

1. AGREEMENT TO SUPPLY

- 1.1. Unless a formal agreement has been entered into between **Downer** and the **Supplier** these **Terms of Purchase** shall apply to any **Purchase Order** issued by **Downer** to the **Supplier**. The **Purchase Order** is deemed to be accepted by the **Supplier** upon acceptance of or otherwise processing of an **Order**. Any terms and conditions of the **Supplier** shall have no legal effect and shall not constitute part of any agreement (including this **Agreement**) between **Downer** and the **Supplier** for the supply of **Goods and Services**.
- 1.2. Subject to the exception stated in **clause 1.1**, or unless otherwise agreed in writing by **Downer**, if the **Supplier** supplies any **Goods or Services** to **Downer** then the **Supplier** is deemed to have accepted these **Terms**.
- 1.3. The **Supplier** will supply the **Goods and Services** according to the **Specification(s)** detailed in the **Purchase Order**.

2. QUANTITY FORECAST

- 2.1. Where **Downer** provides an estimate or forecast of its future requirements for **Goods or Services**, these estimates are indicative only and do not constitute a commitment to purchase the estimated requirements.

3. DELIVERY

- 3.1. **Delivery of Goods** or performance of **Services** shall be made by the **Supplier** by the dates and to the places specified in the relevant **Purchase Order**, and the **Supplier** is solely responsible for safely unloading all **Goods** or performance of **Services** at the **Place of Delivery**.
- 3.2. If the **Supplier** is not responsible for **Delivery**, **Downer** is responsible for taking **Delivery** of the **Goods** from the **Supplier**. In that case, the **Supplier** must make the **Goods** available to **Downer** for pick up at the **Place of Pick-up on the Delivery Date**.
- 3.3. **Downer** may, at any time, and for any reason whatever, by notice in writing to the **Supplier** extend the time for completion of **Delivery** of the **Goods**.
- 3.4. The **Supplier** shall ensure all deliveries of **Goods** are accompanied by a delivery docket containing the following information:
- Purchase Order** number and order date;
 - Supplier's** details
 - quantity dispatched;
 - item description and part number;
 - whether or not **Delivery** is part only of total order; and
 - details of any items on back order.
 - the **Supplier's** delivery docket number/invoice number

- 3.5. The **Supplier** must, at its own cost, package, mark, label and ship the **Goods** in accordance with the instructions or specifications on the **Purchase Order**, or with any specification for packaging, marking or labeling in respect of the **Goods**, if applicable or otherwise in a manner reasonably expected of the **Supplier** by **Downer** having regard to the nature of the **Goods** and the purpose for which the **Goods** are reasonably intended by **Downer** whilst complying with best commercial practice to ensure safe arrival at the **Place of Delivery** at the lowest transportation cost.
- 3.6. The **Supplier** must clearly indicate any substances in the **Goods** which are or may be hazardous to human health, animal health or the environment, by clearly marking the **Goods** and their packaging and including appropriate and prominent precautions in documentation accompanying the **Goods**.
- 3.7. The **Supplier** must comply with **Downer's** reasonable quality requirements, including management of quality, quality systems, control and reporting, managing defects and providing quality statistics reporting, and where required by **Downer** production of and working to a quality plan approved by **Downer**.
- 3.8. Compliance with the requirements outlined in **clause 3.7** may be audited by **Downer**.

4. TITLE AND RISK

- 4.1. The **Supplier** warrants that it has ownership of the **Goods** free of any liens, charges and encumbrances and will transfer the **Goods** to **Downer** on that basis.
- 4.2. Unencumbered title to the **Goods** passes to **Downer** at the point of **Delivery** of the **Goods** in accordance with this **Agreement** or at time of payment if the **Goods** were paid for in advance.
- 4.3. Risk of loss and damage or deterioration to the **Goods** from any cause whatsoever shall remain with the **Supplier** and shall not pass to **Downer** until the **Goods** are **Delivered** to **Downer** at the specified **Place of Delivery**, or where the **Goods** are held by the **Supplier** at a **Place of Pick-up**, until the **Goods** are picked-up by **Downer** from that **Place of Pick-up**.

