

## Standard Terms & Conditions for Purchase Order

### 1. EVANS BUILT DEFINITION

Each Party to this Agreement acknowledges and agrees that:

- a) each reference in this Agreement to 'Evans Built' or to a 'Purchaser' is a reference to Evans Built Pty Ltd (ABN 61 120 743 099).

### 2. EXCLUSIVITY & MINIMUM PURCHASE

#### 2.1 Contract is non-exclusive

- a) Nothing in the Contract imposes an obligation of exclusivity on Evans Built or the Supplier.
- b) Evans Built may engage a third party to provide any combination of Goods and Services in addition to or in place of the Supplier at any time and from time to time.

#### 2.2 No minimum volume

Evans Built has no obligation to purchase a minimum volume, or any particular volume, of Goods and Services from the Supplier.

### 3. COMPLIANCE WITH LAWS

Except as expressly provided otherwise, the Supplier must, at its own cost, obtain all Licenses required to provide the Goods and Services.

### 4. ASSIGNMENT, NOVATION & SUBCONTRACTING

- a) The Supplier may not assign, novate or subcontract its rights or obligations under the Contract to another party without the prior written consent of Evans Built.
- b) Evans Built may assign, or novate any or all of its rights or obligations under the Contract at any time to any person.

### 5. DELIVERY

#### 5.1 Delivery Team

The Supplier must deliver the Goods or Services in accordance with the delivery term stated in the Purchase Order. If no delivery term is specified in the Purchase Order, all Goods will be delivered DDP (Delivered Duty Paid).

#### 5.2 Supply difficulties

If the Supplier is, or reasonably believes it will be,

unable to provide the Goods or Services by the Date for Delivery, the Supplier must use its best endeavours to obtain the Goods or Services from an alternative source or provide alternate goods or services which are acceptable to Evans Built in their discretion, at the Price.

### 6. TITLE

- a) Unless expressly provided otherwise, title in the Goods will pass to Evans Built on and from the earlier to occur of:
  - (i) the date Delivery is achieved; or
  - (ii) payment for the Goods.
- b) The Supplier warrants that Evans Built will receive full unencumbered title in the Goods free of any Security Interest.

### 7. PERFORMANCE ON SITE

The Supplier must:

- a) Use its best endeavours to not interfere with any of the activities of any member of Evans Built;
- b) Only access the Site in the manner and at the times provided for in the Contract or if none are specified, as directed in writing by Evans Built;
- c) Take all steps necessary to protect the safety of Evans Built, Evans Built Personnel and any invitees of Evans Built from risks to safety in connection with the Goods and Services;
- d) Complete such safety or other training or induction as Evans Built directs from time to time;
- e) Not do anything which may place Evans Built in breach of any Laws;
- f) Keep the site clean and tidy at all times; and
- g) Comply with Evans Built occupational health and safety policies, Site Specific Safety Rules, Construction Safety and Environmental management Plans, all of which are accessible at the respective Site.

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### 8. PAYMENT

- a) Evans Built must pay the Supplier the amount certified as being due for payment within 32 days of the end of the month in which the Tax Invoice was submitted.
- b) Payment is payment on account only and is not evidence of the value of the Goods or Services, an admission of liability or an admission that the Goods or Services are in accordance with the Contract.
- c) Except to the extent expressly provided otherwise in this contract, the Supplier is solely responsible for any and all taxes, duties, levies, charges and deductions including, but not limited to, stamp duty, payroll tax, customs duty and fuel excise (including any penalties and additional payments thereon), paid or payable in the supply of the Goods or the performance of the Services and they are deemed to be included in the Price.

#### 8.1 Set-off

Evans Built may deduct from any amount due or to become due to the Supplier, all debts and monies due and payable from the Supplier or its Personnel to any member of Evans Built under or in connection with the Contract or any other agreement between the Parties.

### 9. TERMINATION

#### 9.1 Termination for Breach

Evans Built may immediately terminate the Contract by notice to the Supplier:

- a) If the Supplier is in breach of the Contract and:
  - (i) the Supplier has failed to remedy the breach in accordance with the terms of the relevant Breach Notice; or
  - (ii) the breach is not capable of remedy.
- b) If the Supplier grants a Security Interest, assigns or novates the Contract other than in accordance with the terms of the

Contract; or

- c) On any other grounds specified in the Contract giving rise to a right of termination.

