

MINOR SERVICES, GOODS OR WORKS CONDITIONS OF CONTRACT (ELECTRONIC FORMATION OF CONTRACT)

1. Acceptance of Terms

By accepting Sunwater's Purchase Order for the Supply or making any offer to Sunwater to carry out the Supply or commencing the Supply, the Vendor agrees to be bound by these terms and conditions to the complete exclusion of any terms and conditions provided by the Vendor on or before accepting the Purchase Order from Sunwater or making the offer to Sunwater.

2. Performance

The Vendor must complete the Supply by the Delivery Date in accordance with this Contract.

3. Goods

To the extent the Supply includes the supply of goods:

- (a) the Vendor warrants that the goods satisfy the requirements of the Specifications (if any), are Fit for Purpose, are of merchantable quality and are free from all security interests;
- (b) full and unencumbered title in the goods passes to Sunwater upon the earlier of payment for the goods or delivery;
- (c) risk in the goods remains with the Vendor until the goods are delivered (despite the passing of title);
- (d) the Vendor must deliver the goods to the place directed by Sunwater in writing and in the manner Sunwater otherwise reasonably requires; and
- (e) the Vendor must not deliver the goods prior to the Delivery Date without Sunwater's consent.

4. Services

To the extent the Supply includes the performance of services, the Vendor:

- (a) must perform those services in accordance with the Specifications (if any);
- (b) must use reasonable skill and care in performing the services; and
- (c) warrants that the services will be Fit for Purpose.

5. Works

To the extent the Supply includes the performance of works, the Vendor:

- (a) must ensure the works are carried out in a proper and workmanlike manner and in accordance with the Specifications (if any);
- (b) must use reasonable skill and care in performing the works;
- (c) warrants that the works will be Fit For Purpose; and
- (d) warrants that the works incorporate only new materials or plant which are Fit for Purpose, of merchantable quality and free from all security interests.

6. Design Obligations

To the extent the Supply requires the Vendor to undertake any Design Obligations, the Vendor:

- (a) confirms that the description of the Supply is adequate for the Vendor to complete the Design Obligations in accordance with this Contract;
- (b) agrees that it will not rely on any information provided by or on behalf of Sunwater for any purpose whatsoever, except to the extent Sunwater specifically authorises the Vendor to do so in writing (which sets out the information to be relied upon and purpose for which it can be relied upon by the Vendor);
- (c) must complete and provide to Sunwater all Design Deliverables;
- (d) warrants that the product of the Design Obligations, when completed, will be Fit for Purpose; and
- (e) releases Sunwater from and indemnifies Sunwater against any loss or liability arising from the Vendor not complying with clause 6(b).

7. Site access

(a) If in providing the Supply the Vendor must access a Sunwater site, the Vendor must comply with all directions, requirements and policies as advised by Sunwater from time to time in relation to doing so.

(b) Sunwater may direct the Vendor to do one or more of the following within such time as Sunwater directs:

- A. remove any of the Vendor's officers, employees, agents and subcontractors, and their employees, agents and subcontractors, and any other person employed in connection with the Supply, identified in the direction from a Sunwater site; and
- B. cease any of the Vendor's officers, employees, agents and subcontractors, and their employees, agents and subcontractors, and any other person engaged in connection with the Supply identified in the direction from participating in activities connected with the Supply,

for any reason as determined by Sunwater in its absolute discretion. The Vendor must ensure that the person identified in a direction under clause 7(b) must not after such direction is given return to Sunwater's sites, or participate in activities connected with the Supply, without the prior written approval of Sunwater.

(c) The Vendor is not entitled to, and releases Sunwater from, any claims, demands, actions, costs, charges, expenses, damages, loss or other liability in respect of a direction by Sunwater given under clause 7(b).

