

## PURCHASE ORDER TERMS AND CONDITIONS

### 1. PURCHASE ORDER TERMS

These Terms and Conditions apply to each Purchase Order issued by the Company. The Supplier will be deemed to have accepted these Terms and Conditions by proceeding with the supply of Goods or Services, or by confirming its acceptance. The parties agree that any reference to the Supplier's terms on any quote, invoice or other document, shall not import those terms into the Contract unless the Company expressly agrees otherwise in writing. Where additional terms or conditions do apply, these Terms and Conditions shall prevail in case of any inconsistency.

### 2. PRECEDENCE

The Purchase Order prevails to the extent of any inconsistency with these Terms and Conditions.

### 3. GOODS AND SERVICES

The Supplier will ensure that the Goods and Services are (where applicable):

- (a) transported or performed to a high standard in accordance with industry best practice;
- (b) safe, durable, free from defects and fit for purpose;
- (c) compliant with all applicable Australian laws and standards and not damaged at time of delivery;
- (d) delivered strictly in accordance with the specifications and timeframe referred to in the Contract;
- (e) delivered in a manner that does not interfere with the Company's activities or the activities of any third party;
- (f) are supplied in compliance with all reasonable directions and orders given by or on behalf of the Company to the Supplier or its personnel.

### 4. INSPECTION

Goods and Services are subject to inspection, test and approval by the Company, notwithstanding any prior acceptance, payment or inspection. The Company may, without limiting any other rights it may have, reject any Goods or Services which contain defective design, workmanship or materials, do not conform to the specifications in the Purchase Order, have not been ordered or are in breach of this Contract. Rejected Goods or Services must be returned or remedied at the Supplier's risk and expense in all things.

### 5. PRICE

In consideration of the due and proper performance of this Contract by the Supplier, the Company will pay to the Supplier the price stated in the Purchase Order. Unless expressly provided otherwise, the price stated is:

- (a) fixed and not subject to adjustment for any reason whatsoever; and

- (b) inclusive of all costs including (but not limited to) the cost of any miscellaneous, associated or necessary services of a kind which are commonly provided with the supply of Goods and Services of the same or similar nature or services necessary to comply with the Supplier's obligations under this Contract.

### 6. PAYMENT

- (a) The Supplier must claim payment for the supply of the Goods and Services by submitting tax invoices, which must contain sufficient detail to enable the Company to easily identify the Goods and Services supplied (**Payment Claim**).
- (b) Each Payment Claim must comply with the requirements in subclause 6(a) and must be made within 30 days of the supply of the Goods and Services.
- (c) Payments will be made within 25 business days of receipt of a correctly rendered Payment Claim. The Company may in its discretion pay sole traders at an earlier date.
- (d) If the Company disputes a Payment Claim:
  - (i) a payment schedule will be provided to the Supplier within 15 Business Days of receipt of the Payment Claim, identifying the amount the Company will pay (**Assessed Amount**) and any reasons for non-payment (**Reasons**);
  - (ii) payment of any Assessed Amount Payment Claim will be made within 25 Business Days of receipt of receipt of the Payment Claim.
- (e) Where any Reasons include that the Company is asserting a right to withhold payment (or part of the payment), the Reasons must identify why the Company is withholding payment, which may include any right to deduct or set off.
- (f) The Company is not be liable to pay for any Goods and Services until they have been supplied in accordance with the Contract.
- (g) Without prejudice to any other rights, the Company may deduct from or set off against any monies which may be, or become, payable to the Supplier against any amount owing from the Supplier to the Company for any reason, whether in connection with this Contract or otherwise.

### 7. RISK AND TITLE

Risk in the Goods passes to the Company upon delivery. Title to the Goods passes to the Company upon the earlier of payment or delivery.

### 8. WARRANTIES

The Supplier represents and warrants that:

# Purchase Order Terms and Conditions

- (a) the Goods and the Services will be supplied in an efficient manner in accordance with all applicable laws, regulations, codes and standards;
- (b) the Supplier's personnel will be appropriately qualified and will exercise the standards of diligence, due care and skill normally exercised by a prudent and similarly qualified and competent supplier supplying equivalent goods and services; and
- (c) all Goods are completely owned by the Supplier and will be supplied to the Company free of any interests, liens, charges or encumbrances and no interest shall be registered under the PPSA.

