



Standard Terms & Conditions for Purchase Order

1. Goods and Services

- (a) Cleary Bros will, by issuing a Purchase Order, which incorporates these Terms and Conditions, create a Contract between the Parties (a **Contract**).
- (b) The Supplier must provide the Goods and/or the Services to Cleary Bros in accordance with the Contract.

2. Quality

2.1 Conditions as to quality

The Supplier must ensure that the Goods and/or Services:

- (a) match the description (including any performance criteria) in the Contract;
- (b) correspond to any sample of the Goods or demonstration of the Services provided to Cleary Bros prior to the formation of the Contract;
- (c) comply with:
 - (i) any Quality Standards;
 - (ii) all relevant Laws and Policies;
 - (iii) the nature and quality of any demonstration, sample or example equipment or services relating to the Goods and Services; and
 - (iv) any direction given by Cleary Bros or Cleary Bros' Personnel, in accordance with the Contract; and
- (d) when provided, are Fit For Purpose.

2.2 Warranty as to Quality

The Supplier warrants that it will provide the Goods and/or Services:

- (a) with suitably trained, qualified, licensed and experienced Personnel;
- (b) exercising Best Industry Practice;
- (c) in a good and workmanlike manner; and
- (d) using goods, equipment and material of new and merchantable quality.

2.3 Inspection

Cleary Bros may:

- (a) inspect the Goods at any time after the Goods are delivered; and
- (b) inspect or audit the performance of any or all of the Services provided by the Supplier at any time.

2.4 Deficient Services or Goods

- (a) If:
 - (i) at any time, Cleary Bros identifies that the Services are Deficient Services or;
 - (ii) at any time during the Warranty Period, Cleary Bros identifies that the Goods are Defective Goods,
- then Cleary Bros may in its sole discretion:

- (iii) reject the Deficient Services or Defective Goods (as applicable) and require the Supplier to refund any payments made by it in respect of any Deficient Services or Defective Goods (as applicable);
- (iv) reject the Deficient Services or Defective Goods (as applicable) and require the Supplier to make good, free of charge, any Deficient Services or Defective Goods (as applicable); or
- (v) accept the Deficient Services or Defective Goods (as applicable) and require the Supplier to reimburse Cleary Bros for any expenses incurred as a result of the Deficient Services or Defective Goods (as applicable), (including a reduction in the Price to reflect the Deficient Services or Defective Goods as applicable).

- (b) The Supplier will not be liable under this clause in respect of any defect in the Services or Goods caused by Cleary Bros.
- (c) Any Goods repaired or replaced by the Supplier in accordance with this clause will be subject to the same Warranty Period as the original Goods commencing from the date on which those Goods were delivered to Cleary Bros following repair or replacement.

2.5 Rights to survive termination

The rights under this clause survive the termination or expiry of the Contract.

3. Cleary Bros Entity

3.1 Cleary Bros Definitions

Each Party to this Contract acknowledges and agrees that:

- (a) each reference in this Contract to '**Cleary Bros**' is a reference to Cleary Bros (Bombo) Pty Limited (ABN 28 000 157 808), which is a party to this Contract;
- (b) each reference in this Contract to a '**Purchaser**' is a reference to Cleary Bros as defined in clause 3.1(a).

4. Exclusivity and minimum purchase

4.1 Contract is non-exclusive

- (a) Nothing in the Contract imposes an obligation of exclusivity on Cleary Bros or the Supplier.
- (b) Cleary Bros may engage a third party to provide any combination of goods and/or services of the same nature as the Goods and/or Services in addition to or in place of the Supplier at any time and from time to time.

4.2 No minimum volume

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

5. Compliance with Laws

5.1 Except as expressly provided otherwise, the Supplier must, at its own cost, obtain all Licenses required to provide the Goods and/or Services and comply with all applicable Laws at all times.

5.2 Heavy Vehicle National Law

- (a) This clause 5.2 only applies if one or more heavy vehicles (as defined under the Heavy Vehicle National Law) will be used by the Supplier to provide the Services.
- (b) The Supplier must at all times and without limiting any other provisions of this Contract:
 - (i) comply with and ensure each of their Personnel and subcontractors complies with the provisions of the Heavy Vehicle National Law including the requirements relating to vehicle standards, mass, dimension and loading requirements, driver fatigue management, speed management, maintenance management and the Chain of Responsibility provisions, and the Road Transport Legislation; and
 - (ii) permit Cleary Bros and its Personnel to attend and participate in any risk assessment workshops associated with the Chain of Responsibility Provisions and Heavy Vehicle National Law.