5. INSPECTION

- 5.1. **Downer** may reject any **Goods and Services** that fail to meet the description or **Specification** set out in a **Purchase Order**. Any monies paid by **Downer** to the **Supplier** prior to inspection of the **Goods and Services** shall be deemed to have been paid conditional upon, and subject to, the **Goods and Services** being free of any defects to the satisfaction of **Downer**, following inspection by it. If **Downer** notifies the **Supplier** of any defects in or damage to the **Goods** or the output of the **Services** **Downer** may return the **Goods** to the **Supplier's** premises at the **Supplier's** expense and risk and/or request the **Services** are performed again and any monies paid shall be refunded to **Downer**.

6. PRICE

- 6.1. The **Supplier** agrees to supply the **Good and Services** in accordance with this **Agreement** in consideration for the **Price** specified in the **Purchase Order**. No variation to the **Price** will be allowed unless agreed to in writing by **Downer**. If the **Price** is omitted on the **Purchase Order**, the **Price** will be that specified in any quotation provided by the **Supplier** and accepted by **Downer**, or otherwise the lowest prevailing market price for the **Goods and Services** as determined by **Downer**. All prices are inclusive of delivery, packaging, transport and any **Taxes** unless otherwise stated in a **Purchase Order** and are in New Zealand dollars.

7. PAYMENT AND DEDUCTIONS

- 7.1. Invoices submitted to **Downer** under this **Agreement** must specify the:
- description of **Goods**, including manufacturer part number;
 - quantity of the **Goods** in units of measure which are consistent with the **Purchase Order**;
 - details of any items on back order;
 - serial item number, if applicable, of the **Goods**;

- Place of Delivery** or the **Place of Pick-up**, as applicable;
 - Delivery Date**; and
 - Price** (including unit price) of the **Goods** consistent with the relevant **Purchase Order**, or discount applied to items whose price is not specified in a **Purchase Order**
 - Purchase Order** number; and
 - Purchase Order** item number (in sequential order)
 - Downer** business unit's name
 - the delivery docket number
- and list transactions in date order showing;
- freight and other charges where applicable,
 - goods and services tax ("GST")
 - total purchase price
 - a description of any **Services** performed

- 7.2. If the **Supplier** complies with **clause 7.1**, and subject to **Downer** receiving a correct tax invoice by the 5th working day of the month following supply of the **Goods or Services**. **Downer** shall pay the tax invoice by the first working day of the second calendar month following the month in which the **Goods or Services** delivered. **Downer** may withhold payment of any tax invoice which contains reference to **Goods or Services** under dispute until that dispute is resolved.

- 7.3. In addition to any other rights that it may have under this **Agreement** or otherwise, **Downer** may deduct from, and set off against, any monies due or that become due to the **Supplier**:
- all costs, damages and expenses which **Downer** may have paid for or incurred or is likely to incur in connection with the supply of **Goods and Services** for which the **Supplier** is liable and which remain unpaid by the **Supplier**; and
 - all debts owed by the **Supplier** to **Downer** and which remain unpaid on any account whatsoever.

8. GST

- 8.1. **Downer** agrees to pay the **Supplier** **GST** for supplies subject to such tax, and delivered to **Downer** pursuant to a **Purchase Order**. If the amount of **GST** recovered by the **Supplier** from **Downer** differs from the amount of **GST** payable at law by **Downer** in respect of the supply, the relevant price payable by **Downer** will be adjusted.
- 8.2. **Downer** will not be obliged to pay any amount in respect of **GST** to the **Supplier** unless and until a valid tax invoice has been issued by the **Supplier** in respect of the **Goods and Services** to which that **GST** relates.

9. SUPPLIER'S WARRANTIES

- 9.1. The **Supplier** warrants and guarantees to **Downer** that:
- the **Goods and Services** conform with the **Agreement**;
 - all **Goods** are free from defects in design, material and workmanship, of merchantable quality, of good material and workmanship, fit for the particular purpose specified by **Downer** and generally fit for purpose and comply with any samples or **Specification(s)** given by **Downer** or provided by the **Supplier** and agreed to by **Downer** and with any express guarantees, warranties and undertakings given by the **Supplier** and meet the quality requirements set out in a **Purchase Order**;
 - all **Services** provided are performed by persons with the requisite skill and experience, with due care and diligence and in accordance with best industry practice and are fit for the purpose for which they have been supplied and comply with any express guarantees, warranties and undertakings given by the **Supplier** and meet the performance requirements set out in a **Purchase Order**;
 - any third party materials or data provided to **Downer** by the **Supplier** do not infringe any intellectual property rights of third parties;
 - the **Supplier** will cover any costs and expenses of **Downer** resulting from a failure to meet the performance requirements and/or **Specification(s)** set out in a **Purchase Order**;
 - Downer** shall have the full benefit of any manufacturer's warranties that may be applicable to the **Goods or Services** or any part thereof;
 - the **Goods and Services** will comply with all laws in force in the jurisdiction in which they are supplied; and
 - it shall not do or omit to do anything, or use any materials, substances or processes which breach or would or could breach any duty or obligation of the **Supplier** or **Downer** under the Resource Management Act 1991, and any other environmental legislation relevant to the supply of the **Goods and Services**

