

## PURCHASE ORDER CONDITIONS

### 1. DEFINITIONS AND INTERPRETATION

Unless the context otherwise requires:

"**Auctus**" mean Auctus Resources Pty Ltd (ABN 15 136 606 338);

"**Change Order**" means a written amendment by Auctus to the Goods and/or Services;

"**Conditions**" means these Purchase Order Conditions;

"**Contract**" means the agreement between the Supplier and Auctus consisting of the PO, these Conditions and any other documents expressly referred to in the PO;

"**day**" means the period of time commencing at midnight and ending 24 hours later;

"**Delivery**" or "**Delivered**" means the delivery of Deliverables by the Supplier to the nominated Delivery Point specified in the PO and the acceptance of the Deliverables by Auctus;

"**Delivery Date**" means the date for Delivery specified in the PO;

"**Delivery Point**" means the place(s) or site(s) where the Goods and/or Services are to be delivered or Deliverables are to be delivered as specified in the PO;

"**Deliverables**" means the deliverables to be Delivered as described in the PO;

"**GC**" means a provision of these Conditions;

"**Goods and/or Services**" means the goods and/or services described in the PO and, if applicable, the works to be carried out at the Site;

"**GST**" means a goods and services tax or any similar tax which is imposed in Australia and has effect during the term of the Contract;

"**Intellectual Property Rights**" includes patents, inventions, know-how, processes, designs, databases, copyrights, trademarks, brands, logos, domain names, business names, moral rights and any other intellectual property rights;

"**PO**" means the Purchase Order Form containing an order for Goods and/or Services to which these Conditions are attached;

"**Price**" means the total amount payable to the Supplier set out in the PO;

"**Related Body Corporate**" has the meaning given to that term in the *Corporations Act 2001* (Cth) and, in the case of the Auctus, shall be deemed to include:

- (a) Auctus Chillagoe Pty Ltd;
- (b) any body corporate controlled by Auctus Chillagoe Pty Ltd taking into account the aggregate percentage interests of their respective direct or indirect shareholdings in that body corporate; and
- (c) any body corporate controlling or controlled by that body corporate;

"**Site**" means any place owned or controlled by Auctus where the Goods and/or Services are to be carried out by the Supplier;

"**Site Manager**" means any person appointed by the Supplier under GC 10;

"**Site Rules and Regulations**" means the rules and regulations as advised to the Supplier by Auctus as amended from time to time;

"**Supplier**" means the person, company or corporation referred to in the PO as the "Supplier" and to whom the PO is issued, and where two or more persons are referred to in the PO, then the obligations on their part shall bind and be observed and performed by them jointly and severally;

"**Taxes**" means any and all present and future sales, use, personal, property, real property, value added, goods and services, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or

other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever imposed (other than taxes on Auctus' net income) by any government, governmental, semi-governmental or other relevant authority, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed or otherwise payable;

"**Valid Tax Invoice**" means an invoice provided by the Supplier that must include substantiation for the amount invoiced, the PO number and Supplier's bank account details for payment by electronic bank transfer;

The words "including" and "include" are a reference to "including, but not limited to"; and

Words importing the singular include the plural (and vice versa).

### 2. FORMATION OF THE CONTRACT

2.1 The Contract constitutes the entire agreement between the Supplier and Auctus. Except as may be specifically provided in the PO, any terms and conditions contained in or relating to any other documents, including any of Supplier's documents, in respect of the Goods and/or Services are of no effect.

2.2 No terms stated by the Supplier in accepting or acknowledging the Contract will be binding unless Auctus' prior written consent has been given.

2.3 In the absence of any written acceptance or acknowledgment of the Contract by the Supplier, the commencement of any work by the Supplier in connection with the Goods and/or Services or the provision of any Deliverables will be deemed an acceptance of the Contract.

### 3. PERFORMANCE AND DELIVERABLES

3.1 The Supplier must perform and supply the Goods and/or Services and provide the Deliverables at the times, dates and Delivery Points specified in the PO.

3.2 Where the Supplier fails to perform or supply the Goods and/or Services (or any part thereof) or fails to provide the Deliverables to the Delivery Point by the relevant Delivery Date, such failure will constitute a material breach of the Contract and Auctus may:

- (a) deduct from payments due to the Supplier under the Contract; and/or
- (b) immediately terminate the Contract.

3.3 Partial performance or supply of the Goods and/or Services or partial provision of the Deliverables (including the supply of non-compliant Goods and/or Services or Deliverables) by the relevant Delivery Date constitutes a failure to deliver and/or perform and GC 3.2 applies, unless Auctus confirms in writing that partial performance, supply or Delivery is acceptable.

