

## MINOR SERVICES OR GOODS 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. This contract consists of the Purchase Order and these terms and conditions ("Contract").

### 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 the purposes set out in, or which are reasonably ascertainable from, this Contract ("**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 at the Delivery Point 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:

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

### 5. Site access

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

### 6. Laws and legal requirements

The Vendor must comply with and ensure the Supply complies, and all of the Vendor's officers, employees, agents and subcontractors comply, with:

- (a) all agreements and policies of Sunwater applicable to the Supply (as advised by Sunwater from time to time); and
- (b) all relevant laws and legal requirements including all workplace, health, safety and environment laws and legal requirements.

### 7. Work Health Safety and Environment

The Vendor must:

- (a) maintain safe work practices and ensure that all workers are qualified and/or licensed to undertake the work required by the Supply;
- (b) 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;
- (c) 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;
- (d) 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
- (e) ensure that it maintains adequate records of all health and safety matters and promptly report all incidents to, and follow all lawful directions by, Sunwater.

### 8. Modern Slavery

(a) In this clause 8, 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 or is in breach of, paragraph (b) above.

### 9. Ethical Supplier Mandate

(a) in this clause 9:

- (i) **Ethical Supplier Mandate** means the Queensland Government policy titled "Buy Queensland: Ethical Supplier Mandate" or any policy that replaces that policy; and
- (ii) **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.

(b) 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.

(c) The Vendor and its subcontractors and related entities must comply with the Ethical Supplier Threshold during the term of this Contract.

### 10. Payment

- (a) Sunwater must pay the Vendor the Amount in the manner set out in this Contract.
- (b) The Vendor may invoice Sunwater for the Supply within 30 days after completion of the Supply (unless this Contract provides otherwise). Invoices must be in the form reasonably required by Sunwater from time to time.
- (c) Unless this Contract provides otherwise, Sunwater must pay any correctly-rendered invoice within 30 days (unless another time period is specified as the Payment terms in the Purchase Order) after receipt.
- (d) Sunwater is not required to pay any element of an invoice which it disputes.
- (e) Neither delivery of the Supply nor delivery of the Supply will be evidence that Sunwater accepts that any of the Supply has been performed in accordance with this Contract.

### 11. 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, the Vendor shall effect 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.

### 12. 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.

### 13. 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.

### 14. GST

- (a) Capitalised terms in this clause 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 Price 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.

### 15. 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.

### 16. 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 personnel; or
  - (iv) any claim by a third party relating to this Contract, including breach of a third party's Intellectual Property Rights; or

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- (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 17 or 18 by the Vendor or its personnel.
- (c) Notwithstanding anything else in this Contract, neither party will have any liability to the other for any Indirect or Consequential Loss (as defined in paragraph (d)).
- (d) In this clause 16, 'Indirect or Consequential Loss' means loss of opportunity, profit, anticipated profit, business, business opportunities or revenue, or any failure to achieve anticipated savings.

### 17. Confidentiality

The Vendor must:

- (a) keep confidential all information provided by or obtained from Sunwater in relation to this Contract ('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 personnel 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.

### 18. 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 18, or any unauthorised access, use, modification, disclosure or other misuse of any Personal Information collected or accessed in connection with this Contract.

### 19. 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.

### 20. 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 11(d), 16, 17 and 18 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.
- (g) **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.
- (h) **Personal Information** has the meaning defined in the *Privacy Act 1988* (Cth).
- (i) **Purchase Order** means a Sunwater purchase order in respect of the Supply.
- (j) **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.