

General Terms and Conditions of Purchase Order

1. Definitions and interpretation

The following definitions shall be used for the purpose of interpreting the General Terms and Conditions of Purchase Order (“General Conditions”):

- (a) **“ADC”** means the Australian Disputes Centre or such other body as carries on the functions of that Centre.
- (b) **“day”** means calendar day.
- (c) **“Delivery”** means: (i) the physical receipt of, possession and control of any goods (including materials, parts, plant and equipment) which comprise the Supplies from the Supplier by the Purchaser and/or (ii) the completion by the Supplier of any services, including any Site Activities (as defined in clause 24), that comprise the Supplies to the Purchaser’s reasonable satisfaction by the Purchaser, as the context requires, in satisfaction of the Supplier’s obligations under the Purchase Order, and “deliver” and “delivered” have corresponding meanings.
- (d) **“Delivery Date”** means the date specified in the Purchase Order as the date by which the Supplier must:
 - (i) deliver the goods (including materials, parts, plant and equipment) to the delivery place or Site described in the Purchase Order; and/or
 - (ii) complete the services, including any Site Activities (as defined in clause 24), as may be adjusted in accordance with clause 17.
- (e) **“EOT Event”** is an act of prevention or breach by the Purchaser or any Variation in accordance with clause 18.
- (f) **“losses”** include losses, costs, expenses, damages and liabilities of whatsoever kind.
- (g) **“Price”** means the price or prices and other rates stated in the Purchase Order.
- (h) **“Property Rights”** includes every type of right interest or thing which is legally capable of being owned and includes, but is not restricted to, physical goods, equipment and real property, as well as intangibles such as intellectual property including, without limitation, rights in relation to design and to registered and unregistered patents and trademarks.
- (i) **“Purchaser”** means the relevant Eptec group entity ordering the Supplies, as identified in the Purchase Order.
- (j) **“Purchase Order”** means the purchase order issued by the Purchaser to the Supplier, comprising:
 - (i) The Purchase Order form containing the description of the Supplies, Price and delivery details, including Special Conditions as applicable;
 - (ii) General Conditions (this document);
 - (iii) Any specifications; and
 - (iv) Any drawings.
- (k) **“Site”** means a project site or other location where the Purchaser is engaged to perform work for its client/s.
- (l) **“Supplier”** means the person (including an individual, firm or corporate entity) providing the Supplies, as identified in the Purchase Order.
- (m) **“Supplies”** means all goods, materials, article, plant, equipment, parts or any other property or services of any kind to be supplied, delivered or performed by the Supplier under the terms of the Purchase Order and described therein, as the context requires, and includes, without limitation, activities such as design, manufacture, installation, painting, inspection,

testing, quality assurance and control, packing and delivery as required or appropriate to the items/services being provided or performed, whether or not specifically mentioned in the Purchase Order.

- (n) **“Variation”** means any increase or decrease in quantity or omissions from the Supplies, any change in the character or quality of the Supplies, the inclusion of other goods (including materials, parts, plant and equipment) or services as Supplies or the execution of additional work.
- (o) **“Warranty Period”** means the period commencing on the date of the Purchaser’s acceptance of the final supply of the goods (including materials, parts, plant and equipment) and/or services comprising the Supplies to or at the specified delivery location, and extending for a minimum period of twelve (12) months thereafter unless otherwise stated in the Purchase Order.

2. Purchase Order

The Purchase Order constitutes the entire agreement between the parties. The Purchaser shall not be bound by or be liable for any statement, representation, promise or understanding not set forth herein.

The Purchase Order supersedes and overrides any terms and conditions of sale provided by the Supplier, however and whenever established and / or referred to by the Supplier’s quotation, invoices or other documentation.

The Purchase Order can only be modified by the express written agreement between the parties.

3. Supplier to inform itself

The Supplier shall be deemed to have carefully examined all documents furnished by the Purchaser and fully satisfied itself regarding and allowed for all the conditions, risks, contingencies and other circumstances which may in any way affect the supply of the Supplies.

4. Precedence of Purchase Order documents

If the Supplier notices any ambiguity or discrepancy in the Purchase Order documents, it shall immediately notify the Purchaser in writing. The Purchaser shall then determine the correct interpretation which shall be final and binding on the Supplier, following the order of precedence of the documents comprising the Purchase Order as listed in clause 1 (j).