5.3 Emissions and Energy Data

- (a) In this clause, "consumption", "emission", "energy", "facility", "greenhouse gas", "group", "member", "operational control", "production", "registered corporation" and "Regulator" has the meaning given to it in the NGER Legislation.
- (b) Without limiting any other obligation of the Supplier, the Supplier must:
 - i) keep, and must ensure that all subcontractors keep, all such information and documentation concerning greenhouse gas emissions, energy production and energy consumption in relation to all aspects of the performance of the Supplier's obligations under the Contract as a registered corporation would be required to keep and report upon if any Plant and Equipment of the performance of the Supplier's obligations under the Contract, were a facility that was under the operational control of a registered corporation;
 - ii) provide access to and copies of any such information and documentation to Cleary Bros on request;
 - iii) provide reasonable assistance to Cleary Bros upon request regarding its compliance with any reporting obligations under the NGER Legislation and/or other legislative or contractual energy reporting requirements arising from or connected with the performance of the Supplier's obligations under the Contract.

- (c) If the Supplier is unable or fails to provide the information or documentation as required by this clause, the Supplier must support an application by Cleary Bros to the Regulator to make a determination under section 20 of the NGER Legislation requiring the information or documentation to be provided directly to the Regulator by the Supplier or their representative.

5.4 Modern Slavery

The Supplier warrants that:

- i) there is no outstanding investigation of it and it has not been convicted of any offence under the Modern Slavery Legislation;
- ii) it will not cause Cleary Bros to breach the Modern Slavery Legislation, whether as a result of a breach of Contract by the Supplier or by default, act or omission of the Supplier or any person for whom the Supplier is responsible in connection with the Contract or otherwise.

The Supplier must comply with any requests made by Cleary Bros to provide any assistance, information, documents or interview any person as required by Cleary Bros to discharge any obligations arising under the Modern Slavery Legislation.

6 Assignment, novation and subcontracting

- 6.1 The Supplier may not assign, novate or subcontract its rights or obligations under the Contract to another party without the prior written consent of Cleary Bros.
- 6.2 Cleary Bros may assign or novate any or all of its rights or obligations under the Contract at any time to any person.

7 Delivery

7.1 Delivery Term

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.

7.2 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 Cleary Bros in their discretion, at the Price.

7.3 Alternate supply

- 7.1 Where the Supplier is unable to procure Goods, Services or acceptable alternative goods or services in accordance with clause 7.2 and Cleary Bros procures Goods or Services from an alternative supplier, then the Supplier must, subject to clause 7.2, pay Cleary Bros the difference between:

- 7.1.1 the actual price of the Goods or Services purchased (including all freight costs); and
- 7.1.2 the Price that would have been paid for the Goods or Services had the Supplier satisfied its obligations.

7.2 Cleary Bros must use reasonable endeavours to mitigate its cost of procuring replacement Goods or Services.

8 Risk and Title

8.1 Risk

The Goods will be at the risk of the Supplier up to Delivery. The Supplier must at its cost make good any damage to the Goods which occurs prior to Delivery.

8.2 Title

- 8.2.1 Unless expressly provided otherwise, title in the Goods will pass to Cleary Bros on and from the earlier to occur of:
 - 8.2.1.1 the date Delivery is achieved; or
 - 8.2.1.2 payment for the Goods.
- 8.2.2 The Supplier warrants that Cleary Bros will receive full unencumbered title in the Goods free of any Security Interest.

9 Access to Site

Provided the Supplier has complied with all of its insurance obligations and any Site Requirements under the Contract, Cleary Bros will give the Supplier access to sufficient areas of the Site necessary for the Supplier to perform its obligations under the Contract.

10 Performance on Site

The Supplier must:

- 10.1.1 use its best endeavours to not interfere with or interrupt any of the activities of Cleary Bros;
- 10.1.2 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 Cleary Bros;
- 10.1.3 take all steps necessary to protect the safety of Cleary Bros, Cleary Bros' Personnel and any invitees of Cleary Bros from risks to safety in connection with the Goods and Services;
- 10.1.4 complete such safety or other training or induction as Cleary Bros directs from time to time;
- 10.1.5 not do anything which may place Cleary Bros in breach of any Laws; and
- 10.1.6 keep the Site clean, safe and tidy at all times.

11 Price

- 11.1.1 Cleary Bros agrees to pay the Price to the Supplier in accordance with the Contract.

- 11.1.2 Except as expressly stated otherwise, the Price is inclusive of all costs and Taxes (excluding GST) incurred by the Supplier in supplying the Goods and performing the Services.
- 11.1.3 The Price may not be increased without Cleary Bros' prior written consent.

12 Invoicing and payment

12.1 Payment Claim

- 12.1.1 On completion of the provision of the Goods or Services, or if the Goods are Delivered or the Services performed from time to time during the Term, at the end of each calendar month, the Supplier must submit a tax invoice to Cleary Bros in respect of the Goods or Services provided (**Tax Invoice**).