8. Changes in Sunwater's Requirements

Sunwater may for any reason (including its convenience) direct the Vendor in writing to:

- (a) accelerate or delay the progress of, change the sequence of or suspend for any period the Supply or any part of it; or
- (b) change the extent, character or quality of the Supply in any way (including by adding or omitting any part of the Supply or changing methods of Supply),

in which case:

- (c) the Vendor must within five (5) days after receipt of Sunwater's direction and (unless Sunwater requires otherwise in writing) before the Vendor complies with the notice, advise Sunwater in writing of the costs or time which the Vendor will incur or save in complying with Sunwater's directions, failing which the Vendor will have no claim for any additional costs or extension of time; and
- (d) the Amount and Delivery Date will be adjusted by:
 - (i) the amounts set out in the Vendor's notice as the costs and time to be saved or incurred by the Vendor (if acceptable to Sunwater); or
 - (ii) if the amounts set out in the Vendor's notice are not acceptable to Sunwater, the amount reasonably determined by Sunwater having regard to the reasonable costs and time which a reasonably competent contractor would save or incur in complying with Sunwater's direction,

but if Sunwater's direction arises from an act, omission or default of the Vendor, its subcontractors or their employees or agents, the Vendor will have no claim for any additional costs or extension of time.

9. Time and Program

(a) Where Sunwater requires a program, the Vendor must:

- (i) prepare and obtain Sunwater's approval of a program for the Supply (in a form approved by Sunwater) before commencing the Supply;
- (ii) at all times comply with the approved program; and
- (iii) not change the approved program without Sunwater's prior written approval.

(b) If:

- (i) the Vendor is unavoidably delayed in achieving any Delivery Date or is prevented from performing the Supply by a cause that is beyond the Vendor's or any of its subcontractors' control;
- (ii) the Vendor has not by its act or omission (or the act or omission of its subcontractor) contributed to the cause and has used all endeavours to minimise the delay arising from the cause; and
- (iii) the Vendor has notified Sunwater in writing of:
 - (1) the existence of the cause, within 2 days after the Vendor becomes aware of the circumstances giving rise to the cause; and
 - (2) the length of the period of the delay for which the Vendor claims an extension, within 2 days after the cause ends,

Sunwater will by notice in writing to the Vendor:

- (iv) allow the Vendor a reasonable extension to any applicable Delivery Date; or
 - (v) excuse the Vendor from performance for a reasonable period, within a reasonable period after the Vendor's claim in paragraph (b)(iii) is received.
- (c) The Vendor acknowledges that failure by Sunwater to extend any Delivery Date will not set time at large and Sunwater may in its discretion extend any Delivery Date at any time for any reason.

10. Site Conditions

Despite any other provision of this Contract, where the Vendor provides works on a Sunwater site:

- (a) the Vendor accepts the risk of all Site Conditions;
- (b) the Vendor is not entitled to any adjustment to the Amount or to any claim for any costs, expenses, damages, delay or disruption costs or other liabilities or extension of time arising from any Site Condition;
- (c) the Vendor must carry out all works required to ensure the Supply is in accordance with this Contract despite any Site Conditions; and
- (d) Sunwater gives no warranty and makes no representation as to the capacity of the site to support the works, services or goods.

11. Defects

(a) Without limiting or excluding any of its other rights, Sunwater may in its discretion, require the Vendor to promptly undertake Rectification Activities for any part of the Supply which Sunwater finds to be defective at any time after the Delivery Date and before the date that is 12 months after the Delivery Date.

(b) Without limiting or excluding other rights of Sunwater, if goods are reasonably determined by Sunwater to not be in compliance with this Contract:

- (i) Sunwater may return the goods to the Vendor at the Vendor's risk and expense; and
- (ii) the Vendor will be indebted to Sunwater for:
 - (A) the Amount paid by Sunwater for the returned goods (if paid); and
 - (B) the costs incurred by Sunwater in connection with the delivery and return of the returned goods.

12. Subcontracting

If the Vendor subcontracts any of the Supply, the Vendor:

- (a) remains fully responsible for the Supply and its obligations under this Contract; and
- (b) will be liable to Sunwater for acts or omissions of its subcontractors and their employees and agents as if they were acts or omissions of the Vendor.

13. Laws and legal requirements

The Vendor must:

- (a) comply with and ensure the Supply complies, and all of the Vendor's officers, employees, agents and subcontractors comply, with:
 - (i) all agreements and policies of Sunwater applicable to the Supply (as advised by Sunwater from time to time), including but not limited to the Supplier Code of Conduct available on the Sunwater website (www.sunwater.com.au); and
 - (ii) all relevant laws and legal requirements;
- (b) ensure that it and its officers, employees, agents and subcontractors hold and maintain at all times during this Contract all Licence and Competency Requirements; and
- (c) provide evidence of its Licence and Competency Requirements where requested by Sunwater and notify Sunwater of any breach of any Licence and Competency Requirements.