- 9.2. The **Supplier** provides a warranty for the **Goods and Services** against any defects in its manufacture or supply for a period of 12 months or such other longer period as may be defined by the requirements of any local authority or other governing or regulatory body, or as agreed between **Downer** and the **Supplier**, from the date of **Delivery** of the **Goods and Services**.

- 9.3. If the **Goods or Services** are or become defective in any way during the warranty period specified in **clause 9.2**, at **Downer's** absolute discretion:
- the **Supplier** must remedy, replace or repair the **Goods and Services** at the **Supplier's** cost and within a reasonable period; or
 - Downer** may cancel the **Purchase Order** in respect of the **Goods and Services** (and any other **Purchase Order** with the **Supplier** in respect of **Goods and Services** which have not yet been **Delivered**) and will be entitled to a full refund of any amounts paid for the **Goods and Services**; and
 - the **Supplier** indemnifies **Downer** against any **Loss** **Downer** incurs that is caused by the defective **Goods or Services**.

10. INDEMNITY

- 10.1. The **Supplier** shall be liable for and must indemnify **Downer**, against any and all **Loss** whatsoever suffered by **Downer** arising, directly or indirectly, from:
- any breach by the **Supplier** of any warranty or any of the other terms and conditions of this **Agreement**;
 - any loss or damage arising out of, or in connection with, any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused or contributed to by the **Goods and Services**;

Terms of Purchase – Downer New Zealand Limited (and related companies) (Downer)

