risk of loss or damage during transportation and, if specified in the Purchase Order, the Goods shall be packed, marked and transported as specified. The Supplier is liable for loss or damage to Goods in transit to the Site and for any difference in freight or charges arising from its failure to follow any transportation instructions in the Purchase Order.

- 4.4 If the supply of Goods or Services involves the bringing of any hazardous goods, materials or equipment onto the Site, the Supplier must first provide EHL Group with all material information and comply with EHL Group's instructions in relation to those hazardous goods, materials or equipment.
- 4.5 If delivery is not made in accordance with EHL Group's Purchase Order and these Conditions, EHL Group may, by written notice and without prejudice to any other rights it has, cancel the Purchase Order, obtain replacement goods or services, and claim reimbursement from the Supplier for any additional costs incurred due to such failure by the Supplier to deliver (including without limitation penalties paid by EHL Group to third parties) and damages for breach of contract.
- 4.6 If any delay or failure to complete any Purchase Order is caused by any fact, circumstance, matter or thing beyond the reasonable control of the Supplier, the Supplier must immediately upon becoming aware of the delay or failure, notify EHL Group in writing, and EHL Group may at its discretion suspend completion of the Purchase Order and/or terminate the Purchase Order. For the avoidance of doubt the suspension of completion of the Purchase Order by EHL Group will not detract from EHL Group's rights to terminate the Purchase Order in accordance with these Conditions.
- 4.7 EHL Group may vary the scope or the extent of the Goods or Services. The Supplier must not vary the scope or extent, nature or character of the Goods or Services in any way unless instructed to do so in writing by EHL Group. The Supplier must comply with the notice instructing the variation. The price of the variation shall be agreed wherever possible prior to the execution of the variation. In the absence of agreement, the price for a variation shall be a reasonable price determined by EHL Group. The price for any variation shall be added to or deducted from the Price.

## **5 Title & Risk**

- 5.1 Subject to clause 5.2, title to the Goods shall pass from the Supplier to EHL Group on the earlier of payment of the Price or delivery in accordance with clause 4. Risk in the Goods shall pass to EHL Group upon acceptance of the Goods in accordance with clause 3 (Inspection, Testing & Acceptance).
- 5.2 This clause 5.2 only applies to any Goods required under the Purchase Order to be manufactured, assembled or installed by the Supplier at the Site, when title and risk in such Goods passes from the Supplier to EHL Group as soon as the Goods become part of the process of manufacture, assembly or installation of the Goods.
- 5.3 If the Supplier is in breach of the Purchase Order or fails to fulfil any of its obligations under the Purchase Order, any right to possession of the Goods then vested in the Supplier as licensee or otherwise ceases forthwith and EHL Group may at any time thereafter, and from time to time, take possession of the Goods.
- 5.4 For the purposes of clause 5.3, the Supplier hereby grants to EHL Group or its agents a right of access to any property or premises owned or in the control of the Supplier on which the Goods are held and shall provide to EHL Group or its agents all reasonable assistance requested by or on behalf of EHL Group to locate and remove the Goods.
- 5.5 Any costs or losses incurred by EHL Group in recovering the Goods under clause 5.3 and 5.4 or resulting directly or indirectly from the circumstances giving rise to that recovery (including without limitation, costs incurred by or on behalf of EHL Group in the completion of the process of manufacture, assembly or installation of the Goods which would otherwise have been undertaken by the Supplier under the Purchase Order) shall be a debt owing by the Supplier to EHL Group and may be deducted from the Price.

## **6 Warranties**

- 6.1 The Supplier warrants that Goods supplied will:
- 6.1.1 Be free from encumbrances and free from any security interest under the Personal Property Securities Act 2009;
- 6.1.2 Be of acceptable quality and fit for the express or implied purpose for which they are supplied;
- 6.1.3 Be free from defects in design, material and workmanship;
- 6.1.4 Comply with all relevant specifications and quality requirements notified by EHL Group, and all statutory or regulatory requirements;
- 6.1.5 Where supplied by reference to a sample, correspond to that sample; and
- 6.1.6 Where used by any person, not infringe the intellectual property rights of any third party.
- 6.2 The Supplier will comply with all applicable laws, statutes and regulation governing the provision of Goods and/or Services including Occupational or Work Health and Safety Regulations. The Supplier will further comply with all health and safety rules and regulations in force on the Site and all reasonable safety-related instructions given by EHL Group in relation to ensuring the safety of the Supplier's employees and any other persons for whom the Supplier is deemed responsible, hazard management, information for employees, training and supervision of employees, and any other statutory or regulatory safety obligations.
- 6.3 The Supplier warrants that all Services will be provided using due care and skill and will ensure that its employees, agents and subcontractors, perform such Services in a proper, professional and workmanlike manner, and exercise that degree of care, skill and diligence that would reasonably be expected of a skilled and experienced operator engaged in Australia in the same type of undertaking under the same or similar circumstances.



