

## Terms and Conditions of Supply to Keyton by the Supplier

### 1. General

- 1.1. Subject to clause 1.3, these Terms and Conditions apply to the supply of Goods, provision of Services and performance of Works for Keyton, pursuant to the above Keyton Purchase Order and the entire agreement between Keyton and the Supplier for the supply of Goods, provision of Services and performance of Works for Keyton is constituted by the Purchase Order, these Terms and Conditions and any other documents identified in the Purchase Order as forming part of this Agreement (together, this "Agreement"). No shipment or delivery docket, invoice or other terms of contract issued by or on behalf of the Supplier (including the terms on any pre-printed purchase order form, any warranty or maintenance terms or licence terms) will vary or form part of this Agreement.
- 1.2. If a conflict exists between these Terms and Conditions and the Purchase Order or any other document identified in the Purchase Order as forming part of this Agreement, then these Terms and Conditions will prevail.
- 1.3. These Terms and Conditions and this Agreement do not apply to the extent both parties sign a written contract which expressly replaces this Agreement.

### 2. Provision of Goods, Services and/or Works

- 2.1. The Supplier agrees to perform, supply, provide, deliver and/or carry out (**Provide**) at or to the Delivery/Service Address/ Village / Office identified in this Agreement, the Goods / Services / Works as described in the above Purchase Order.
- 2.2. If the Purchase Order or any other document identified in the Purchase Order as forming part of this Agreement is ambiguous, contains errors, incorrect descriptions of the Goods / Services / Works or inconsistencies in pricing, the Supplier must inform Keyton immediately and prior to the fulfilment of the Purchase Order.
- 2.3. The Supplier must comply with any reasonable instructions, guidelines, policies or codes of conduct notified to the Supplier at the time the Purchase Order is issued.
- 2.4. The Supplier agrees to Provide the Goods / Services / Works:
  - a) with a degree of skill, care and diligence expected of a competent and skilled supplier experienced in Providing the Goods / Services / Works;
  - b) free from encumbrances and in accordance with all legislative requirements (including regulations), technical standards and industry best practice;
  - c) in a thorough, careful and expeditious manner and in accordance with any timing requirements set out in the Purchase Order or advised by the Keyton Contact in writing; and
  - d) such that any Goods / Services / Works the Supplier Provides are fit for intended purpose and of merchantable quality.

At all times when the Supplier is Providing the Goods / Services / Works, the Supplier must ensure the safety of employees, contractors, subcontractors and agents (**Personnel**) of the Supplier, Keyton's Personnel and residents.
- 2.5. If the Supplier receives written approval by Keyton to engage subcontractors to Provide the Goods / Services / Works, the Supplier agrees to include appropriate flow down clauses in the Supplier's subcontract agreements to ensure compliance and adherence to this Agreement, except where restricted by applicable legislative requirements.
- 2.6. The Supplier will not make any substitutions to the Provision of Goods / Services / Works Provided unless:
  - a) The substitution is formally proposed in writing to Keyton; and
  - b) The substitution is accepted in writing by Keyton.
- 2.7. Keyton may require the Supplier to resupply Goods / Services / Works which do not comply with this Agreement or are otherwise unsatisfactory (at no additional cost to Keyton).

### 3. Late Delivery

- 3.1. If the Supplier becomes aware that the Supplier will not be able to meet the any timing requirements of this Agreement, the Supplier must notify the Keyton Contact immediately.

### 4. Quality Maintenance and Assurance

- 4.1. The Supplier must maintain quality assurance procedures to monitor the quality of Goods / Services / Works Provided. Keyton's comment upon or inspection or other review (if any) of the Goods / Services / Works as they are being Provided does not relieve the Supplier of the Supplier's obligations under this Agreement.
- 4.2. The Supplier must, on request, give to the Keyton Contact an up-to-date copy of any relevant certification, accreditation, licenses or registration details which relate to the Supplier's Provision of Goods / Services / Works under this Agreement.