- 10.1.3. any negligence or willful act or omission by the **Supplier** in connection with the performance of the **Supplier's** obligations under this **Agreement**;
- 10.1.4. any claim that the **Goods** or **Services**, anything the **Supplier** does in supplying **Downer** with the **Goods** or providing **Downer** with any **Services**, or **Downer's** use of the **Goods** or **Services** infringes or allegedly infringes the **Intellectual Property Rights** of any person.
102. Notwithstanding any other provision of this **Agreement**, the liability of **Downer** to the **Supplier**, whether arising under or in connection with this **Agreement** or the performance or non-performance thereof or anything incidental thereto, and whether by way of indemnity, by statute, in tort (for negligence or otherwise), or on any other basis in law or equity is hereby limited or excluded as follows:
- 10.2.1. **Downer** shall have no liability whatsoever to the **Supplier** for **Loss**; and
- 10.2.2. the total aggregate liability of **Downer** to the **Supplier** is limited to the **Price** or such other amount as agreed between **Downer** and the **Supplier**.
- 11. INTELLECTUAL PROPERTY**
- 11.1. **Intellectual Property** existing prior to the placement of a **Purchase Order** shall remain the property of the party who owned it. **Downer** shall retain copyright and the sole and exclusive ownership of all data, information, documents, reports or other such **Intellectual Property** outputs of the **Goods** and **Services** made in the course of the **Supplier** supplying the **Goods** and **Services**, provided that any other **Intellectual Property** invented, made or discovered during the fulfillment of a **Purchase Order** that relates to the **Goods** and **Services**, shall vest in and belong to the party who invented, made or discovered that **Intellectual Property**. If in the course of providing the **Goods** and **Services** any **Intellectual Property** is jointly invented made or discovered that relates to the **Goods** and **Services**, then, ownership of that **Intellectual Property** automatically and completely vests in **Downer** and the **Supplier** jointly and either party may use such **Intellectual Property**.
- 12. INSURANCE**
- 12.1. Before commencing work, the **Supplier** must at its own expense, procure and maintain with insurers, and on terms and conditions approved by **Downer** insurance policies relating to the **Supplier's** supply of the **Goods** and **Services** necessary to protect **Downer** against the risks under these **Terms** upon usual commercial terms including:
- public and products liability insurance written on an occurrence basis with a limit of indemnity of not less than \$10,000,000 for each and every occurrence and, in the case of product liability, no less than \$10,000,000 in the aggregate during any 12 month period of insurance which covers the liability of **Downer** in respect of:
 - bodily injury to any third party; and
 - third party property damage
 - third party motor vehicle insurance, including, as a minimum:
 - insurance that is compulsory under applicable laws governing the use of motor vehicles and liability for personal injury or death; and
 - liability insurance for third party property damage with a sum insured of not less than \$5,000,000 per occurrence;
 - professional indemnity insurance providing coverage for the **Supplier's** professional responsibilities to **Downer** with a sum insured of not less than \$10,000,000; and
 - such other insurance policies in such amounts and against such risks as **Downer** may from time to time reasonably require.
- The **Supplier** must insure the **Goods** until the time of delivery to **Downer's** specified delivery location, for performance of **Services** until the end of the defects liability period and must maintain professional indemnity insurance for 6 years following delivery of **Services**.
- 12.2. The **Supplier** must provide evidence that all insurances required are current and fulfill the obligations of the **Purchase Order**.
- 13. VARIATION AND CANCELLATION OF A PURCHASE ORDER**
- 13.1. **Downer** may at its option cancel any order to the extent unperformed without cause. In the event of cancellation of an **Order** **Downer's** only obligation shall be to pay for **Goods** delivered or **Services** performed prior to the cancellation.
- 13.2. In the case of the cancellation of an **Order** for **Goods** specifically manufactured or fabricated for **Downer** to the **Specification(s)**, upon receipt of a notice of cancellation the **Supplier** shall cease manufacture, supply all work in accordance with and to the extent specified in the notice and shall immediately do everything possible to minimise any cost after such cancellation. Following cancellation:
- The **Supplier** must send **Downer** a written claim setting out all costs and cost savings that result from the variation or termination of the **Purchase Order** (including an adjusted Price) within 30 business days of the effective date of variation or termination.
 - Downer** has the right to audit the adjusted price specified in the written claim.
- 13.3. The adjusted price will apply to the **Purchase Order**; if:
- Downer** is satisfied that the adjusted price specified in the written claim is equitable; and
 - the variation or termination of the **Purchase Order** is not a result of any default or action on the part of the **Supplier**.
- 14. TERMINATION**
- 14.1. **Downer** may terminate this **Agreement** at any time and for any reason on 30 days written notice. Undisputed Invoices for **Goods** supplied and **Services** rendered prior to the effective date of termination will be honoured, but **Downer** will have no further liability to the **Supplier**.
- 14.2. **Downer** may terminate this **Agreement** immediately by giving notice to the **Supplier** if the **Supplier** commits a breach of this **Agreement** which:
- is capable of rectification and does not rectify the breach within 10 days of receipt of a notice from **Downer**; or
 - is not capable of rectification.
- 14.3. **Downer** may terminate this **Agreement** immediately by giving notice to the **Supplier** if:
