

DIVERSE GROUP AUSTRALIA PTY LTD

STANDARD TERMS AND CONDITIONS OF SUPPLY

1. DEFINITIONS

In these conditions:

DGA means Diverse Group Australia Pty Ltd (ABN 33 146 840 780);

Client means the Client named in the Tender Document;

Commencement Date is the date specified for commencement of Services by DGA in the Tender Document or any subsequent Purchase Order or Subcontract issued by the Client.

Completion Date is the date specified for practical completion of Services by DGA in the Tender Document or any subsequent Purchase Order or Subcontract issued by the Client.

Head Contract means any Purchase Order or Subcontract between the Client and Principal for which the Client has been contracted to provide goods or supply services to the Principal.

Loss includes but is not limited to any damage, loss (including loss of profit, loss of expected or anticipated profit, change of share price, loss of business, and loss of customers or customer losses), liability (including any fine or penalty), cost, claim, charge, expense, outgoing or payment (whether direct or indirect, unforeseeable, remote, abnormal, consequential or incidental (including revenue loss and pure economic loss) present or future, fixed or unascertained, actual or contingent) and whether arising under contract, in equity, under statute, in tort or otherwise.

Parties mean the Client and DGA.

Tender Document means the Tender Document which these conditions are attached;

PPSA means the Personal Property Securities Act 2009 and subsequent amendments enacted thereto.

Purchase Order means the Client's Purchase Order setting out the Services required from DGA.

Services mean the services ordered by the Client and referred to in their Purchase Order and / or Subcontract.

Site means the Client's premises or the Principal's premises or any other place designated by the Client or the Principal for the performance of Services as set out in the in the Tender Document or any subsequent Purchase Order or Subcontract issued by the Client.

2. LEGALLY BINDING AGREEMENT

- 2.1 The acceptance of the Tender Document or subsequent issue of a Purchase Order or Subcontract by the Client (pertaining to the scope of work tendered) will create a legally binding contract between the DGA and the Client to supply the Services set out in the Purchase Order or Subcontract and set out in these conditions.
- 2.2 These conditions set out in this Agreement will prevail over any terms or conditions submitted by the Client (including any references to any Head Contract) unless DGA notifies the Client in writing that it agrees to accept the Client's terms.

3. SUPPLY OF SERVICES

DGA agrees to supply the Services to the Client at the agreed purchase price or rates and subject to additional variations for allowances set out in these conditions.

4. TENDER NON-CONFORMANCE AND CLARIFICATION SCHEDULE

Where a Tender Non-Conformance and Clarification Schedule is issued to the Client for reading in conjunction with the Tender Document, any and all amendments to the Tender Documents agreed between DGA and the Client will be incorporated into the Purchase Order and / or Subcontract with the Client. It is hereby assumed failing notification and/or upon receipt of an order to proceed that the enclosed conditions are accepted in whole and have been incorporated to form part of the Subcontract.

5. NATURE OF RELATIONSHIP

The relationship between the Client and DGA in relation to the Tender Document or subsequent issue of a Purchase Order or Subcontract by the Client is that of principal and independent contractor and not that of employer and employee. Nothing in the Tender Document or subsequent issue of a Purchase Order or Subcontract by the Client shall be construed to create a relationship of employment, agency or partnership between DGA and the Client.

DGA does not have any authority to act for or on behalf of the Client or to bind it without its express written consent, and shall not hold out that it does have the authority of the Client.

6. FORCE MAJEURE

No allowance has been made in the Tender Document for inclement weather, cyclones or any other matters which may result in works being temporarily stopped due to unforeseen circumstances (force majeure).

Definition

An event of force majeure is an event or circumstance which is beyond the control and without the fault or negligence of the party affected and which by the exercise of reasonable diligence the party affected was unable to prevent provided that event or circumstance is limited to the following:

- (a) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution,

insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority

- (b) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component
- (c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds
- (d) earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions regardless of severity
- (e) strikes at national level or industrial disputes at a national level, or strike or industrial disputes by labour not employed by the affected party, its subcontractors or its suppliers and which affect an essential portion of the works but excluding any industrial dispute which is specific to the performance of the works or this contract.

Any operating restrictions resultant from the aforementioned conditions or the effect of such which may render the site inaccessible will be recorded via a DGA generated Contract Variation Instruction and authorised by the Client within 24 hours of issue. Such time is to be recorded as stand down/by time consequential of such conditions and included within our application for payment based on our standard standby rates enclosed within our tender submission. The recovery of both labour and plant costs for the duration of the stoppage are to be deemed as allowed for in the above paragraph and site issued documentation.

7. INDUSTRIAL ACTION

Any delays/stoppage to the works progress subsequent of both national or site specific union actions will be recorded and identified in our application for payment as an industrial incident of unrest whereby, we will require reimbursement for all stand down/by labour and equipment production time by the form of a recorded and authorised variation notice, being identified as stand down time for the duration of the industrial action taken. Payment to be based on DGA's applicable rates enclosed within our tender submission.