### 5. Title, Risk of Loss and Insurance

- 5.1. Where the Purchase Order includes Provision of Goods whether on their own or as part of Services or Works:

- a) All risk in the Goods shall remain with the Supplier until such time as completion of Provision of the Goods
  - b) Title in the Goods shall pass to Keyton on the first to occur of:
    - i. Delivery in accordance with this Agreement; or
    - ii. Payment of the invoice related to this Agreement.
- 5.2. Where title passes to Keyton prior to the Provision of Goods / Services / Works, the Supplier must store any such Goods in a separate and secure area, clearly identifying them as Keyton's property.
  - 5.3. The Supplier must as a minimum maintain the following policies for the term of this Agreement on terms as expected of a supplier Providing the Goods/Services/Works as applicable. This includes:
    - a) Public Liability, Product Liability and/or Professional Indemnity insurance:
      - i. for an insured amount not less than \$10 million per incident (and in the aggregate for Product liability only); and
      - ii. which covers Keyton, its Personnel, the Supplier and its Personnel, against any liability to any party arising out of or in connection with this Agreement.
    - b) Workers Compensation Insurance in the amount required by law covering the Supplier for any claim against the Supplier by any person employed by the Supplier who is involved in the Provision of the Goods / Services / Works.

### 6. Receipt of Goods

- 6.1. Upon Provision of the Goods / Services / Works, Keyton may verify whether the Provided Goods / Services / Works (including interim stages) are:
  - a) in accordance with the order placed;
  - b) of acceptable quality;
  - c) damaged, and whether the packaging of Goods is damaged; and
  - d) completed to an acceptable standard and to Keyton's satisfaction.
- 6.2. Any non-compliant or otherwise unacceptable Goods may be returned to the Supplier at the Supplier's cost (unless Keyton directs the Supplier to collect them at the Supplier's cost).
- 6.3. Any Services / Works Provided which are non-compliant or otherwise of unacceptable standard, must be remediated at the Supplier's cost.

### 7. Invoicing and Goods and Services Tax (GST)

- 7.1. Unless otherwise specified, the price stated on the Purchase Order in respect to Goods / Services / Works to be Provided:
  - a) Is inclusive of GST and any other taxes, duties or levies; and
  - b) is inclusive of all delivery, shipping and/or handling charges.
- 7.2. Keyton reserves the right to review and verify all invoices to ensure the Supplier's invoices reflect:
  - a) the Purchase Order;
  - b) the Goods / Services / Works Provided in accordance with this Agreement;
  - c) any non-conformances, breakages or damage; and
  - d) the agreed price as specified in the Purchase Order.
- 7.3. Invoices must be submitted in accordance to the instructions specified on the Purchase Order, within 60 days of Providing the Goods / Services / Works.
- 7.4. All undisputed payments will be made within 30 days of Keyton receiving an invoice for the Goods / Services / Works Provided or within such shorter period specified as mandatory by law.
- 7.5. If the invoice is incorrect or shows a discrepancy, Keyton will make payment within 30 days of receiving the corrected invoice.
- 7.6. Keyton may set off against any monies Keyton owe the Supplier any amounts that Keyton (acting reasonably) claims are owing by the Supplier.
- 7.7. Terms used in this clause that are defined in *A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Act)* take their meaning from the GST Act.
- 7.8. To the extent GST is payable on a supply made under this Agreement, Keyton will pay the Supplier the GST payable on the supply.
- 7.9. Notwithstanding any other provision, Keyton need not pay the GST amount until Keyton has received a tax invoice or adjustment note from the Supplier, as the case may be.
- 7.10. If the GST amount paid by Keyton to the Supplier includes an amount of "excess GST" (as defined in section 142-10 of the GST Act) then, within 10 business days of the Supplier becoming aware of the excess GST, the Supplier must:
  - a) issue an adjustment note to Keyton for the relevant supply or arrangement; and
  - b) reimburse Keyton an amount equal to the excess GST.