#### 9.2 Insolvency

Either Party may terminate the Contract immediately by giving a notice to the other Party if an Insolvency Event occurs in relation to that other Party.

#### 9.3 Payment on Termination

- a) On termination of the Contract for any reason, the sole liability of Evans Built to the Supplier will be the payment of amounts payable for Goods Delivered and Services performed up to the date of termination.
- b) Nothing in the Contract will render Evans Built liable for any costs relating to redundancy or termination payments of any Supplier Personnel.

#### 9.4 Clause survives termination

This clause survives the termination or expiry of the Contract.

### 10. INSURANCE

#### 10.1 Insurances required to be effected by the Supplier

The Supplier will effect or cause to be effected:

- a) Public and Products Liability Insurance with a limit of liability of at least \$20 million per occurrence (and for products liability insurance, in the aggregate);
- b) Motor Vehicle Insurance with a limit of liability of at least \$10 million per occurrence; and
- c) Workers Compensation Insurance.

#### 10.2 Evidence of Insurance

Upon request, before commencing the performance of its obligations under the Contract, and at other times requested by Evans Built, the Supplier must provide Evans Built, in respect of each Insurance Policy, certificates of currency issued by the insurer.

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### 10.3 Terms of Insurance Policy

- a) Each Insurance Policy will be an occurrence basis policy in effect at all times up to and including the delivery of the Goods and the performance of the Services.
- b) Each Insurance Policy must extend to insure Evans Built for its vicarious liability for acts or omissions by the Supplier or its Personnel.
- c) Where an Insurance Policy insures multiple named parties, that policy will include:
  - (i) a cross-liability clause;
  - (ii) a clause in which the insurer agrees not to impute the acts or omissions of one insured to another insured; and
  - (iii) a clause in which the insurer agrees that any non-disclosures or misrepresentations prior to the effecting of the policy by any person will not be imputed to any other insured.

## 11. LIABILITY & INDEMNITIES

### 11.1 Liability

- a) Subject to this clause, the Supplier will indemnify and keep indemnified the Indemnified Parties against any Liability arising out of or in connection with any:
  - (i) breach by the Supplier or its Personnel of any warranty;
  - (ii) negligent, reckless or intentional act or omission of the Supplier or its Personnel;
  - (iii) any damage to or loss or destruction of any property of the Indemnified Parties or any third party; or
  - (iv) personal injury, illness or death to any person;
  - (v) breach of Law by the Supplier or its Personnel; and
  - (vi) any Claim regarding the infringement or alleged

infringement of Intellectual Property Rights of any person.

- b) The Supplier's liability under clause 11.1(a) will be reduced proportionally to the extent that the Liability is caused or contributed to by the Indemnified Parties.
- c) Each indemnity in the Contract is a continuing obligation separate and independent from the Supplier's other obligations and survives termination of the Contract.

### 11.2 Limit on Liability

- a) Subject to clause 11.3 but notwithstanding any other provision of the contract, the Supplier's maximum aggregate Liability to Evans Built for all Claims and Liabilities arising under or in connection with the Contract or the performance of the Services is limited to and will not exceed the General Liability Cap.
- b) Notwithstanding anything else in the Contract, the maximum aggregate Liability of Evans Built to the Supplier for all Claims and Liabilities arising under or in connection with the Contract is limited to payment of the Price.

### 11.3 Uncapped Amounts

The General Liability Cap and the Consequential Loss Exclusion do not limit the Supplier's Liability in respect of any Claim or Liability for any Uncapped Amount, and the Supplier's Liability in respect of an Uncapped Amount will be unlimited.

## 12. MISCELLANEOUS

### 12.1 Definitions

In these Terms and Conditions unless the context clearly indicates otherwise, the following definitions apply:

#### Best Industry Practice

Means exercising the degree of skill, care and diligence to be expected from a skilled and competent service provider experienced in providing goods and services commensurate to the type, size, value and complexity of the Goods

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and Services.