8. LIQUIDATED DAMAGES

If DGA fails to complete the Services by the agreed Completion Date or within the extended time granted or allowed by the Client, then unless such failure is due to a cause for which the Client is solely responsible (which will be determined by the Client) the Client's sole remedy is the payment of Liquidated Damages from DGA for each and every day or part of a day during which the Services remain incomplete after the agreed completion date.

The Client and DGA agree that Liquidated Damages are fixed and capped at \$100 per day and that this sum is a genuine and reasonable pre-estimate of the Loss resulting from the delay in completion of the Services. All sums so payable as a result of the DGA's failure to complete the Services by the agreed Completion Date will be recoverable by the Client as liquidated damages or may be deducted by the

Client from any monies due or becoming due to DGA and the right to such payment will not be waived except in writing by the Client.

9. DEFECTS LIABILITY PERIOD

All defects discovered before or during a Defects Liability Period will be rectified by DGA.

The Defects Liability Period starts on the earlier of (i) the Completion Date of the Services set out in the Tender Document or Purchase Order or Subcontract and (ii) demobilisation of DGA personnel from the site(s) where the Services have been provided; and ends on the expiration of the defects liability period of 12 months from the start date defined above

10. DELAYS

Where a delay to site access, non-delivery of materials and consumables to the relevant laydown site or non-issue of approved construction drawings by required delivery times occurs in relation to timelines set out in Tender Document or Purchase Order or Subcontract, both Parties agree this will constitute a commensurate variation to the contract sum for time and costs.

11. INSURANCE

11.1 DGA will, at its own expense, procure and maintain or caused to be procured and maintained the following minimum insurances:

- (a) public and products liability insurance written on an occurrence basis with a limit of indemnity of not less than \$10,000,000 for each and every occurrence and, in the case of product liability, no less than \$10,000,000 in the aggregate during any 12 month period of insurance which covers the liability of the Client in respect of:
 - (i) bodily injury to any third party; and
 - (ii) third party property damage.
- (b) motor vehicle insurance, covering all mechanically propelled vehicles that are registered or capable of being registered, for road use and are at any time used in connection with provision of the Services including, as a minimum:
 - (i) insurance that is compulsory under any Australian statute, ordinance, regulation, or by-law, and includes any licenses, permits and consents necessary for DGA to supply the Services governing the use of motor vehicles and liability for personal injury or death; and
 - (ii) liability insurance for third party property damage with a sum insured of not less than \$20,000,000 per occurrence; and
- (c) workers compensation insurance as required by law.

11.2 Duration of insurances

DGA will ensure that each policy of insurance is in force prior to the Commencement Date of the Services and is maintained until the Completion Date or earlier termination of the Services being provided by DGA.

11.3 Insurers and terms and conditions

DGA will ensure that any insurance required to be taken out under this clause (other than statutory insurances) is effected with reputable insurers with a financial security rating of A- or better by Standard & Poor or the equivalent rating with another recognised agency.

11.4 Certificates of currency

DGA will provide certificates of currency as and when requested.

12. LIABILITY AND INDEMNITIES

12.1 Site

DGA acknowledges that if it enters the Site it does so to the extent permitted by law at its own risk.

12.2 Indemnity

DGA will be liable for, and will indemnify and keep the Client (its affiliates, officers, subcontractors and other service providers, agents and employees) indemnified from and against any Loss from:

- (a) any breach by DGA of any warranty or any of the other terms and conditions of this Agreement;
- (b) any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused or contributed to by the Services and the performance or non-performance of any services by DGA under this Agreement;
- (c) any negligence or wilful act or omission by DGA in connection with the performance of the its obligations under this Agreement;
- (d) any claim made against the Client by or on behalf of any of DGA's personnel, or by any government or regulatory authorities, in respect of any relevant legislation concerning pay-roll tax, remuneration, income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal;
- (e) any penalty imposed for breach of any Australian statute, ordinance, regulation, or by-law, and includes any licenses, permits and consents necessary for the Service Provider to supply the Services in connection with the performance of DGA's obligations under this Agreement; and

- (f) any claim that the Services, anything DGA does in supplying the Client with the Services or providing the Client with any services, or the Client's use of the Services infringes or allegedly infringes the Intellectual Property Rights of any person,

except where such Loss is caused (directly or indirectly) by any negligence or wilful act or omission by the Client or its contractors other than DGA, in which case DGA's liability and obligation to indemnify shall reduce and be extinguished to the extent the Client or its contractors other than DGA caused such Loss directly or indirectly.