- there is any change in effective control of the legal or equitable ownership of the **Supplier** without **Downer's** prior written consent (which must not be unreasonably withheld);
 - the **Supplier**:
- informs **Downer** or its creditors generally that it is insolvent or unable to pay its debts as they fall due, or if **Downer** on reasonable grounds suspects that the **Supplier** is insolvent;
 - enters into or calls a meeting with a view to entering into a composition or arrangement with its creditors;
 - has a receiver or controller appointed over the whole or part of its property;
 - resolves to appoint, or has appointed to it, an administrator;
 - has execution levied against it by creditors, debenture holders or trustees under a floating charge; or
 - being a company, has any action or proceeding instituted against it which may result in the winding up of the **Supplier**, or an order is made or a resolution is passed which will lead to the winding up of the **Supplier**; or
 - breaches any of the HSE Act obligations arising under this **Agreement**; or
 - the **Supplier** or its employees or contractors commits fraud in regards to any supply or alleged supply pursuant to this **Agreement**; or
 - breaches any of the **Terms**, or any other conditions or warranties contained in a **Purchase Order**.
- 14.4. Termination under clause 14 does not affect any other rights available to **Downer**, and **Downer** shall not be obliged to make any payment in respect of the unfulfilled portion of a cancelled **Purchase Order** and any costs incurred by **Downer** arising from such cancellation and non-performance of the **Purchase Order** by the **Supplier** will be due and payable by the **Supplier** to **Downer** and may be claimed as a debt owing by the **Supplier** to **Downer** or otherwise set-off pursuant to clause 7.
- 15. SECURITY INTEREST**
- 15.1. Under no circumstance does **Downer** agree to grant a security interest over any of its property including any **Goods** delivered to it, and **Downer** does not consider itself bound by any provision purporting to create a security interest over any of its property.
- 16. FORCE MAJEURE**
- 16.1. If an affected party is wholly or partly unable to carry out any obligation under this **Agreement** because of **Force Majeure** and the affected party:
- gives the non-affected party prompt notice of that **Force Majeure**; and
 - uses all reasonable diligence to remove or remedy that **Force Majeure** as quickly as possible,
- that obligation is suspended, to the extent that it is affected by the continuation of the **Force Majeure**.
- 16.2. Despite clause 16.1, the non-affected party may terminate this **Agreement** immediately by giving notice to the affected party if the suspension of the affected party's obligation continues under clause 16.1 for more than one month.
- 16.3. If a **Purchase Order** is cancelled pursuant to this clause, **Downer** shall not be liable for payment of any amount to the **Supplier** in respect of the cancelled **Purchase Order**.
- 16.4. If the **Purchase Order** is cancelled the **Supplier** will return to **Downer** all payments made. However if upon cancellation **Downer** elects to keep or take any **Goods** it will pay the **Supplier** for them but otherwise no compensation will be payable to the **Supplier** upon cancellation of a **Purchase Order**.
- 16.5. Cancellation of a **Purchase Order** does not affect any responsibilities which are intended to continue or come into effect under the **Agreement**.
- 17. NOTICES**
- 17.1. A notice is taken as given by the sender and received by the intended recipient:
- if posted, 3 business days after posting;
 - if faxed, on completion of transmission, but if delivery or receipt is on a day which is not a business day or is after 5.00 pm at the Place of Delivery or receipt, it is taken as given at 9.00 am on the next business day; or
 - if emailed, on receipt of an automatic receipt transmission reply by the sender.
- 18. DISPUTE RESOLUTION**
- 18.1. Either party will promptly notify the other party of any dispute in writing in accordance with clause 17.
- 18.2. In the event of a dispute or difference arising out of or in connection with this **Agreement**, both parties shall genuinely attempt amicable resolution by conference or, by using appropriate alternative dispute resolution techniques, but without prejudice to any other right or entitlement they may have pursuant to these **Terms** or otherwise.
- 18.3. Failing resolution the issue shall be submitted to arbitration by an arbitrator appointed by The Arbitrators and Mediators institute of New Zealand Inc. The arbitrator's decision is final and binding on the parties.
- 18.4. Notwithstanding the existence of a dispute, the parties shall continue to perform this **Agreement**.
- 18.5. Nothing under this clause prevents either party seeking urgent interlocutory relief from the courts.
- 19. ASSIGNMENT & SUBCONTRACTING**
- 19.1. The **Supplier** may not assign or otherwise transfer any of the rights, benefits or obligations under this **Agreement** without **Downer's** prior written consent, which may not be unreasonably withheld. **Downer** shall be entitled to assign any **Agreement** reached with a **Supplier** incorporating these Terms to a third party undertaking the business to which the Agreement relates upon giving written notice to the **Supplier**.
- 19.2. The **Supplier** must not subcontract or otherwise arrange for another person to discharge any of its obligations (excluding **Delivery**) under the **Agreement** without the prior written consent of **Downer**. Notwithstanding **Downer's** consent, the **Supplier** will remain fully responsible for all obligations to **Downer** under the **Agreement**.
- 20. THE RELATIONSHIP BETWEEN THE SUPPLIER AND DOWNER**
- 20.1. Nothing in this **Agreement** should be interpreted as constituting either **Downer** or the **Supplier** as an agent, partner, or employee of each other and neither the **Supplier** nor **Downer** may pledge the credit of the other nor represent to anyone that:
- It is the other party;
 - It is an agent, partner or employee of the other party; or
 - It has any power or authority to incur any obligation of any nature on behalf of the other party.