**Evans Built** has the meaning given in clause 1(a).

### **Evans Built Material**

Means any material provided by or on behalf of Evans Built to the Supplier under on in connection with the Contract or the supply of Goods and Services.

**Breach Notice** means a notice issued pursuant to clause 9.

### **Claim**

Means any claim, action, demand, suit or proceeding of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether in connection with these Terms and Conditions or any Purchase Order, at Law, in equity, under statute or otherwise.

### **Commencement Date**

Means the date so specified in the Purchase Order forming part of the Contract.

### **Confidential Information**

Means any information in any form which:

- a) Is, by its nature, confidential or non-public
- b) Is marked or designated or confirmed by a Party as confidential or proprietary at the time of its disclosure; or
- c) A Party knows or ought to know is confidential,

But excludes information that is:

- d) In or enters the public domain through no fault of either Party;
- e) Was made available to a Party by a person (other than the other Party) who, as far as that recipient Party knows, has or then had the unrestricted legal right to do so; or
- f) Was developed by a Party without that Party relying on, referring to, or incorporating any of the other Party's Confidential Information.

**Consequential Loss Exclusion** has the meaning

given to that term in clause 11.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Date for Delivery** means the date for the Delivery of the goods and Services as specified in the Purchase Order.

**Defective Goods** means Goods which are not in conformity with the Contract.

**Deficient Services** means Services or the results of any Services which are not in conformity with the Contract.

**Delivery** means delivery of the Goods and performance of the Services at the Site.

**DDP** means Delivered Duty Paid as that term is understood the International Chamber of Commerce (ICC) rules for the use of international and domestic trade terms (2010 Edition).

**Expiry Date** means the date so specified in the Purchase Order forming part of the Contract.

**Excluded Liability** means a Liability arising as a consequence of:

- a) Fraud, wilful misconduct (including wilful default) or criminal conduct by the Supplier or its Personnel;
- b) The abandonment (whether wholly or substantially) of the Goods; or
- c) The loss of or damage to any third party property or injury to, illness or death of any person.

**Fit for the Purpose** means that the Goods and Services satisfy the purposes, functions and requirements set out in, or which can reasonably be inferred from, the Contract.

**General Liability Cap** means the greater of:

- a) 200% of the Price; and
- b) \$1,000,000.

**Goods** mean the goods to be supplied by the Supplier under the Contract.

**Government Authority** means all persons and any government, government body, semi-government, local government, authority, administrative or judicial body, public authority,

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statutory corporation or instrumentality that has jurisdiction over the Goods and Services or Evans Built Premises.

**GST** means any form of goods and services tax payable under the GST Law.

**GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Indemnified Parties** means Evans Built and their respective Personnel and an **Indemnified Party** means any of the Indemnified Parties.

**Indirect or Consequential Loss** means any loss of opportunity, profit, anticipated profit, business, business opportunities or revenue or any failure to realise anticipated savings.

**Insolvency Event** in relation to an entity, means:

- a) A receiver, receiver and manager, administrator, trustee or similar official being appointed over any of the assets or undertaking of the entity;
- b) The entity suspending payment of its debts generally;
- c) The entity being or becoming unable to pay its debts when they are due or is unable to pay its debts within the meaning of the Corporations Act;
- d) The entity entering into or resolving to enter into any arrangement, understanding or compromise with, or assignment for the benefit of, its creditors or any class of item;
- e) An application or order being made for the winding up or dissolution of, or the appointment of a provisional liquidator to, the entity or a resolution is passed or steps are taken to pass a resolution for the winding up or dissolution of the entity otherwise than for the purpose of an amalgamation or reconstruction which has the prior consent of all the members of the entity; or
- f) An administrator being appointed in accordance with the Corporations Act; and

in relation to an individual, means the individual being or becoming insolvent or committing an act

of bankruptcy as those terms are used in the *Bankruptcy Act 1966* (Cth).

**Insurance Policy** means each policy of insurance required to be effected and maintained in accordance with this Purchase Order.