3.4 If a licence, certificate or consent of any government or other authority is required for the performance or supply of the Goods and/or Services, the Supplier must obtain such licence, certificate or consent at Supplier's expense and produce evidence of it to Auctus on demand.

3.5 The value of the Goods and/or Services performed and supplied must not be greater than the Price, unless quantity amendments have been made to the Contract by the issue of a Change Order.

### 4. NON-COMPLIANT GOODS AND/OR SERVICES

4.1 The Supplier must, at no additional cost to Auctus, ensure that all Goods and/or Services are performed, supplied, reported and presented in a professional manner consistent with best professional practice.

4.2 Notwithstanding that payment has been made to the Supplier, Auctus will not be deemed to have accepted the Goods and/or Services unless and until Auctus have had a reasonable opportunity to inspect them and have notified the Supplier of Auctus' acceptance.

4.3 If any Goods and/or Services (or any part of them) are defective, or do not comply with the Contract, Auctus may reject such Goods and/or Services. If such Goods and/or Services are not re-performed or re-supplied by the Supplier within a reasonable time, Auctus may re-perform or re-supply such Goods and/or Services and any costs incurred by Auctus arising out of the re-performance or re-supply of such Goods and/or Services shall be to the Supplier's account.

4.4 If Auctus rejects any Goods and/or Services under GC 4.3, the Supplier must re-perform or re-supply such rejected Goods and/or Services within 10 days of being notified (or such other time reasonably directed by Auctus) at the Supplier's cost.

4.5 If such Goods and/or Services are not re-performed or re-supplied by the Supplier within a reasonable time, such Goods and/or Services may be re-performed or re-supplied by Auctus and Auctus may immediately terminate the Contract in whole or part and the Supplier must refund any payments made by Auctus for any Goods and/or Services rejected by Auctus within 14 days. Any additional costs incurred by Auctus arising out of the re-performance or re-supply of such Goods and/or Services shall be to the Supplier's account.

4.6 If Auctus requests the Supplier to remove any person from the performance or supply of the Goods and/or Services on the grounds the person is not complying with the requirements of the Contract or is otherwise not behaving appropriately then the Supplier must comply and promptly replace the person.

### 5. RISK AND TITLE

5.1 Without prejudice to Auctus' right under GC 4, unless otherwise specified in this PO, ownership of Goods passes to Auctus on full payment of the Goods. The Goods shall be at Auctus' sole risk immediately on Delivery. The Supplier acknowledges that, notwithstanding that ownership of the Goods passes to Auctus on full payment, Auctus may use and deal with the Goods at its absolute discretion on and from Delivery.

### 6. CONTRACT PRICE AND PAYMENT

6.1 The Supplier is deemed to have satisfied itself of the correctness and sufficiency of the Price which, except as otherwise provided in the PO, covers all the Supplier's obligations under or in connection with the Contract.

6.2 Auctus is only liable to pay for Goods and/or Services specified in the PO at the Price stated in the PO.

6.3 Subject to the Supplier providing a complete Valid Tax Invoice to Auctus at the address for the submission of invoices indicated on the PO, Auctus will make payments due to the Supplier within the time stated in the PO.

6.4 To the extent that the *Building and Construction Industry Payments Act 2004 (Qld)* ("Act") applies to the Contract:

- (a) the time prescribed for the submission of invoices indicated on the PO is also the "reference date" within the meaning and for the purposes of the Act; and
- (b) Auctus has the greatest period provided under that Act to issue a "payment schedule" within the meaning and for the purposes of that Act.

6.5 If Auctus becomes aware that a subcontractor to the Supplier is entitled to suspend work pursuant to the Act or the Supplier has otherwise failed to pay a subcontractor, the Auctus may (in its sole and absolute discretion) pay the subcontractor such money that is, or may be, owing to the subcontractor for work forming part of the Goods and/or Services. The cost thereby incurred shall be deducted from the Price.