12.2 Payment Assessment

- 12.2.1 Cleary Bros must, within 20 Business Days of the date on which the Tax Invoice was submitted, notify the Supplier of:
 - 12.2.1.1 the amount Cleary Bros assesses as payable to the Supplier in the respect of the Goods supplied or the Services performed; and
 - 12.2.1.2 where the amount assessed by Cleary Bros under clause 12.2.1.1 is different to the amount claimed by the Supplier in the Tax Invoice, the reasons for the difference,

(a **Payment Certificate**).

12.3 Payment

- 12.3.1 Cleary Bros must pay the Supplier the amount certified as being due for payment within 30 days of the end of the month in which the Tax Invoice was submitted.
- 12.3.2 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.
- 12.3.3 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 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.

12.4 Set-off

Cleary Bros 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 Cleary Bros under or in connection with the Contract or any other agreement between the Parties.

13 Termination

13.1 Breach capable of remedy

If the Supplier is in breach of the Contract and that breach is capable of remedy, then Cleary Bros may issue the Supplier with a written notice:

- 13.1.1 providing details of the breach; and
- 13.1.2 specifying the reasonable time within which the Supplier is required to remedy that breach (Breach Notice).

13.2 Termination for Breach

Cleary Bros may immediately terminate the Contract by notice to the Supplier:

- 13.2.1 if the Supplier is in breach of the Contract and:
 - 13.2.1.1 the Supplier has failed to remedy the breach in accordance with the terms of the relevant Breach Notice; or
 - 13.2.1.2 the breach is not capable of remedy,
- 13.2.2 if the Supplier grants a Security Interest, assigns or novates the Contract other than in accordance with the terms of the Contract; or
- 13.2.3 on any other grounds specified in the Contract giving rise to a right of termination; or
- 13.2.4 for convenience for any reason whatsoever.

13.3 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.

13.4 Payment on termination

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

13.5 Clause survives termination

This clause survives the termination or expiry of the Contract.

14 Insurance

14.1 Insurances required to be effected by the Supplier

The Supplier will effect or cause to be effected:

- 14.1.1 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);

14.1.2 Motor Vehicle Insurance with a limit of liability of at least \$10 million per occurrence; and

14.1.3 Workers' Compensation Insurance.

14.2 Evidence of Insurance

Before commencing the performance of its obligations under the Contract, and at other times requested by Cleary Bros, the Supplier must give Cleary Bros, in respect of each Insurance Policy, the original or a certified copy of renewal certificates or certificates of currency issued by the insurer.

14.3 Terms of Insurance Policy

- 14.3.1 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.
- 14.3.2 Each Insurance Policy must extend to insure Cleary Bros for its vicarious liability for acts or omissions by the Supplier or its Personnel.
- 14.3.3 Where an Insurance Policy insures multiple named parties, that policy will include:
 - 14.3.3.1 a cross-liability clause;
 - 14.3.3.2 a clause in which the insurer agrees not to impute the acts or omissions of one insured to another insured; and
 - 14.3.3.3 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.

15 Liability & Indemnities

15.1 Liability

- 15.1.1 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:
 - 15.1.1.1 breach by the Supplier or its Personnel of any warranty;
 - 15.1.1.2 negligent, reckless or intentional act or omission of the Supplier or its Personnel;
 - 15.1.1.3 any damage to or loss or destruction of any property of the Indemnified Parties or any third party; or
 - 15.1.1.4 personal injury, illness or death to any person;
 - 15.1.1.5 breach of Law by the Supplier or its Personnel; and
 - 15.1.1.6 any Claim regarding the infringement or alleged infringement of Intellectual Property Rights of any person.
- 15.1.2 The Supplier's liability under clause 15.1.1 will be reduced proportionally to the extent that the

Liability is caused or contributed to by the Indemnified Party.

- 15.1.3 Each indemnity in the Contract is a continuing obligation separate and independent from the Supplier's other obligations and survives termination of the Contract.

15.2 Limit on Liability

- 15.2.1 Notwithstanding anything else in the Contract, the maximum aggregate Liability of Cleary Bros to the Supplier for all Claims and Liabilities arising under or in connection with the Contract is limited to payment of the Price.

15.3 Consequential loss

Neither Party will be liable to the other for any Claims or Liability in respect of any Indirect or Consequential Loss suffered or incurred as a result of any breach, act or omission by the Party (whether in negligence or otherwise).