5. Property Rights, Ownership and Confidentiality

- 5.1 The Supplier warrants that the Supplier is the owner or valid licensee of all Property Rights in the Supplies and that the supply of the Supplies and their use by the Purchaser does not and will not infringe any Intellectual Property Rights of any third party.
- 5.2 To the extent the Supplies comprise the supply of physical goods (including materials, parts, plant and equipment), ownership of the goods passes to the Purchaser upon Delivery, as evidenced by the corresponding delivery docket signed by the Purchaser’s duly authorised representative, or upon payment, whichever comes first.
- 5.3 The Supplier grants the Purchaser a perpetual, royalty free license of any intangible Property Rights (whether protectable by statute or under common law or in equity) required to use, consume or sell the Supplies to the Purchaser’s own clients, and the Supplier indemnifies the Purchaser against any losses suffered or incurred by the Purchaser or by the Purchaser’s clients as a consequence of any claim by a third party with respect to the Property Rights.
- 5.4 Any information provided by the Purchaser to the Supplier, including but not limited to the Purchase Order documents, shall not be copied or used for any purpose other than for providing the Supplies, and shall not be disclosed to any third party without

the prior written consent of the Purchaser. The obligations under this clause shall be continuing and shall survive the completion or termination of the Purchase Order.

6 Waiver

No failure or delay on the part of the Purchaser in exercising any of its rights under the Purchase Order shall be construed as constituting a waiver of any such rights.

7 Subcontracting and Assignments

The Supplier must not subcontract nor assign all any part of the Purchase Order without the prior written approval of the Purchaser. The Purchaser's approval shall in no way relieve the Supplier of any of its obligations under the Purchase Order.

8 Communications

Any notice or other communication ("Notification") under the Purchase Order shall be delivered in writing, in English, sent by prepaid post or email to the recipient's address specified in the Purchase Order form. If posted, the Notification, will be deemed to have been received 3 days after it was sent. If emailed, the Notification will be deemed to have been received within 24 hours after the email was sent.

If requested in writing by the Supplier, any verbal instructions or directions from the Purchaser shall be confirmed in writing within a reasonable time.

9 Laws and Other Regulatory Requirements

The Supplier shall comply and shall ensure the Supplies comply with all relevant laws, ordinances, regulations, orders and rules, and with the lawful requirements of any relevant public and other authorities.

10 Indemnity and Insurances

10.1 The Supplier shall fully indemnify and hold harmless the Purchaser and its officers, employees and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses arising as a consequence of any injury to or death of any person or damage to any property to the extent this is caused by any act, omission, neglect or default of the Supplier or its employees, agents or subcontractors in relation to its obligations under the Purchase Order.

10.2 The Supplier shall effect and maintain the following insurance policies, and provide evidence to the Purchaser on request:

- (i) insurance for any physical goods (including materials, parts, plant and equipment) included in the Supplies for their full replacement value for the period the Supplier is responsible for loss or damage in accordance with clause 5.2.
- (ii) public and product liability insurance for not less than \$10million unless otherwise specified in the Special Conditions.
- (iii) such other insurances as: (a) is appropriate to the Supplies; (b) required under clause 24; and (c) otherwise required by law.

11 Consequential losses

Neither the Purchaser nor the Supplier shall be liable to the other, whether for breach of contract, under indemnity, in tort (including for negligence) or on any other basis in law or equity for loss of use, production, profit, contract, revenue, business interruption or for any financing costs or increase in operating costs, or for any consequential, indirect or special losses arising out of or in connection with the Purchase Order.

12 Testing, inspection and acceptance

12.1 The Supplies shall be tested in accordance with the requirements of the Purchase Order (if any), and unless otherwise specified in

the Purchase Order, all tests and the costs thereof shall be the responsibility of the Supplier.

12.2 The Purchaser shall have the rights to inspect, independently test, monitor and expedite the Supplies at any time prior to Delivery, and the Supplier shall facilitate prompt access for the Supplier's and any of its subcontractor's premises for such purposes during normal working hours. The Supplies shall not be deemed to be accepted by the Purchaser until the test required (if any) and the Supplier's quality assurance documentation confirming full compliance of the Supplies with the requirements of the Purchase Order have been provided by the Supplier, and the Supplies have been inspected and approved by the Purchaser. Inspection and /or testing by the Purchaser shall neither relieve the Supplier from its obligations under the Purchase Order nor waive the Purchaser's rights and remedies provided under the Purchase Order or otherwise.

12.3 The Supplier shall maintain and implement an acceptable quality assurance system that demonstrates that the Supplies fully comply with the quality standards specified in the Purchase Order. If no particular standards are specified in the Purchase Order, the Supplier shall demonstrate that the Supplies comply with the highest quality standards applicable to the class of Supplies concerned.