6.6 If Auctus is required by any law to deduct an amount in respect of Taxes from a payment under the

## PURCHASE ORDER CONDITIONS

- Contract, Auctus will pay the Supplier the difference between the payment due under the Contract to the Supplier and the amount deducted.
- 6.7 Auctus may set-off any amount owing to Auctus from the Supplier against any amount owed to the Supplier by Auctus. Auctus may separately recover from the Supplier any debt owed by the Supplier to Auctus arising out of or in connection with the Contract.
- 6.8 Unless otherwise notified by Auctus in writing, all payments made by Auctus to the Supplier will be by electronic bank transfer.
- 6.9 Should any Taxes be levied on, in respect of, or in relation to, the Goods and/or Services, these will be to the Supplier's account. The Supplier will be responsible for payment of those Taxes and will immediately provide Auctus with documentary evidence of payment if payment is made by the Supplier on Auctus' behalf.
- 6.10 Where the amount payable to the Supplier for a supply of Goods and/or Services under or in connection with the Contract is based on the actual or reasonable costs incurred by the Supplier, the amount which the Supplier is entitled to be paid will be reduced by any input tax credits available to the Supplier, or Supplier's representative member, in respect of such costs.
- 6.11 The Supplier acknowledges and agrees that if a legislative requirement requires Auctus to deduct an amount in respect of withholding tax from a payment under the Contract such that the Supplier would not actually receive on the due date the full amount provided for under the Contract, then on the due date Auctus must pay:
- the relevant authority an amount equal to the amount deducted in accordance with applicable law and give the original receipt to the Supplier; and
  - the Supplier an amount equal to the deducted amount.
- 7. GST**
- 7.1 If GST is imposed on any supply made under the Contract by one party ("the supplying party") to another party ("the receiving party") and the consideration payable or to be provided for the supply under any other GC in the Contract is not expressed to be inclusive of GST, the receiving party must pay, in addition to and at the same time as any GST exclusive consideration is payable or to be provided for the supply, an additional amount calculated by multiplying the value of that GST exclusive consideration (without deduction or set off) by the prevailing GST rate.
- 7.2 The receiving party is not required to pay any amount of GST to the supplying party unless the supplying party has made demand for payment by means of a Valid Tax Invoice.
- 7.3 If the amount of GST recovered by the supplying party from the receiving party differs from the amount of GST payable at law by the supplying party in respect of the supply, the amount payable by the receiving party to the supplying party will be adjusted accordingly.
- 7.4 Where one party ("payer") is liable to reimburse another party ("payee") for any expenditure incurred by the payee ("Expenditure"), the amount reimbursed by the payer shall be the GST exclusive Expenditure plus any GST payable by the payer to the payee pursuant to GC 7.1.
- 8. INTELLECTUAL PROPERTY RIGHTS**
- 8.1 The Supplier agrees that all Intellectual Property Rights created or produced by providing the Goods and/or Services will be owned by Auctus.
- 8.2 The ownership of all Intellectual Property Rights owned by the Supplier and Auctus prior to commencing the Goods and/or Services will remain with the owner and the owner grants an irrevocable, transferable, royalty free and perpetual licence to the other party to use those rights for the purpose of performing the Goods and/or Services or using, copying or modifying the Deliverables.
- 8.3 The Supplier must do everything necessary to ensure that the use, copying or modifying of the Deliverables by Auctus does not infringe any rights, including Intellectual Property Rights, of another person or entity.
- 9. OBLIGATIONS**
- 9.1 The Supplier must ensure that:
- the Goods and/or Services will comply with the specifications in the Contract and any other specifications, requirements or instructions made known to the Supplier by Auctus;
  - the Goods and/or Services are of high quality, fit for purpose, and free from defects or computer viruses;
  - the Goods and/or Services are, and at the time that title passes to Auctus will be, free and clear of all liens and encumbrances;
  - the Goods and/or Services comply with all laws, rules or regulations in force at the time of performance;
  - the use, copying or modification of the Deliverables does not infringe any rights, including Intellectual Property Rights, of another person or entity;
  - in providing the Goods and/or Services, the Supplier:
    - informs itself of and complies with all applicable health, safety and environmental laws and regulations, as may be amended from time to time; and