14. Work Health Safety and Environment

(a) The Vendor must:

- (i) comply with (and ensure its officers, employees, agents and subcontractors comply with) and ensure that the Supply is carried out in accordance with:
 - A. any legislative requirement, principles of law or equity established by decisions of Australian Courts or requirements of persons acting in the exercise of statutory powers relating to health and safety, including the *Work Health and Safety Act 2011* (Qld), the *Work Health and Safety Regulation 2011* (Qld), and the *Queensland Electrical Safety Act 2002* (Qld);
 - B. any requirements of Sunwater or any manufacturer's recommendations associated with any equipment or materials to be used for the purposes of carrying out the Supply or any other provisions of this Contract in each case relating to health and safety; and
 - C. Work Health and Safety Codes published by www.WorkSafe.qld.gov.au;
- (ii) maintain safe work practices and ensure that all workers are qualified and/or licensed to undertake the work required by the Supply;
- (iii) ensure that any activities carried out in connection with the Supply are conducted in a safe manner and do not place others or the environment at risk of harm;
- (iv) ensure that it and all workers comply with the directions of Sunwater (or any person nominated by Sunwater as having the authority to give directions) in connection with health and safety;
- (v) consult fully with Sunwater in respect of any matter relevant to health and safety, including, without limitation, how the Supply can be undertaken in a way which prevents or minimises all risks to health and safety; and