13 Warranties

13.1 The Supplier represents and warrants that it has the skills, experience and resources to successfully supply the Supplies in accordance with all the requirements of the Purchase Order.

13.2 The Supplier warrants that the Supplies:

- (i) are fit for their intended purposes, new and made to the specified quality or, if not specified, be of merchantable quality, free from any liens, charges or encumbrances, and free from defects in design, materials and workmanship for the duration of the Warranty Period;
- (ii) comply with any specifications and/or drawings referenced in the Purchase Order; and
- (iii) conform to all applicable laws, regulations, statutory requirements, codes and Australian Standards.

13.3 The above warranties are in addition to the specific warranty included in the Special Conditions, if any, and are provided by the Supplier for the benefit of both the Purchaser and the Purchaser's clients, to whom the Supplier's warranties are transferred on the Purchaser's request.

14 Defects and rectification

14.1 If any of the Supplies as supplied do not comply with the specifications and/or drawings or are otherwise not in accordance with the Purchase Order at any time before Delivery or during the Warranty Period, the Purchaser shall give written notice to the Supplier of any failure or defect identified in the Supplies and the Purchaser may at its election:

- (i) require that the Supplier without delay, and at the Supplier's cost, correct any failure or defect identified in the Supplies by way of replacement, repair, appropriate modification or other means reasonably acceptable to the Purchaser;
- (ii) require that the Purchaser be credited in respect of any amount that the Purchaser has paid for the Supplies; or
- (iii) return all of the Supplies to the Supplier at the Supplier's cost and cancel the balance of Purchase Order.

14.2 Any Supplies rectified under warranty shall be subject to a further Warranty Period, commencing from the date of completion of such rectification, unless otherwise directed in writing by the Purchaser.

14.3 The Supplier indemnifies the Purchaser for any losses arising out of or in connection with the return or cancellation of the Supplies pursuant to clause 14.1, including the cost of freight and packaging.

14.4 If the Supplier fails to correct any defects or failures in the Supplies of which have been notified by the Purchaser within the time specified in the notice (which shall not be unreasonable), the Purchaser shall have the right to rectify the Supplies itself or have the necessary rectification undertaken by a third party. All costs so incurred by the Purchaser shall be a debt due and recoverable from the Supplier from any moneys otherwise owed by the Purchaser to the Supplier.

15 Delivery Requirements

Unless otherwise specified in the Purchase Order, where the Supplies comprise physical goods (including materials, parts, plant and equipment), they shall be delivered adequately packaged and protected to ensure safe delivery, to the delivery locations(s) and by the Delivery Date(s). Each Delivery shall be accompanied by a delivery docket showing the Purchase Order number and the quality and nature of the Supplies being delivered. Each delivery docket must be signed by a duly authorised representative of the Purchaser at the relevant delivery point.

Prior to Delivery, the Supplier will have full responsibility and bear all associated costs for packing, loading, transport and insurance of the relevant goods (for their full replacement value).

Notwithstanding that the Purchaser has taken physical delivery of the Supplies, the Supplier shall remain responsible for any loss or damage to the Supplies which may have occurred prior to its acceptance by the Purchaser. The Purchaser may reject any Supplies which, in its reasonable opinion, do not conform with the requirements of the Purchase Order, and the Supplier agrees that the Purchaser is not liable to pay for any rejected Supplies.

16 Site Conditions

16.1 Where the Supplies comprise services being performed by the Supplier on a Site, the Supplier will be deemed to have allowed in the Price for all matters concerning the Site and its surroundings ("**Site Conditions**") including but not limited to:

- (1) conditions upon, below the surface of and surrounding the Site;
- (2) conditions existing within buildings or other structures situated on or forming part of the Site;
- (3) conditions of access to, from and within the Site for the purposes of carrying out the relevant services;
- (4) heritage, preservation or other orders affecting the Site; and
- (5) utilities servicing the Site.

16.2 Purchaser will not be liable for any losses suffered by the Supplier as a result of Site Conditions.

17 Delays

17.1 The Supplier must supply or perform the Supplies in accordance with the terms of the Purchase Order by the Delivery Date.

17.2 The Supplier shall take all reasonable steps to minimise and prevent any delay to the delivery or performance of the Supplies and shall promptly notify in writing the Purchaser of any event or circumstance which is likely to cause delay with respect to the Delivery Date.