    - complies with any safety, environmental or other policies, guidelines, procedures and requirements provided to the Supplier by Auctus; and
  - the Supplier provide the Goods and/or Services exercising the care, skill and diligence reasonably expected of a competent, professional supplier of goods and/or services similar to the Goods and/or Services.
- 9.2 The Supplier must ensure that Auctus receives the benefit of all warranties provided by the Supplier's subcontractors.
- 9.3 Auctus' rights and remedies in the Contract are cumulative and are not exclusive of any rights or remedies provided at law or otherwise.
- 9.4 Auctus' acceptance of the Goods and/or Services and Deliverables does not relieve the Supplier from any of the Supplier's warranties, obligations or liabilities under or in connection with this GC 9.
- 10. SITE**
- 10.1 This GC 10 applies in the event that any Goods and/or Services are to be performed on the Site.
- 10.2 Auctus must provide the Supplier with access to the Site as reasonably required for the proper performance of any Goods and/or Services. The Supplier acknowledges and agrees that it will not be given exclusive access to the Site.
- 10.3 Whilst on Site the Supplier and any of its employees, agents or subcontractors must:
- adhere to all applicable Site Rules and Regulations; and
  - not enter any area on the Site for which it does not have express permission or authorisation to enter; and
  - keep the Site free from all unnecessary obstructions and must at regular intervals remove any surplus materials, wreckage, rubbish or temporary works.
- 10.4 From the commencement of any Goods and/or Services on Site until completion of demobilisation at the Site, the Supplier must appoint a suitable person to act as the Site Manager. The Site Manager must personally supervise the performance of all Goods and/or Services and be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Goods and/or Services. Whenever the Site Manager is absent from the Site, a suitable person must be appointed to act as its deputy.
- 10.5 In respect of any Site visit, or prior to the performance of Goods and/or Services at the Site, the Supplier, its employees, agents and subcontractors must, in addition to the Supplier's own Site induction covering safety and other aspects of the Goods and/or Services, attend an Auctus Site induction covering safety and other aspects of the Site. The Supplier shall not be entitled to any additional costs above the Price for attending such safety inductions, unless otherwise agreed by Auctus in writing.
- 10.6 The Supplier must ensure that the working environment at the Site where the Goods and/or Services are to be performed is safe, without risks to the safety or health or exposure to hazards of its employees, subcontractors, suppliers, Auctus, any employee or other contractor of Auctus or any member of the public.
- 10.7 The Supplier must ensure that safe work practices are in place in relation to the performance of its (and its employees') duties at the Site where the Goods and/or Services are to be performed. The Supplier must record those work practices in documented work health and safety policies and procedures that include:
- organisation structure and responsibilities;
  - safe work practices; and
  - work health and safety training and induction, performance monitoring and auditing and inspection procedures.
- 10.8 Immediately following a health and safety occurrence or incident, the Supplier must notify Auctus of any accident, injury, loss or damage of any kind which occurs whilst Goods and/or Services are performed under the Contract.
- 10.9 When requested to do so by Auctus, the Supplier must give all other documents relevant to any health and safety incident and also authorise Auctus and its representatives or agents to conduct interviews with the Supplier's employees and contractors regarding all matters relevant to the incident.
- 10.10 The Supplier is responsible for industrial relations matters of its own workforce. Auctus must not interfere in the industrial and personnel matters of the Supplier but may give guidance and assistance where Auctus considers it necessary.
- 10.11 As between Auctus and the Supplier, valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the Site will be and remain the property of Auctus. Immediately upon the discovery of these items the Supplier must:
- take precautions to prevent their loss, removal or damage; and
  - give Auctus written notice of the discovery.
- 10.12 The Supplier's extra costs necessarily incurred in connection with GC 10.11, which may include an allowance for off-site overheads and profit, will be added to the Price.
- 11. INDEMNITY**
- 11.1 Subject to GC 11.2, the Supplier must indemnify and keep Auctus, Auctus' directors, employees and agents