### 8. Termination

- 8.1. Keyton may terminate this Agreement immediately by written notice to the Supplier, if the Supplier breaches a provision of this Agreement and fails to remedy the breach within 7 days of receiving a notice from Keyton specifying the breach and the action required to remedy it.
- 8.2. Notwithstanding clause 8.1, Keyton may terminate this Agreement without cause by providing 30 days' written notice to the Supplier. Where the Supplier receives such notice, the Supplier will cease work as specified in the notice

and take all available steps to minimise loss arising from the termination. Keyton will only be liable for any reasonable costs (excluding, without limitation, loss of profits), unavoidably incurred by the Supplier and directly attributable to the termination.

## 9. Environmental, Health and Safety

9.1. In these Terms and Conditions:

- a) **Environment and Health and Safety Legislation** means all Acts, Regulations and codes of practice relating to the environment, or work health and safety which apply in the state in which the Goods / Services/ Works will be Provided.

9.2. The Supplier must comply and ensure that all of the Supplier's Personnel comply with the Keyton Supplier Code of Conduct and do all things necessary to ensure that the standards set out in the Keyton Supplier Code of Conduct are followed and observed in the Provision of the Goods / Services / Works. 'Supplier Code of Conduct' means Keyton's supplier code of conduct which can be accessed on Keyton's website at <https://keyton.com.au/home/supplier-code-of-conduct>, or if not available online shall be made available by Keyton upon request.

9.3. The Supplier must comply, and ensure that all of the Supplier's Personnel comply, with applicable Environment and Health and Safety Legislation and all of Keyton's applicable environmental, health and safety policies and procedures and do all things necessary to ensure that all requirements are followed and observed in the provision of the Goods / Services / Works.

9.4. The Supplier and all of the Supplier's Personnel must be inducted onto the Delivery/Service Address/ Village / Office, prior to commencement of any Works and sign-in at arrival to the Delivery/Service Address/ Village / Office. If, at the induction or sign-in, any Village / Office / Site Rules applicable to the Delivery/Service Address/ Village / Office are provided, the Supplier and the Supplier's Personnel must comply with the Village / Office / Site Rules.

9.5. Keyton may request that the Supplier provide to Keyton evidence that all of the Supplier's Personnel that may at any time attend a Delivery/Service Address/ Village / Office have been subject to and cleared a security and national police background check.

9.6. If the Supplier provides labour hire to work under the direction of Keyton, the Supplier confirms that labour supplied is competent and licensed where required to undertake the work they have been supplied to undertake, and have been instructed to comply with all safety instructions issued by Keyton at all times.

## 10. Warranties

10.1. The Supplier warrants that:

- a) all representations, warranties, declarations and information provided in writing or verbally in connection with the Provision of Goods / Services / works are complete, accurate, up to date and not misleading;
- b) to the best of the Supplier's knowledge, the Provision of Goods does not involve breaches or offences committed under the *Modern Slavery Act 2018* (Cth);
- c) to the best of the Supplier's knowledge, Services / Works performed are not in breach of the *Modern Slavery Act 2018* (Cth);
- d) if a conflict of interest is identified at any time during the provision of Goods / Services / Works the Supplier will notify Keyton immediately in writing and comply with any reasonable direction provided to manage the conflict.

## 11. Intellectual Property

11.1. The Supplier warrants that the Supplier holds intellectual property ownership and/or obtained appropriate licenses over all intellectual property rights necessary to Provide the Goods / Services / Works and to ensure Keyton receive the full benefit of the Goods / Services / Works.

11.2. If the Supplier Provides Goods / Services / Works which have been prepared and/or created specifically for Keyton, Keyton shall own all intellectual property rights created by the Supplier in the fulfillment of this Agreement.

11.3. The Supplier must not reproduce any Keyton brand, trademark or any other intellectual property associated with Keyton's brands or trademarks, and the Supplier must not publicise or promote that the Supplier has Provided Goods / Services / Works to Keyton without Keyton's written consent.

## 12. Relationship

12.1. This Agreement does not create a relationship of employer and employee, principal and agent, or partnership between the Supplier and Keyton, nor does it create any relationship between the Supplier's Personnel and Keyton.

## 13. Governing Law

13.1. This Agreement must be construed in accordance with the laws of the state of Australia in which the Goods / Services / Works are to be Provided and each party unconditionally and irrevocably submits to the courts of that state being the competent jurisdiction.