17.3 (i) If the Supplier considers that it is entitled to an extension to the Delivery Date the Supplier must give written notice to the Purchaser of its intention to claim an extension to the Delivery Date not later than 5 days after the cause of the delay first arose.

(ii) The Supplier must give further written notice to the Purchaser of the period of extension of time claimed not later than 1 week after the expiration of the period stated in paragraph (i) directly

above. Where it is not practicable to give this notice, the Supplier must advise the Purchaser in writing on a weekly basis of the likely period of extension of time to be claimed.

17.4 If the Supplier complies with clause 17.3 and

(i) demonstrates to the Purchaser's reasonable satisfaction that the Delivery Date will be delayed by an EOT Event which is beyond the reasonable control of the Supplier; and

(ii) the delay affected activities which are critical to achieving Delivery by the Delivery Date,

the Purchaser must extend the Delivery Date by a period equal to the period by which, as a result of the delay, the actual Delivery Date is likely to exceed the Delivery Date specified in the Purchase Order.

17.5 If the Supplier fails to deliver the Supplies by the specified Delivery Date, as may be adjusted under clause 17.4, the Purchaser shall be entitled to terminate the Purchase Order for default, either in whole or in part, in accordance with the provisions of clause 19.

18 Variations

The Purchaser may direct the Supplier by a notice in writing to perform a Variation and the Supplier shall promptly carry out any such Variation as directed.

The Supplier's price (addition or reduction) for any Variation and any effect on the Delivery Date shall be preferably agreed in writing between the Purchaser and the Supplier prior to the Supplier carrying out any such variation. Failing such agreement, the Purchaser shall determine a reasonable price for the Variation and the delivery date for the relevant Supplies. The Supplier shall not vary the work under the Purchase Order or any condition thereof, except as directed and approved by the Purchaser in writing. No Variation ordered by the Purchaser shall invalidate the Purchase Order.

The Supplier will not be entitled to payment for a Variation unless the Supplier first provides the Purchaser with a copy of a written instruction from the Purchaser to execute the Variation.

If the Supplier considers that a drawing, instruction or direction issued by the Purchaser, although not stated to involve a Variation, in fact involves a Variation then the Supplier must give written notice to the Purchaser before commencing work in relation to the drawing, instruction or direction. Compliance with this clause will be a condition precedent to any claim the Supplier may have for an extension of time or in respect of a Variation.

The Purchaser may instruct a Variation which decreases the scope of the Supplies or omits any part of the Supplies for the purpose of having that part executed by any other person. There is no limit on the scope of a variation which BLL may instruct.

19 Termination

19.1 In the event of a substantial breach of any of the terms or conditions of the Purchase Order, which in the opinion of the Purchaser, may significantly delay or impair the completion of the Purchase Order and which is not remedied within seven (7) days of the Purchaser's written notice, the Purchaser may terminate the Purchase Order and the Supplier shall be liable for all losses incurred by the Purchaser.

19.2 If, in the opinion of the Purchaser, the Supplier is unable to effectively perform the obligations under the Purchase Order due to insolvency, bankruptcy, or related reasons, the Purchaser may terminate the Purchase Order with immediate effect.

19.3 Notwithstanding any other provisions of the Purchase Order, the Purchaser may for its convenience terminate the Purchase Order by giving seven (7) days written notice to the Supplier.