**Intellectual Property Rights** means all rights conferred by statute, common law or equity in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, inventions and Confidential Information, and all and any other results of intellectual activity in any field whether or not registrable, registered or patentable. These rights include rights that may exist in applications to register these rights and all renewals and extensions of these rights.

**Law** means:

- a) All present and future Acts of Parliament of the Commonwealth of Australia or of any State or Territory of Australia, regulations, codes, ordinances, local laws, by-laws, rules and requirements of all Authorities;
- b) Any Licenses; and
- c) Those principles of common law and equity established by decision of the courts.

**Liability** means any debt, obligation, Claim, action, cost (including legal costs on an indemnity basis, deductibles or increased premiums), expense, loss (whether direct or indirect), damage, losses, compensation, charge or liability of any kind (including fines or penalties), whether it is:

- a) Actual, prospective or contingent; or
- b) Currently ascertainable or not,

and whether incurred or payable under this Purchase Order or otherwise at Law.

**Manufacturer's Warranty** means a warranty given by the manufacturer of the Goods in relation to those Goods.

**Party** means Evans Built or the Supplier and **Parties** has a corresponding meaning.

**Payment Certificate** has the meaning given to that term in clause 8.

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**Personnel** means:

- a) In the case of the Supplier, any of its employees, agents and representatives, any Subcontractors and any of the employees, agents and representatives of any Subcontractors, who are involved either directly or indirectly in the provision of either or both of the Goods and Services; and
- b) In the case of Evans Built, any of their respective past or present officers, employees, agents or representatives.

**Price** means the amount payable for the Goods and Services specified in the Purchase Order and adjusted in accordance with the Contract.

**Purchase Order** means a document so identified, from Evans Built to the Supplier requiring the provision of Goods and the performance of the Services.

**Related Body Corporate** has the meaning given to the term 'related body corporate' in the Corporations Act.

**Security Interest** means:

- a) Any security under the Personal Property Securities Act 2009 (Cth); and
- b) Any mortgage, charge, pledge, hypothecation or lien or any security or preferential interest of any kind, or arrangement with any creditor.

**Services** means the services to be performed by the Supplier specified in the Purchase Order.

**Site** means the site for Delivery of the Goods and Services as specified in the Purchase Order.

**Site Requirements** means the requirements relating to working on or around the Site as Evans Built provided to the Supplier in writing whether as part of a Purchase Order or otherwise.

**Subcontractor** means any contractor or subcontractor (including consultants and suppliers) engaged by the Supplier and those contractor's or subcontractor's employees, officers, agents, consultants and contractors.

**Subcontractor Statement** means a duly completed signed and dated statement in the

form made available to the Supplier by Evans Built from time to time (including by way of online download) or in such other form as Evans Built requests from time to time, which:

- a) Complies with section 127(3) of the Industrial Relations Act 1996(NSW) and any regulations under this Act;
- b) Complies with Part 5, Division 2 of the Pay-roll Tax Act 2007(NSW);
- c) Complies with section 175B(4) of the Workers Compensation Act 1987 (NSW) and any regulations under that Act;
- d) Has attached to it a copy of any relevant certificate of currency in respect of the workers compensation insurance referred to within the statement; and
- e) Covers the period up to the date of the invoice.

**Supplier** means the Party so identified in the Purchase Order.

**Supplier Material** means any material provided to a member of Evans Built by the Supplier or on the Supplier's behalf in connection with the Contract.

**Tax** means any present and future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature imposed or levied by a Government Authority, together with any penalties, fines or interest thereon.

**Tax Invoice** means an invoice which complies with the GST Act in relation to the production and form of tax invoices for GST purposes, and which includes:

- a) A Subcontractor Statement (where applicable); and
- b) Any and all information and supporting evidence required by Evans Built to verify any payments claimed by the Supplier in respect of Goods Delivered or Services performed.