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- (vi) ensure that it maintains adequate records of all health and safety matters and promptly reports all incidents to, and follow all lawful directions by, Sunwater.
- (b) Without limiting any of its rights, Sunwater may terminate this Contract on written notice if, in Sunwater's opinion, the Vendor fails to:
- (i) maintain safe work practices; or
 - (ii) ensure that activities carried out in connection with the Supply are conducted in a safe manner, on two or more occasions.
- 15. Modern Slavery**
- (a) In this clause 15, modern slavery includes but is not limited to forced labour, bonded labour, human trafficking, child slavery, forced marriage, and any conduct which constitutes modern slavery under any law.
- (b) The Vendor warrants and agrees that:
- (i) it has not, and will not, engage in any modern slavery practices;
 - (ii) it will comply with all laws relating to modern slavery;
 - (iii) it will do all things necessary to immediately rectify or avoid any modern slavery risk (including complying with any direction given by Sunwater), and provide written notice to Sunwater of such rectification or avoidance, including supporting documentary evidence as reasonably required by Sunwater; and
 - (iv) it will provide all information as may be reasonably required by Sunwater to comply with any law or legal requirement.
- (c) Sunwater may (without limiting any other rights of Sunwater) terminate this Contract immediately by written notice to the Vendor if the Vendor breaches, or Sunwater reasonably believes that the Vendor has breached, paragraph (b) above.
- 16. Ethical Supplier Mandate**
- (a) The Vendor acknowledges that, and shall procure that each subcontractor acknowledges that:
- (i) a failure to comply with the State's policies that apply to the Supply or the Vendor's obligations under this Contract can result in the imposition of a demerit or sanction under the Ethical Supplier Mandate, in addition to any other remedies available to Sunwater under this Contract; and
 - (ii) the Queensland Government may issue a show cause notice (as that term is defined in the Ethical Supplier Mandate Guidelines) for breaches of relevant laws and policies in accordance with the Ethical Supplier Mandate.
- (b) The Vendor and its subcontractors and related entities must comply with the Ethical Supplier Threshold during the term of this Contract.
- 17. Payment**
- (a) Sunwater must pay the Vendor the Amount in the manner set out in this Contract.
- (b) The Vendor may, at each time for a payment claim set out in a Purchase Order, submit a Tax Invoice.
- (c) The amount which the Vendor must be paid at the time of each claim for payment must be:
- (i) the amount specified in this Contract as payable; or
 - (ii) if no amount is specified, the amount of the value of the Supply provided to the reasonable satisfaction of Sunwater to the time of the progress payment claim, but excluding any:
 - (iii) previous amounts paid;
 - (iv) amounts representing the value of unfixed plant or materials, unless Sunwater has agreed to such value being included; and
 - (v) amounts which this Contract otherwise provides are not payable for any reason (including by way of set-off).
- (d) Sunwater shall pay the Vendor within 15 business days after Sunwater receives a Tax Invoice in accordance with clause 17(b).
- (e) Neither payment by Sunwater nor delivery of the Supply will be evidence that Sunwater accepts that any of the Supply has been performed in accordance with this Contract.
- 18. Insurance and Indemnities**
- (a) The Vendor agrees that, to the extent the Supply includes goods, the goods are at its risk until delivery.
- (b) The Vendor warrants that it has obtained and maintains through the duration of this Contract (including any defects liability period) all insurances required by law and by this Contract, including but not limited to, the following:
- (i) public and products liability insurance with a limit of liability of not less than \$20 million for any one occurrence;
 - (ii) where this Contract requires the Vendor to provide professional advice or to prepare or provide any design, formula or specification (including any Design Obligations), professional indemnity insurance with a minimum cover of not less than \$10 million for any one claim. Any professional indemnity policy must be maintained for a period of six years following completion of this Contract;
 - (iii) third party personal injury and property motor vehicle insurance for not less than \$20 million per claim;
 - (iv) workers compensation or personal injury insurance (as applicable); and
 - (v) any other insurance required by Sunwater.
- (c) On request, the Vendor shall provide certificates of currency as evidence of insurances the Vendor or its subcontractors are required to effect under the terms of this Contract.
- (d) The Vendor indemnifies Sunwater against claims, demands, actions, costs, charges, expenses, damages, loss or other liability arising from or contributed to by the carrying out of the Supply, or any breach or unlawful, negligent or fraudulent act or omission of the Vendor or any of its officers, agents, employees, subcontractors or representatives.
- (e) The Vendor must ensure all subcontractors effect and maintain insurances required to be maintained by the Vendor (unless the subcontractors are covered by the Vendor's insurance).
- 19. Default and Termination**
- If the Vendor:
- (a) does not comply with any of its obligations in accordance with this Contract and fails to rectify the breach within 5 days after Sunwater has notified the Vendor that Sunwater requires the Vendor to do so; or