- 19.4 In the event of termination under clause 19.1 or clause 19.2, the Purchaser shall immediately suspend any further payment to the Supplier. Any costs to complete the Purchase Order in excess of the amount the Purchaser would have been required to pay the Supplier under Purchase Order, shall be a debt due by the Supplier to the Purchaser.
- 19.5 In the event of termination under clause 19.3, the Purchaser shall pay the Supplier for the work carried out prior to termination, and the reasonable documented costs associated with the cancellation of any orders placed by the Supplier in connection with the Supplies prior to termination.
- 20. Price and payment**
- 20.1 Unless otherwise stated in the Purchase Order, the Price is fixed and not subject to any variation, including but not limited to variation in the cost of labour, material or exchange rates.
- 20.2 The Supplier shall be responsible for the payment of all relevant Australian (Federal, State and Local Government) and overseas taxes, duties and charges with respect to the Supplies. The Price is deemed to be inclusive of all such taxes, duties and charges.
- 20.3 Unless otherwise specified in the Purchase Order, invoices for payments must include the Purchase Order number and shall be submitted to the Purchaser as follows:
- (i) To the extent the Supplies comprise the supply of physical goods (including materials, parts, plant and equipment), following Delivery;
 - (ii) To the extent that the Supplies comprise services being performed by the Supplier on a Site and the duration of the services does not exceed one calendar month, following Delivery; and
 - (iii) To the extent the Supplies comprise services being performed by the Supplier on a Site and the duration of the services exceeds one calendar month, monthly on the last day of the month,
- and payments of the amount approved by the Purchaser shall be made by the Purchaser no later than thirty (30) days from the first day of the month following the month of receipt of the invoice. In respect of invoices referred to in clause 20.3(iii), on or before the day on which the Supplier submits an invoice, it must provide to the Purchaser a written statement signed by an authorised employee of the Supplier in the form required by the Supplier that the following have been paid:
- (a) all remuneration and other entitlements payable to or on behalf of the Supplier's employees in relation to the Supplies during the period up to submission of the invoice;
 - (b) all amounts payable to its subcontractors and suppliers in respect of the Supplies; and
 - (c) all relevant taxes, duties, statutory fees, charges and other amounts payable by the Subcontractor in respect of the Supplies.
- Any invoice which does not contain the information or statement required by this clause 20.3 will be deemed not to have been submitted.
- 21. Personal Property Securities Act 2009 (Cth) ("PPSA")**
- 21.1 If the Supplier believes that a security interest (as that term is defined in the PPSA) arises under the Purchase Order, it must notify the Purchaser at least 5 business days before the Supplier takes steps to register such security interest on the PPSA Register.
- 21.2 Within 10 business days of the earlier of the completion or termination of the Purchase Order or the receipt of the Price for the Supplies, the Supplier will at its cost procure the removal from the PPSA Register of each security interest it has registered in respect of the Supplies, and must provide the Purchaser with verification of the removal pursuant to section 157 of the PPSA.
- 21.3 The parties agree that for the purposes of section 115 of the PPSA the following sections will not apply to any Relevant Collateral: section 120 (enforcement of liquid assets), section 126 (apparent possession) and section 128 (secured party may dispose of collateral).
- 22 Disputes**
- 22.1 If a dispute or difference arises between the parties concerning this Purchase Order either party may deliver to the other party a notice in writing providing details of the dispute or difference and within fourteen (14) days of the date of such notice, the parties must arrange for authorised representatives to meet at a mutually convenient location and use best endeavours to settle the dispute or difference.
- 22.2 In the event that the dispute or difference remains unresolved 28 days after receipt of the above written notice, either party may refer the dispute to the ADC and request the appointment of an independent expert and participate in the expert determination process. That process shall be conducted in accordance with the ADC Rules for Expert Determination operating at the time the matter is referred to ADC (the "Rules"). The terms of the Rules are hereby deemed incorporated into this Purchase Order. Each party must bear their own costs during this process and the Supplier must continue to perform its obligations under this Purchase Order during this process.
- 22.3 Compliance with this clause 22 is a precondition to any party commencing arbitration or litigation.
- 23. Applicable law**
- The Purchase Order shall be governed and construed in accordance with the laws in place in the State of New South Wales.
- 24. Other Specific Conditions for activities on a Site**
- 24.1 This clause 24 applies to the Supplier's activities and/or services to be carried out on a Site (hereafter called "Site Activities").
- 24.2 The Purchaser may issue instructions or directions in relation to health and safety matters at the Site. The Supplier must comply with those instructions or directions within the time instructed by the Purchaser and must comply at its cost with the legislative requirements and with the health and safety policies in place on Site, as established by the Purchaser and / or by the Purchaser's clients.
- 24.3 The Supplier shall ensure that only properly qualified personnel are engaged to perform the Site Activities and that they attend, at the Supplier's cost, Site specific inductions, as requested by the Purchaser.
- 24.4 The Supplier shall procure and maintain worker's compensation insurance. The Supplier shall lodge certificates of currency with the Purchaser not later than 5 days before commencing any Site Activities for all of the insurance policies required under clause 10.3 and this clause 24. The Supplier shall ensure that the Purchaser is listed as an interested party under the Supplier's public liability insurance policy.
- 24.5 In the event that the Supplier does not achieve completion of the Site Activities by the Delivery Date, liquidated damages shall apply if defined in the Purchase Order.
- 24.6 The Supplier's Site Activities shall be subject to a minimum defect liability period of 12 months from completion of the project work under the contract between the Purchaser and its client.
- 25. Subcontract Agreement**
- In the event that the Purchaser and the Supplier have signed or subsequently sign a Subcontract Agreement, then the Subcontract Agreement shall prevail over these General Conditions.