## 14. Privacy

14.1. In the performance of the Supplier's obligations under this Agreement the Supplier must comply with the Privacy Act 1988 and the Australian Privacy Principles (as defined in the Act) and any other applicable legislative

requirements relating to privacy or data protection, as they may be amended from time to time.

14.2. Without limiting clause 14.1, the Supplier must ensure that in respect of any Personal Information (as defined in the Act) of an individual that the Supplier discloses to Keyton, that such disclosure to Keyton and Keyton's anticipated use of that Personal Information complies with the Privacy Act 1988 and the Australian Privacy Principles and any other applicable legislative requirements relating to privacy or data protection.

14.3. In respect of any Personal Information of an individual that Keyton might provide to the Supplier, the Supplier must only use and/or disclose the information for the purposes for which it was disclosed to the Supplier.

14.4. The Supplier must promptly notify Keyton if the Supplier does not comply with the provisions of this clause 14.

## 15. Indemnity and Liability

15.1. In this clause, **Loss** includes any cost, expense (including legal or other professional charges and expenses), loss, damage or liability whether direct, indirect or consequential (including pure economic loss), present or future, fixed or unascertained, actual or contingent and any liability under an indemnity.

15.2. The Supplier indemnifies Keyton and Keyton's Personnel against any claim, action or Loss (including any legal costs, on a full indemnity basis) in respect of:

- a) any fraudulent, reckless or negligent act or omission by the Supplier;
- b) any breach of this Agreement by the Supplier;
- c) personal injury to, disease of or death of any person; and
- d) loss of, damage to or loss of use of any property, including Keyton's property,

arising out of or as a consequence of the provision of the Goods / Services / Works, but the indemnity shall be reduced to the extent that the negligent act or omission of Keyton or others for whom Keyton is responsible have contributed to the injury, death, claim, action or Loss.

15.3. If the Supplier enters into this Agreement as a trustee, the Supplier is liable personally and as trustee.

## 16. Trustee limitation of liability

16.1. If Keyton enters into this Agreement (whether as agent, by agent or otherwise) in its capacity as trustee of a trust (**Trustee Party**) Keyton is only a party to this Agreement in its capacity as trustee of that trust and in no other capacity. A liability arising under or in connection with this Agreement can be enforced against a Trustee Party only to the extent to which it can be satisfied out of the property of its indemnifying trust out of which it is actually indemnified for the liability. This limitation of a Trustee Party's liability applies despite any other provision of this Agreement and extends to all liabilities and obligations of a Trustee Party in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement.

16.2. No party may take any action to seek recourse to any assets held by a Trustee Party in any capacity other than as trustee of its indemnifying trust including seeking the appointment of a receiver (except in relation to the property of its indemnifying trust), a liquidator, an administrator or any similar person to the Trustee Party or prove in any liquidation, administration or arrangement of or affecting the Trustee Party (except in relation to property of its indemnifying trust).

16.3. The provisions of this 'Trustee limitation of liability' clause do not apply to any obligation or liability of a Trustee Party to the extent that it is not satisfied because:

- a) under the relevant trust agreement or by operation of law there is a reduction in the extent of a Trustee Party's indemnification out of the assets of its indemnifying trust as a result of the Trustee Party's failure to properly perform its trustee duties; or
- b) a Trustee Party failed to exercise any right of indemnity it has under the relevant trust agreement in respect of that obligation or liability.

16.4. Except as the *Corporations Act 2001* (Cth) otherwise requires, no act or omission of a Trustee Party (including any related failure to satisfy its obligations under this Agreement) will be considered a failure by the Trustee Party to properly perform its trustee duties for the purposes of sub-clause 16.3 of this 'Trustee limitation of liability' clause to the extent to which the act or omission was caused or contributed to by any failure by any other person to fulfil its obligations relating to its indemnifying trust or by any other act or omission of any such other person.

16.5. A Trustee Party is not obliged to enter into any commitment or obligation under this Agreement unless the Trustee Party's liability is limited in the same manner as in this 'Trustee limitation of liability' clause.

16.6. The limitations and obligations under this 'Trustee limitation of liability' clause survive termination of this Agreement.