- 6.4 The warranty period on the Goods or Services shall be specified in the Purchase Order however, if there is no warranty period specified on the Purchase Order the warranty period will be 12 months from delivery by the Supplier and acceptance by EHL Group of the Goods or Services.
- 6.5 EHL Group can require the Supplier to repair or replace Goods or Services (at its discretion) during the warranty period. If the Goods or Services are required to be repaired or replaced by the Supplier the warranty period on the Goods or Services is extended for a time equal to the time taken by the Supplier to repair or replace the Goods or Services.

## **7 Materials Provided by EHL Group**

- 7.1 Any tools, dies, jigs, gauges, equipment, patterns, drawings, blueprints, designs, specifications, samples, software media and technical data supplied by EHL Group to the Supplier or manufactured or acquired by the Supplier in relation to the Purchase Order (Materials) are the exclusive property of EHL Group, and the Supplier shall:
- 7.1.1 Insure those Materials to their full replacement value against all usual risks and in accordance with any direction made by EHL Group (noting EHL Group's interest) and shall provide proof of such insurance to EHL Group upon demand;
- 7.1.2 Maintain and keep those Materials in good order and serviceable condition at its cost and in accordance with any direction made by EHL Group and to the satisfaction of EHL Group;
- 7.1.3 Use those Materials solely for the purpose of supplying the Goods or Services to EHL Group in accordance with EHL Group's Purchase Order;
- 7.1.4 Replace any Materials which are lost, damaged or rendered unusable (in EHL Group's opinion) while in the Supplier's possession;
- 7.1.5 During and after the termination of the Purchase Order, not disclose to any other person, without the prior written consent of EHL Group, which consent can be withheld at EHL Group's discretion, the nature and details of the Materials;
- 7.1.6 Not use, sell, reproduce, copy, destroy, modify, disclose to any person, or dispose of those Materials without EHL Group's prior written consent which can be withheld at the discretion of EHL Group; and
- 7.1.7 Return the Materials to EHL Group upon demand.

## **8 Dispute Resolution**

- 8.1 The Supplier shall not bring any legal proceedings with respect to any dispute arising under or in connection with the Purchase Order and these Conditions (Dispute), until it has first referred the Dispute to EHL Group's Regional Manager for review and resolution. If the Dispute is not resolved by EHL Group's Regional Manager within 28 days from the date that the Dispute is so referred by the Supplier, then the Supplier shall be entitled to refer the matter to a mediator accredited by the Australian Commercial Disputes Centre (Mediator). The parties must jointly agree on the appointment of a Mediator and once the Mediator has accepted appointment the parties must comply with the Mediator's reasonable instructions. If the Dispute is not resolved by a Mediator within 28 days from the date of the appointment of the Mediator, the Supplier may bring any legal proceedings with respect to the Dispute.
- 8.2 The costs of any mediator appointed pursuant to clause 8.1 must be paid equally by the parties.

## **9 Termination**

- 9.1 EHL Group may, and without affecting any accrued rights or remedies of EHL Group, terminate the Purchase Order for any reason (in whole or in part) and shall reimburse the Supplier upon request for:
- 9.1.1 All reasonable costs necessarily incurred by the Supplier pursuant to the Purchase Order up until the date of termination; and
- 9.1.2 All reasonable, unavoidable costs incurred by the Supplier up until the date of termination as a result of the termination provided that the Supplier makes available to EHL Group all or any books, records, facilities, work, material, inventories and other items relating to any claim by the Supplier pursuant to this clause 9.1.2 within 60 days of the date of termination
- 9.2 If the Purchase Order is terminated in part by EHL Group, then the Supplier must deliver those remaining Goods and Services required to be delivered by the Supplier to EHL Group in accordance with the Purchase Order.

## **10 Confidentiality**

- 10.1 The Supplier shall not, and shall ensure that its employees and contractors do not, at any time, disclose to any other person any confidential information disclosed to it by EHL Group for the purposes of the Purchase Order except as expressly authorised by EHL Group or as required by law. Unless the Purchase Order otherwise provides, the obligations in this clause 10 survive the termination of the Purchase Order, including termination for breach by either party and termination by expiry.