 - (b) informs any person it is insolvent, commits an act of bankruptcy, has a bankruptcy petition presented against it, becomes bankrupt or becomes subject to or bound by any arrangement, assignment, composition or moratorium of debts with its creditors, official management, receivership, liquidation, voluntary administration, winding up or other external administration or a mortgagee enters into possession or takes control in respect of any of the assets of the Vendor,
- then without limiting Sunwater's rights, Sunwater may terminate this Contract by notice in writing to the Vendor.
- 20. Termination for Convenience**
- Sunwater may at any time and for any reason (including for its convenience where there is no default by the Vendor) terminate this Contract by 5 days' prior notice in writing to the Vendor in which case:
- (a) the Vendor must cease all parts of the Supply to the extent set out in Sunwater's notice and mitigate any costs incurred by the Vendor consequent upon termination;
 - (b) Sunwater must pay the Vendor for the value of the Supply provided to Sunwater in accordance with this Contract;
 - (c) the Vendor will have no claim whatsoever for any loss of profit, damages or other amounts; and
 - (d) the rights of Sunwater arising from prior breaches by the Vendor will not be affected.
- 21. GST**
- (a) Capitalised terms in this clause 21 have the meanings given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) Unless stated otherwise in this Contract, the Amount is exclusive of GST.
- (c) Sunwater will not be obliged to pay the Vendor any amount payable in respect of a Taxable Supply until the Vendor has provided to Sunwater a tax invoice in respect of the amount payable.
- 22. Trusts**
- Where the Vendor is a trustee:
- (a) the Vendor incurs all obligations under this Contract in its own right and in its capacity as trustee;
 - (b) the Vendor must comply with the terms of the relevant trust deed and ensure there is no restriction or limitation on or derogation from its right of subrogation or indemnity under the relevant trust deed; and
 - (c) the Vendor warrants it is empowered by the trust deed to enter into and perform this Contract.
- 23. Cap on Liability and Exclusion of Liability**
- (a) Subject to paragraph (b), the maximum aggregate liability of a party to the other, whether in contract, tort (including negligence) or otherwise in connection with this Contract, is an amount equal to the total of all Amounts (including additional expenses and charges) payable under the Contract, multiplied by 1.5.
- (b) The cap of liability in paragraph (a) does not apply in relation to:
- (i) personal injury, including sickness, injury or death; or
 - (ii) loss of, or damage to, tangible property; or
 - (iii) wilful default, wilful misconduct, unlawful act or omission of, or failure to comply with applicable law by the Vendor or its officers, employees, agents and subcontractors; or
 - (iv) any claim by a third party relating to this Contract, including breach of a third party's Intellectual Property Rights; or
 - (v) claims to the extent recoverable by the relevant party under a policy of insurance to the limit of that insurance required under the Contract or, in the case of the Vendor's liability to Sunwater, which would have been recoverable but for the Vendor's failure to meet the insurance requirements under this Contract; or
 - (vi) a breach of clauses 24 or 25 by the Vendor or its officers, employees, agents and contractors.
- (c) Notwithstanding anything else in this Contract, neither party will have any liability to the other for any Indirect or Consequential Loss.
- 24. Confidentiality**
- The Vendor must:
- (a) keep confidential all Confidential Information;
 - (b) not use the Confidential Information except for the purposes of this Contract; and
 - (c) not disclose Confidential Information to any person except:
 - (i) to the Vendor's officers, employees, agents and contractors, and advisors on a need to know basis;
 - (ii) with Sunwater's consent;
 - (iii) if required by law; or
 - (iv) if it is in the public domain, except as a result of a breach of this Contract.
- 25. Privacy**
- The Vendor must:
- (a) at all times comply with the *Privacy Act 1988* (Cth) as if the Vendor was an entity to which that Act applies;
 - (b) not disclose Personal Information collected or accessed in connection with this Contract other than for the purpose of performing its obligations under this Contract;
 - (c) not disclose Personal Information collected or accessed in connection with this Contract without the prior written consent of Sunwater, unless otherwise required or authorised by law;
 - (d) not transfer any Personal Information collected or accessed in connection with this Contract outside of Australia, except with Sunwater's prior written consent; and
 - (e) immediately notify Sunwater in writing upon becoming aware of any breach of this clause 25, or any unauthorised access, use, modification, disclosure or other misuse of any Personal Information collected or accessed in connection with this Contract.
- 26. Intellectual Property Rights**
- All Intellectual Property Rights created in connection with the Supply vest in or are assigned or transferred to Sunwater immediately upon creation.
- 27. Legislation relating to Works**
- (a) To the extent the Supply or any part of the Supply is subject to the QBCC Act:
 - (i) the rights and obligations of the parties under this Contract are subject to the provisions of the QBCC Act to the extent they apply, and where there is any inconsistency between this Contract and the QBCC Act, the QBCC Act will prevail to the extent necessary to avoid the inconsistency;
 - (ii) without limiting any other provision of this Contract, the Vendor must maintain its registration under the QBCC Act (under the licence number set out in the Purchase Order, if any) to carry out the Supply.
 - (b) To the extent the Supply is subject to the BIF Act:
 - (i) Chapter 3 of the BIF Act applies to this Contract;