## 9. LIABILITY AND INDEMNITY

- (a) The Supplier indemnifies and will keep indemnified and holds the Company harmless against all Loss, and hereby releases and will release the Company from any action arising directly or indirectly out of the supply of the Goods and the Services, except to the extent caused or contributed to by any wrongful act or omission of the Company. The Company is not liable for any consequential or indirect loss.
- (b) The rights and obligations under clauses 8 and 9 survive termination of the Contract.

## 10. CANCELLATION AND TERMINATION

- (a) The Company may, by 20 days' written notice to the Supplier, cancel the Purchase Order for its convenience. If the Company terminates the Contract under this clause 10(a), the Supplier is entitled to payment for the Services and Goods completed and supplied up to the date of termination prior to cancellation, reasonable compensation for costs relating to any partially completed Services or Goods, which the Supplier cannot recoup, and for any other costs reasonably incurred by the Supplier in anticipation of completion of its obligations under this Contract. The Supplier shall not be entitled to any further payment or compensation arising from such termination.
- (b) The Company may by written notice to the Supplier immediately terminate the Contract or reduce the scope of the Goods and Service if the Supplier materially breaches the Contract, or if the Supplier commits any act of bankruptcy or insolvency, deemed or actual.
- (c) The right to terminate this Contract pursuant to clause 10(a) or 10(b) is subject to any restrictions on their enforcement under Part 5.1, Part 5.2, or Division 17 of Part 5.3A Corporations Act 2001 (Cth).

- (d) Termination of this Contract pursuant to clause 10(a) or 10(b) does not affect or prejudice any rights of the Company that have accrued before the termination.
- (e) The Supplier may terminate the Contract if the Company commits a material breach of this agreement and does not remedy that breach within 20 Business Days of receiving a notice setting out the alleged breach.

## 11. INSURANCE

The Supplier must at any time it has obligations in connection with the supply of the Goods and Services effect and maintain all necessary insurance to cover for all risks arising out of the performance of its obligations under the Contract.

## 12. GENERAL

- (a) **Entire Agreement:** The Contract comprises the entire agreement between the parties in respect of its subject matter and supersedes all prior negotiations, representations or agreements of any kind.
- (b) **Time:** Time is of the essence with respect to the Supplier's obligations in this Contract.
- (c) **Severance:** If any provision of the Contract is determined to be void by any Court then that determination does not affect any other provision of the Contract.
- (d) **Waiver:** A waiver by the Company is only effective if it is in writing, signed by the Company.
- (e) **Variations:** An amendment or variation to the Contract is not effective unless it is in writing and signed by the Company prior to the supply of additional or varied Goods and Services.
- (f) **Assignment:** The Supplier must not assign the Contract or any part of the Supplier's obligations under the Contract without the prior written consent of the Company, which must not be unreasonably withheld.
- (g) **Governing Law:** The Contract is governed by and is to be interpreted in accordance with the laws in force in Western Australia.

## 13. DEFINITIONS

In these Terms and Conditions:

**Business Day** means a day other than a Saturday, Sunday or public holiday in Western Australia, or any other day that falls between 22 December in any year and 10 January in the following year (inclusive).

**Company** means Kais Hire Pty Ltd (ACN 626 783 613) as trustee for the Kais Hire Trust (ABN 29 116 014 851).

**Contract** means the Purchase Order, these Terms and Conditions and special conditions, if any.

# Purchase Order Terms and Conditions

**Goods** means the goods (if any) specified in the Purchase Order including, without limitation, manuals, operating instructions, reports and drawings.

**Loss** means any loss, damage, expense, payment or liability, whether direct or indirect, and includes consequential loss, damage or expense (including but not limited to loss of profit or revenue, loss of market or loss of contracts or damage to commercial reputation).

**Purchase Order** means the written order provided by the Company for the supply of the Goods and the Services.

**Services** means the services (if any) specified in the Purchase Order and includes all necessary incidental services.

**Supplier** means the supplier of the Services and Goods.

**Terms and Conditions** means these terms and conditions.

Kais Hire