**11 Intellectual Property**

- 11.1 The Supplier must not, at any time, use any EHL Group Trade Mark or EHL Group Insignia without the prior written consent of EHL Group, which consent can be withheld by EHL Group in its absolute discretion.
- 11.2 For the purpose of this clause 11, 'EHL Group Trade Mark' means a trade mark owned or used by EHL Group irrespective of whether or not that trade mark is registered, and 'EHL Group Insignia' means any sign (including without limitation any letter, word, name, signature, numeral, device, brand, heading, label, ticket, shape, colour, sound or aspect of packaging) used to distinguish Goods or Services dealt with or provided in the course of trade by EHL Group or a Related Body Corporate (within the meaning of the Corporations Act 2001) of EHL Group or a third party associated with EHL Group.
- 11.3 The operation of this clause 11 survives termination of the Purchase Order, including termination for breach by either party and termination by expiry.

**12 Indemnity**

- 12.1 The Supplier indemnifies EHL Group, its officers, employees and agents from and against:
- 12.1.1 All actions, claims, demands, damages, losses, costs, injury and expenses which may be brought or made against or suffered or incurred by EHL Group in respect of or by reason of or arising out of any negligence of or omission or breach of the Purchase Order or these Conditions by the Supplier, its officers, employees or agents; and
- 12.1.2 All damages, loss, costs and expenses arising out of the presence of the Supplier's officers, employees or agents upon or about the Site and against all liability for their injury or death whilst carrying out their duties for the Supplier and for all loss or damage to their personal effects.

**13 Severance**

- 13.1 Any invalid, illegal or unenforceable provision of these Conditions shall be severed. That severance does not in any way prejudice or affect the validity, legality or enforceability of the remaining provisions which remain in full force and effect to the extent that they are substantially capable of performance in accordance with their terms.

**14 Waiver**

- 14.1 A waiver in whole or in part of any provision of these Conditions or any other provision of a Purchase Order is valid only if in writing and signed by the party giving the waiver. A waiver of any provision is not a continuing waiver unless so expressed and is not a waiver of any other provision.

**15 Jurisdiction**

- 15.1 The Purchase Order is deemed to have been made in the State of Victoria, Australia in which the EHL Group office concerned most closely with the Purchase Order is situated and is governed by and shall be construed in accordance with the law in force for the time being in that State. In any other event, the laws of the State of Victoria will apply. The parties submit to the exclusive jurisdiction of the Courts of that State and Courts competent to hear appeals therefrom.

**16 Successor & Assignees**

- 16.1 The Supplier must not assign any of its rights under the Purchase Order and the Conditions unless it first obtains the prior written consent of EHL Group, which consent can be withheld by EHL Group in its absolute discretion. EHL Group may assign any of its rights under the Purchase Order and the Conditions.

**17 Site Safety**

- 17.1 EHL Group may order the Supplier or its employees and contractors from the Site should a situation be encountered, where in the opinion of EHL Group, a breach of any statutory or contractual safety requirements may occur, until the breach is remedied. Any such breach must be remedied by the Supplier within a reasonably practicable time. If the Supplier does not comply with this provision then EHL Group may terminate the Purchase Order and the provisions of clause 9.1 will not apply.
- 17.2 The Supplier is responsible for the protection of the Site (including the protection of air, water and soil) as a result of its provision of the Goods or Services to the Site and must comply with the environmental protection legislation applicable to the State or Territory of the Site in which the Goods or Services are being supplied.

**18 Insurance**

- 18.1 Before delivering the Goods or Services, the Supplier must arrange the following types of insurance and give EHL Group satisfactory evidence that the following insurance has been affected:
- 18.1.1 Public liability insurance in respect of personal injury, death or property damage arising out of the Goods or Services;
- 18.1.2 Loss or damage to Goods supplied by the Supplier until the Goods or Services are delivered or completed; and

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- 18.2 The terms of the insurance must be approved by EHL Group and the insurance must be for the amount notified by EHL Group to the Supplier. Where appropriate, the insurance policy must have a waiver of subrogation clause, a cross liabilities clause and a settlement of claims on the basis of reinstatement or new replacement value clause.
- 19 Building Code 2013**
- 19.1 The Building Code 2013 (Building Code) 2013 applies to these Conditions and any Purchase Order.
- 19.2 By agreeing to supply the Goods or Services, the Supplier is taken to have read and agrees to comply with the Code and Guidelines.
- 19.3 Compliance with the Code will not relieve the Supplier from responsibility to perform these Conditions and the Purchase Order, or from liability for any defect in the Goods or Services arising from compliance with the Code.