## PURCHASE ORDER CONDITIONS

- indemnified from and against all losses, claims, liabilities and expenses (including legal and other professional fees and expenses) arising out of injury or death to any person or damage to or destruction of any of Auctus' property, whether caused directly or indirectly out of performance of work under the Contract by the Supplier.
- 11.2 The indemnity provided in GC 11.1 does not apply to the extent that the injury, death, damage, destruction or loss is the result of Auctus' negligence or actions.
- 12. INSURANCE**
- 12.1 The Supplier must at its own expense procure and maintain for the duration of the Contract the following insurances with reputable insurers with a security rating of A- or better:
- (a) workers' compensation insurance covering liability arising out of death of or injury to persons employed (or deemed to be employed) by the Supplier in connection with the Supplier's supply and performance of the Goods and/or Services (including liability under any applicable workers compensation legislation and at common law). The workers' compensation insurance policy must comply with all statutory requirements and provide for a common law liability to a limit of not less than the amount set out in the PO;
  - (b) comprehensive motor vehicle insurance in respect of all vehicles owned, operated, leased, hired, or controlled by the Supplier or its employees, subcontractors or agents, registered or required to be registered in accordance with any applicable law which are used (or to be used) on any road at any time in connection with the Supplier's supply and performance of the Goods and/or Services. The motor vehicle insurance policy must provide cover for material damage to all vehicles for not less than their market value and include a principal's indemnity extension indemnifying Auctus and coverage for liability in respect of third party property damage or personal injury to a minimum limit as set out in the PO;
  - (c) public and products liability insurance covering legal liability to pay compensation for bodily injury, death, sickness or disease to any person and loss, destruction or damage to real or personal property (including resultant loss of use), arising directly or indirectly from the Supplier's supply and performance of the Goods and/or Services. The public and products liability policy must:
    - i. include a minimum policy limit of as set out in the PO;
    - ii. include a principal's indemnity extension indemnifying Auctus, their Related Body Corporates and their respective employees;
    - iii. include a cross liability clause which confirms insurers accept the term "Insured" as applying to each of the parties constituting the Insured as if a separate policy of insurance had been issued to each of them (subject always to the overall limit of liability not being increased) and that a failure by any Insured party to observe and fulfil the terms and conditions of the policy will not prejudice the rights of any other Insured party to claim under the policy;
    - iv. extend to cover goods in the physical and legal control of the Supplier; and
    - v. extend to cover liability in respect of third party property damage or personal injury arising from the use of unregistered plant and equipment;
- (d) if stated in the PO, professional indemnity insurance covering liability arising from an act, error or omission of the Supplier (or any person engaged by the Supplier) in relation to the performance of professional activities, services and duties in connection with the Services. The professional indemnity insurance policy must include:
  - i. a minimum policy limit as set out in the PO arising from the same event or related and similar events;
  - ii. an automatic reinstatement of the policy limit;
  - iii. Include an 'unlimited' retroactive date; and
- (e) the Supplier must effect and maintain any insurance which is required by Law where the Supplier performs the Services.
- 12.2 On or before the date of the Contract, the Supplier shall satisfy Auctus that each of the insurances it is required to procure and maintain under GC 12.1 is current by providing Auctus with certificates of currency in a form acceptable to Auctus.
- 12.3 The Supplier must not do or omit to do or pursue any act or allow any omission or permit, or suffer any circumstance by which the insurances required to be procured and maintained by the Supplier under GC 12.1 may at any time become void or voidable, and the Supplier must at all times and at its own expense comply with the conditions of the insurance policies and the requirements of the insurers so as to prevent the invalidation of the insurance policies or the prejudice of the rights of any of the insured under the insurance policies.
- 12.4 The effecting and keeping in force of any insurance by Auctus or the Supplier will not in any way limit the obligations or responsibilities of the Supplier under the Contract, at law or otherwise.
- 13. CONFIDENTIALITY**
- 13.1 The Supplier must treat all information, data and materials provided by Auctus as confidential and must not disclose it to any third party without Auctus' prior written consent or use it for any purpose other than for provision of the Goods and/or Services.
- 13.2 Upon termination or expiry of the Contract and/or upon Auctus' request, the Supplier must return or, at Auctus' option, destroy all such information and provide evidence of such destruction.
- 14. GENERAL**
- 14.1 The Supplier must not assign or novate the Contract or subcontract the performance of all or part of the Goods and/or Services without Auctus' prior written consent.
- 14.2 Subject to GC 6.3, all notices must be in writing, addressed to Auctus or the Supplier as appropriate, and delivered to the address and/or sent to the facsimile number of the recipient as shown on the PO, or any other address notified in writing by one party to the other and delivered personally or by facsimile transmission.
- 14.3 A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.
- 14.4 A letter or facsimile is deemed to be received:
  - (a) in the case of a posted letter, 3 days after posting (5 days in the case of a letter sent by airmail); and
  - (b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.
- 14.5 If any provision in these Conditions is invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions.
- 14.6 To the extent of any inconsistency between the documents forming the Contract, then the order of precedence is:
  - (a) the PO; and
  - (b) the Conditions.
- 14.7 The Contract may not be varied except in writing signed by a duly authorised representative of each of the parties.
- 14.8 The parties are not entitled to recover any amount representing any kind of indirect or consequential loss or damage including loss of profit, loss of use, loss of contracts, loss of revenue or contribution to head office overheads arising out of or in connection with this Contract.
- 14.9 The Supplier is an independent contractor in relation to the Contract and the Goods and/or Services and not Auctus' employee. This Contract does not create a partnership, joint venture or agency relationship between the parties.
- 14.10 GCs 6.7, 7, 8, 9, 10.9, 11, 12, 13 and 14 will survive any termination or expiry of the Contract.
- 14.11 The Contract is governed by the laws of Western Australia and the parties agree to submit to the exclusive jurisdiction of the courts of Western Australia.