12.3 Indemnity

The Client will be liable for, and will indemnify and keep DGA (its affiliates, officers, subcontractors, agents and employees) indemnified from and against any Loss from:

- (a) any breach by the Client of any warranty or any of the other terms and conditions of this Agreement;
- (b) any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused or contributed to by the Client or its contractors other than DGA or the performance or non-performance by the Client of its obligations under this Agreement;
- (c) any negligence or wilful act or omission by the Client or its contractors other than DGA in connection with the performance of the Client's obligations under this Agreement; and
- (d) any penalty imposed for breach of any Australian statute, ordinance, regulation, or by-law, and includes any licenses, permits and consents necessary for DGA to supply the Services in connection with the performance of the Client's obligations under this Agreement,

except where such Loss is caused (directly or indirectly) by any negligence or wilful act or omission by DGA, in which case the Client's liability and obligation to indemnify shall reduce and be extinguished to the extent DGA caused such Loss directly or indirectly.

12.4 Continuing obligation

Each indemnity in this Agreement is a continuing obligation separate and independent from DGA and the Client's other obligations and survives termination of this Agreement.

13. TITLE TO GOODS

All materials delivered to site by DGA will remain the property of DGA until fully incorporated into the works or paid for in full. All materials delivered will not necessarily be wholly for the Services being provided, surplus material on completion of the Services remains to be the property of DGA and will be removed from site on demobilisation. All materials delivered to site which are to be incorporated into the Services will be included in full within the DGA progress payment claims, be it as forming part of the completed works or as a material on site

claim. Where works don't facilitate a stage claim process DGA reserve the right to make a claim for materials upon their delivery to site.

14. PPSA

All equipment delivered to site by DGA for the undertaking of awarded works will under all circumstances remain the property of DGA. The Client does not have any proprietary, legal, equitable interest or title in any equipment supplied by DGA in carrying out the services under these terms under the PPSA.

The Client will ensure that DGA have full and safe access to that equipment at all times for the undertaking of operations or for removal from site.

In the event that the enforcement of the PPSA (arising from plant and equipment delivered to site by DGA being on site) results in DGA's plant and equipment being encumbered for any period, the Client agrees to indemnify DGA for any Loss suffered by DGA.

15. PAYMENT TERMS

DGA's payment terms are 30 days from the date of DGA's invoice.

16. LATE PAYMENT

DGA reserves the right to invoice the Client an interest charge on all outstanding amounts or part thereof on invoices over 30 days. The Client agrees to pay the interest charge which will be calculated:

- (a) from the due date to the last month of actual payment of the outstanding amount; and
- (b) on a daily basis by reference to the Australia Bank Bill Swap Rate (as advertised in the Australian Financial Review) plus 4%.

An Administration Fee of \$30.00 per month will also be applied to each outstanding invoice.

17. VARIATIONS IN WRITING

Any variation will only be effective if they are agreed in writing and will only bind DGA if they are agreed by DGA's Chief Executive Officer or Chief Operating Officer.

18. DISPUTE RESOLUTION

- 18.1 Until the Parties have complied with this clause 18, a Party must not commence any action, bring any proceedings or seek any relief or remedy in a court, except seeking interlocutory or equitable relief from a court.
- 18.2 Where any dispute arises, a Party may give notice in writing of the dispute to the other Party's nominated Dispute Resolution Representative setting out the material particulars of the dispute. The Representatives must act in good faith to try to resolve the dispute quickly.
- 18.3 If the Parties have not:
- (a) resolved the dispute; or
 - (b) agreed to an alternative method of resolving the dispute,
- within 14 days after the dispute is referred to the Dispute Resolution Representatives (or any longer period the Dispute Resolution Representatives agree), either Party may submit the dispute to mediation.
- 18.4 If the dispute is submitted to mediation and the Parties do not, within 14 days (or any longer period the Parties agree) after the dispute is submitted to mediation, agree on:
- (a) a mediator and the mediator's compensation;
 - (b) the procedure for the mediation; or
 - (c) the timetable of each step of the procedure,
- the mediation will be conducted in accordance with the Australian Commercial Dispute Centre's Mediation Guidelines in force at the time that the Dispute is referred.
- 18.5 If a dispute is not resolved within 30 days after the Dispute Notice or, where a Party has submitted the dispute to mediation, 60 days after the Dispute Notice (or any longer period the Parties agree), either Party who has complied with this clause 28 may end this dispute resolution process and commence court proceedings in relation to the dispute.
- 18.6 These conditions and the Contract between the Client and DGA are governed by the laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the Courts of Western Australia.

19. NOTICES

Notices under these conditions must be given in writing and may be given by post; facsimile or email. Notice shall be given to one of the following:

- (a) as specified in the Purchase Order;
- (b) any address, facsimile number or email with which the Parties have used to communicate prior to or after the Purchase Order has been accepted; or

- (c) if there is not data relevant for the purposes of (a) or (b), to the principal place of business of the relevant party and the facsimile number or email published by it as the point of contact for making orders.