16 Intellectual Property

- 16.1.1 Except as provided in this clause, nothing in the Contract affects the ownership of a Party's Intellectual Property Rights.
- 16.1.2 All Intellectual Property Rights (including future Intellectual Property Rights) produced by or on behalf of the Supplier in connection with the Contract, both present and future (**Project IP**) will remain the property of the Supplier.
- 16.1.3 The Supplier grants to Cleary Bros a perpetual, irrevocable, non-exclusive, worldwide, transferable, royalty-free licence (including the right to sublicense) to use, exercise and exploit all Project IP and to exercise the Intellectual Property Rights in the Supplier Material for the purposes of the business of Cleary Bros.
- 16.1.4 Cleary Bros grants the Supplier a non-exclusive, fully paid-up licence, for the Term, to use and reproduce the Cleary Bros Material for the purpose of providing the Goods and Services.
- 16.1.5 The Supplier represents and warrants that the exercise of Cleary Bros's rights in respect of the Project IP and Supplier Material will not infringe any person's rights in that material, including any Intellectual Property Rights and moral rights.
- 16.1.6 The licences and obligations in this clause survive the termination or expiry of Intellectual Property Rights.

17 Confidential Information

- 17.1.1 Subject to this clause, each Party will maintain in confidence all Confidential Information and ensure that all Confidential Information is kept confidential.

- 17.1.2 Nothing in this clause prohibits disclosure of Confidential Information which:

- 17.1.2.1 is required to be disclosed by Law, any Government Authority, or the rules of a recognised securities exchange;
- 17.1.2.2 is disclosed to a Party's professional advisers to obtain professional advice; and
- 17.1.2.3 is disclosed to a Related Body Corporate.

- 17.1.3 The obligations under this clause survive termination of the Contract.

18 Miscellaneous

18.1 Definitions

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

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 and/or Services.

Chain of Responsibility Provisions means any section of the Heavy Vehicle National Law under which the Supplier is a "party in the chain of responsibility" (within the meaning given to that term under the Heavy Vehicle National Law).

Cleary Bros has the meaning given in clause 3.1(a).

Cleary Bros Material means any material provided by or on behalf of Cleary Bros to the Supplier under or in connection with the Contract or the supply of the Goods and/or Services.

Breach Notice means a notice issued pursuant to clause 13.1.

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:

- (d) is, by its nature, confidential or non-public;
- 18.1.1 is marked or designated or confirmed by a Party as confidential or proprietary at the time of its disclosure; or
- 18.1.2 a Party knows or ought to know is confidential, but excludes information that is:
- 18.1.3 in or enters the public domain through no fault of either Party;
- 18.1.4 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

- 18.1.5 was developed by a Party without that Party relying on, referring to, or incorporating any of the other Party's Confidential Information.

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 in 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.

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.

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, statutory corporation or instrumentality that has jurisdiction over the Goods and Services or Cleary Bros's 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).

Heavy Vehicle National Law means:

- (a) the Heavy Vehicle National Law (NSW) within the meaning of that term under the *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW) as amended, reproduced or updated from time to time; and
- (b) regulations in force under the *Heavy Vehicle National Law* (NSW) as amended, reproduced or updated from time to time.

Indemnified Party or Parties means Cleary Bros and their respective Personnel.

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;

- 18.1.6 the entity suspending payment of its debts generally;

- 18.1.7 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;

- 18.1.8 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 them;

- 18.1.9 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 of the members of the entity; or

- 18.1.10 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;

- 18.1.11 any Licenses; and

- 18.1.12 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 Cleary Bros or the Supplier and **Parties** has a corresponding meaning.

Modern Slavery Legislation means the *Modern Slavery Act 2018 (Cth)* and the *Modern Slavery Act 2018 (NSW)*.

NGER Legislation means the *National Greenhouse and Energy Reporting Act 2007 (Cth)* and the regulations and other legislative instruments under that Act.

Payment Certificate has the meaning given to that term in clause 12.2.

Payment Claim has the meaning given to that term in clause 12.1.

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 Cleary Bros, 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.

Project IP has the meaning given to that term in clause 16.1.2..

Purchase Order means a document so identified, from Cleary Bros to the Supplier requiring the provision of Goods and the performance of the Services or a verbal engagement that is subsequently documented in an email from authorised Cleary Bros Personnel.

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

Road Transport Legislation means as outlined in section 6 of the *Road Transport Act 2013 (NSW)* and includes the regulatory and statutory rules made in that Act (such as the Road Rules 2014).

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 Cleary Bros 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 Cleary Bros from time to time (including by way of online download) or in such other form as Cleary Bros 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 the Cleary Bros Group 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 Cleary Bros to verify any payments claimed by the Supplier in respect of Goods Delivered or Services performed.

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

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).

5.2 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 instance 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.

5.3 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.

5.4 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.

5.5 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 Cleary Bros; 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.

5.6 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.

5.7 Governing Law

- (a) The Contract is governed by the laws of New South Wales.
- (b) Both Parties irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales 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.

5.8 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 that 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.

5.9 Severance

If any clause 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.

5.10 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.

5.11 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.