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- (ii) the Vendor must immediately notify Sunwater of:
 - A. it receiving; or
 - B. it becoming aware of any party providing any work, services or supply required in connection with the Supply receiving,
 any notice under sections 77, 78 or 92 of the BIF Act;
- (iii) the amount of each progress payment to which the Vendor is at any time entitled in relation to this Contract must be calculated in accordance with all provisions of this Contract relevant to the amount which the Vendor may claim or Sunwater must pay;
- (iv) if the Vendor suspends the Supply pursuant to the BIF Act, the Vendor will have no claim apart from a claim for an extension to any Delivery Date or excuse from performance (as the case may be) subject to the terms of this Contract; and
- (v) if a subcontractor of the Vendor suspends the provision of any work, services or supply pursuant to the BIF Act, the Vendor will have no claim (including without limitation for an extension to any Delivery Date).

28. Investigations

- (a) The Vendor must, and must ensure that all of the Vendor's officers, employees, agents and subcontractors, and their employees, agents and subcontractors, and any other person engaged in connection with the Supply, cooperate fully with any investigation conducted by Sunwater or any third party engaged by Sunwater.

29. General

- (a) The law of Queensland applies to this Contract.
- (b) Capitalised terms that are not otherwise defined in these terms and conditions shall refer to the corresponding item (if any) in the Purchase Order for the Supply.
- (c) Clauses 18(d), 23, 24, 25 and 28 survive the termination of this Contract.
- (d) The parties consent to the sending and receiving of documents, the signatures of any proposed or existing contract and any document attached thereto by electronic means in accordance with sections 11, 12 and 14 of the *Electronic Transactions (Queensland) Act 2001* (Qld).
- (e) This Contract constitutes the entire agreement between Sunwater and the Vendor in relation to the Supply.
- (f) In the event of a dispute, the parties will not bring any court proceedings relating to this Contract (except urgent interlocutory proceedings) without first attempting to resolve the dispute by negotiation. The Vendor must continue to carry out the Supply despite any dispute.

30. Definitions:

- (a) **Amount** has the meaning described in the Purchase Order.
- (b) **BIF Act** means the *Building Industry Fairness (Security of Payment) Act 2017* (Qld).
- (c) **Confidential Information** means all information provided by or obtained from Sunwater in relation to this Contract.
- (d) **Contract** means the Purchase Order and these terms and conditions.
- (e) **Delivery Date** has the meaning described in the Purchase Order.
- (f) **Design Deliverables** means all drawings, specifications or other documents or materials required to give effect to the Vendor's Design Obligations, or otherwise required to be provided by the Vendor.
- (g) **Design Obligations** means any part of the Supply that includes design work or design services.
- (h) **Ethical Supplier Mandate** means the Queensland Government policy titled "Buy Queensland: Ethical Supplier Mandate" or any policy that replaces that policy.
- (i) **Ethical Supplier Threshold** means the Ethical Supplier Threshold described in paragraph 2.3 of the Queensland Procurement Policy or any policy that replaces that policy.
- (j) **Fit for Purpose** means fit for the purposes set out in, or which are reasonably ascertainable from, this Contract.
- (k) **Indirect or Consequential Loss** means loss of opportunity, profit, anticipated profit, business, business opportunities or revenue, or any failure to achieve anticipated savings.
- (l) **Intellectual Property Rights** includes all copyright, trade mark, design, patents, semiconductor or circuit layout rights and other proprietary rights, and any rights to registration of such rights existing anywhere in the world, whether created before or after the date of the Contract.
- (m) **Licence and Competency Requirements** means all qualifications, certificates, licences, permits, approvals, skills, experience, and competencies required for the purposes of carrying out the Supply.
- (n) **Personal Information** has the meaning defined in the *Privacy Act 1988* (Cth).
- (o) **Purchase Order** means a Sunwater purchase order in respect of the Supply.
- (p) **QBCC Act** means the *Queensland Building and Construction Commission Act 1991* (Qld).
- (q) **Rectification Activities** means any rectification, replacement, repair or re-supply of any part of the Supply.
- (r) **Site Conditions** means all conditions of the site which are known, were identified in information provided by Sunwater to the Vendor or ought reasonably to have been known to the Vendor through appropriate site inspection and other due inquiries (including without limitation natural or artificial conditions, contamination, services, facilities and improvements on the site (including those installed or constructed by other contractors)).
- (s) **Specifications** means any document provided to the Vendor, or otherwise made known to the Vendor, describing Sunwater's requirements for the Supply.
- (t) **Supply** has the meaning described in the Purchase Order.
- (u) **Sunwater** means any of the following, as noted in the Purchase Order:
 - (i) Sunwater Limited ACN 131 034 985 and ABN 17 020 276 523;
 - (ii) Eungella Water Pipeline Pty Limited ACN 070 999 236 and ABN 17 070 999 236;
 - (iii) North West Queensland Water Pipeline Pty Ltd ACN 070 999 218 and ABN 13 070 999 218; or
 - (iv) Burnett Water Pty Ltd ACN 097 206 614 and ABN 82 097 206 614.
- (v) **Tax Invoice** means an invoice from the Vendor to Sunwater for the Supply (accompanied by all supporting documentation required by Sunwater), which must include the Vendor's name, ABN number, description of the Supply provided, the amount claimed and such other details Sunwater reasonably requires from time to time.
- (w) **Vendor** has the meaning described in the Purchase Order.