**Term** means the term of the Contract which commenced on the Commencement Date and ends on the Expiry Date.

**Uncapped Amounts** means any:

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- a) Amounts received by Evans Built or the Supplier in connection with any Claims or Liabilities pursuant to any one or more Insurance Policies or that would otherwise have been received pursuant to any one or more Insurance Policies, but for:
- i) The operation of the General Liability Cap; or
  - ii) Any act or omission of the Supplier or its Personnel, including a failure by the Supplier to fulfil its obligations under this Agreement and the Insurance Policies, or due to an Insolvency Event in respect of the insurer;
- b) Deductible under any Insurance Policy which the Supplier is liable to pay;
- c) Interest payable by the Supplier;
- d) Amount paid or payable by the Supplier in respect of any breach of Law;
- e) Liability of an Indemnified Party arising out of third party claims to the extent the Supplier would have been liable to such third parties had the claim been brought against the Supplier;
- f) Amounts resulting from any claims for infringement of the Intellectual Property Rights of any person or breach of confidentiality; and
- g) Any Excluded Liabilities.

**Warranty Period** means in respect of the Goods, either;

- a) The period commencing on the date on which those Goods are delivered and ending on the expiry of 12 months; or
- b) The period of any applicable Manufacturer's Warranty, which ever is longer.

**Workers' Compensation Insurance** means insurance as required by Law which fully insures any injury, damage, expense, loss or liability suffered or incurred by any person engaged by the Supplier in the supply of the Goods or the

performance of the Services in accordance with the Contract (or their dependants).

### 12.2 Interpretation

In these Terms and Conditions and any Purchase Order unless the context clearly indicates otherwise:

- a) A reference to these Terms and Conditions, a Purchase Order, the Contract or another instrument means these Terms and Conditions and any Purchase Order issued pursuant to these Terms and Conditions and in each instances collectively a Contract, and includes any variation, supplement, assignment, novation or replacement of any of them;
- b) The singular includes the plural and vice versa;
- c) A reference to a person includes a natural person, firm, partnership, body corporate, unincorporated association, authority, the Crown or any other organisation or legal entity;
- d) A requirement to do any thing includes a requirement to cause or procure that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- e) A word that is derived from a defined word has a corresponding meaning;
- f) The words "include", "includes" or "including" are not words of limitation; and
- g) Headings are inserted for convenience only and do not affect interpretation of the Contract.

### 12.3 Inconsistency

- a) Unless expressly provided otherwise, to the extent of any inconsistency between the terms set out in these Terms and Conditions or a Purchase Order issued pursuant to these Terms and Conditions, the terms of the Purchase Order shall prevail.



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### 12.4 Construction

The Contract is not to be construed against a Party on the basis that the Party or its lawyers were responsible for its drafting.

### 12.5 No Reliance

Without limiting any other provision of the Contract, the Supplier represents and warrants that:

- a) It has not entered into the Contract in reliance on any representation expressly or impliedly given by or on behalf of Evans Built; and
- b) It has made its own inquiries as to the Licenses which apply to the supply of the Goods and the performance of the Services.

### 12.6 Relationship of Parties

- a) Nothing in the Contract creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties.
- b) Neither Party has the authority to bind the other Party by any representation, declaration or admission, or to make any contract or commitment on behalf of the other Party or to pledge the other Party's credit.

### 12.7 Governing Law

- a) The Contract is governed by the laws of the State or Territory in which the Goods are supplied and the Services are performed.
- b) Both Parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State or Territory in which the Goods are supplied and the Services are performed and courts competent to determine appeals from those courts with respect to any proceedings which may be brought arising out of or in connection with the Contract.

### 12.8 Waiver

A right created by the Contract cannot be waived except in writing signed by the Party entitled to that right. Delay by a Party in exercising a right does not constitute a waiver of the right, nor will a waiver (either wholly or in part) by a Party of a right operate as a subsequent waiver of the same right or of any other right of that Party.

### 12.9 Severance

If any cause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from the Contract without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

### 12.10 Preservation of Existing Rights

The expiration or termination of the Contract does not affect any right that has accrued to a Party before the expiration or termination date.

### 12.11 No Merger

Any right or obligation of any Party that is expressed to operate or have effect on or after the completion, expiration or termination of the Contract for any reason, will not merge on the occurrence of that event but will remain in full force and effect.