Terms of Purchase – Downer New Zealand Limited (and related companies) (Downer)

202. **Downer's** relationship with the **Supplier** is not exclusive. The **Supplier** is free to supply the **Goods and Services** to other purchasers and **Downer** is free to purchase the **Goods and Services** (including the **Goods and Services** equivalent to the **Supplier's**) from other suppliers.
- 21. GENERAL**
- 21.1. This **Agreement** supersedes all previous arrangements in respect of its subject matter and embodies the entire agreement between the parties.
- 21.2. Conduct of **Downer** including its employees shall not constitute acceptance of any terms set out in any document provided by the **Supplier** to **Downer** for the supply of Goods and Services.
- 21.3. Where **Downer** fails to enforce or delays enforcing any of these **Terms** **Downer** shall not be considered to have waived those rights with respect to any subsequent breach of any term or condition of these **Terms**. To be effective any waiver must be in writing and must be signed by an authorised officer of **Downer**.
- 21.4. **Downer** may from time to time amend these **Terms** by providing notification in accordance with **clause 17**.
- 21.5. This **Agreement** for the supply and purchase of the **Goods and Services** is to be governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.
- 21.6. If any provision of these **Terms** is, or becomes, unenforceable, illegal or invalid for any reason, the relevant provision shall be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity or if this is not possible then such provision shall be severed from these **Terms**, without affecting the enforceability, legality or validity of any other such provision of these **Terms**.
- 21.7. Time is of the essence in the fulfilment of the **Supplier's** obligations described in these **Terms**.
- 22. DEFINITIONS AND INTERPRETATIONS**
- 22.1. Definitions**
- In these **Terms** unless the context otherwise requires:
- Agreement** means the **Purchase Order** and these **Terms of Purchase**;
- Delivery** means the physical receipt of possession and control of the **Goods** from the **Supplier** to **Downer**, and **Deliver** and **Delivered** have corresponding meanings;
- Delivery Date** means the date(s) upon which the **Supplier** has undertaken to deliver the **Goods** to **Downer** or perform the **Services** at the **Place of Delivery**;
- Downer** means Downer New Zealand Limited or Downer EDI Engineering Limited or any related company as described in a **Purchase Order** and includes its successors and assigns;
- Force Majeure** means where by reason of earthquake, tsunami, volcanic eruption, flood, storm, fire, act of God, act of government or state, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining any raw materials, energy or other supplies, failures of power, water supply or telecommunication services, labour disputes (except where solely restricted to the party's personnel) and any other reason, in any case which is not reasonably within the control of the affected party;
- Goods** means the **Goods** specified in the **Purchase Order**;
- Goods and Services** means the **Goods** and/or **Services** described in a **Purchase Order**;
- GST** means goods and services tax chargeable in accordance with the Goods and Services Tax Act 1985.
- Intellectual Property Rights** all present and future rights conferred by statute, common law or equity in or in relation to copyright, trademarks, designs, patents, inventions and other results of intellectual activity in any field whether or not registerable, registered or patentable;
- Loss** includes but is not limited to any damage, loss (including loss of profit and loss of expected or anticipated profit), liability, cost, claim, charge, expense, outgoing or payment (whether direct or indirect, unforeseeable, remote, abnormal, consequential or incidental);
- Place of Delivery** means the delivery address specified in the **Purchase Order** or such other address that may be advised from time to time by **Downer**;
- Place of Pick-up** means the place specified in the **Purchase Order** or such other address that may be advised from time to time by **Downer**;
- Price** means the price for the **Goods** or **Services** in accordance with this **Agreement**, as set out in the **Purchase Order**, exclusive of **GST**;
- Purchase Order** or **Order** means any document issued by Downer to the **Supplier** requesting the supply of **Goods** or **Services**, whether in the agreed form or otherwise and includes any specifications, drawings or other documents that may be contained therein or annexed thereto;
- Supplier** means the company, firm or person identified in the **Purchase Order** as the supplier of the **Goods** or **Services**.
- Services** mean all services ordered by **Downer** as specified in a **Purchase Order**;
- Specification** means the specification for the **Goods** and **Services** (if any) as set out in a **Purchase Order** and any other specifications communicated in writing by **Downer** to the **Supplier** for the **Goods** or **Services**;
- Taxes** means all taxes (except **GST**), fees, levies, duties and charges imposed or assessed in respect of the **Goods** or **Services** by all local, provincial or national government authorities including sales tax, custom duty, excise tax, and stamp duty (or equivalent) but excludes taxes imposed on the income of the **Supplier**; and
- Terms of Purchase** and **Terms** means the terms in this document.
- 22.2. Interpretation**
- In this **Agreement**, headings are only for convenience and do not affect interpretation and, unless the context requires otherwise:
- words in the singular include the plural and the plural include the singular;
 - an expression indicating a person includes an individual, a company, partnership, joint venture, association, corporation or other body corporate;
 - a reference to a party to this **Agreement** includes that party's successors and permitted assigns;
 - a reference to a clause, party or schedule, is a reference to a clause of, and a party and schedule to, this **Agreement** and a reference to this **Agreement** includes any schedule or annexure;
 - a reference to a right includes a remedy, power, authority, discretion or benefit;
 - a reference to anything (including, but not limited to, a right) includes any part of that thing;
- a reference to legislation includes any amendment to that legislation, any consolidation or replacement of it, and any subordinate legislation made under it;
 - a reference to a document includes all amendments or supplements to, or replacements or novations of, that document; and
 - no rule of construction applies to the disadvantage of a party merely because that party was responsible for the preparation of this **Agreement** or any part of it.
 - Any other conditions appended to a **Purchase Order** or otherwise specified by **Downer** in relation to a **Purchase Order** shall have the same effect as if set out in these **Terms** provided that for the purposes of interpretation of these **Terms** in the event of any conflict any conditions of or relating to a **Purchase Order** shall be interpreted subject to the other provisions of these **Terms**.
- 23. CONFIDENTIALITY**
- 23.1. The **Supplier** and its staff must not without **Downer's** prior written consent, disclose to any person (other than a person authorised by **Downer**) any information whatsoever acquired by the **Supplier** in connection with the **Purchase Order** issued here under, nor advertise or publicly announce that it is supplying goods or services to **Downer**. The provisions of this clause shall continue to bind the **Supplier** notwithstanding that it may have withdrawn from, terminated or concluded a **Purchase Order**.
- 23.2. All Confidential Information provided by **Downer** will be and will remain the property of **Downer**, and you must:
- Use the Confidential Information only for the purpose of the **Agreement** and/or **Order**; and
 - Return the Confidential Information to **Downer** upon **Downer's** request at any time or if no request is made, upon completion or termination of the **Agreement**.
- 24. ACCESS TO FACILITIES AND COMPLIANCE WITH STATUTES**
- 24.1. **Downer** reserves the right to remove from land and premises controlled or occupied by it, any employee or representative of the **Supplier** for any reason. At all times while the **Supplier** or its representatives are present on the land or premises occupied or controlled by **Downer**, such person(s) shall comply with the requirements and directions of **Downer**. The **Supplier** shall at all times comply with all statutes regulations and other laws relating to the supply of the **Goods and Services** under the **Agreement** applying from time to time.
- 25. ZERO HARM**
- 25.1. The **Supplier** shall take all reasonable steps that a prudent party would take to ensure that no act or omission by it or its employees, agents, contractors, subcontractors, invitees, franchisees, visitors or licensees:
- causes a hazard, significant hazard, harm or serious harm to any employee of either party or any person at any site owned or operated or occupied by either party; or
 - is in breach of any duty or obligation of either party under the Health and Safety at Work Act 2015 ("HSW Act"); or
 - does or is likely to give rise to the issue of an improvement or prohibition notice, enforcement proceedings or a prosecution under the HSW Act against either party.
- 25.2. The **Supplier** will also ensure its employees, agents, contractors, subcontractors, invitees, franchisees, visitors or licensees comply with **Downer's** drug and alcohol policy, and any other reasonable health and safety requirements.
- 25.3. The **Supplier** in complying with **Downer's** reasonable health and safety requirements, shall provide reporting of near-miss, incident and overall health and safety statistics, hazard control and production of and working to a health and safety plan approved by **Downer**.
- 25.4. Compliance with the requirements of **clause 25.1** may be the subject of audit by **Downer**.
- 25.5. The **Supplier** must immediately notify **Downer** of all health and safety incidents.
- 26. ENVIRONMENTAL**
- 26.1. The **Supplier** must comply with **Downer's** reasonable environmental management requirements, including the overall management of environmental issues, minimising and, where possible, eliminating any negative impact on the environment, minimising your carbon footprint, meeting the requirements of the Resource Management Act 1991, having effective environmental management systems, including managing and reporting non-compliance, recording and reporting incidents and overall quality statistics, compliance with relevant standards and production of and working to an environmental management plan approved by **Downer**.
- 26.2. Compliance with the requirements of **clause 26.1** may be the subject of audit by **Downer**.