

STANDARD TERMS AND CONDITIONS OF PURCHASE CONTRACT Approved: 21/08/2014

1. DEFINITIONS

"GST" means the goods and services tax under the GST Act;

"GST Act" means *A New Tax System (Goods and Services Tax) Act* and includes other GST related legislation;

"Purchase Contract" means and includes these terms and conditions as applying to the Purchaser's subcontract agreements, supply agreements or purchase orders;

"Specified Services" means the goods and/or service or any part of them the subject of or supplied under this Purchase Contract;

"Purchaser" means Breakthrough (NQ) Pty Ltd;

"Seller" means the entity to which this Purchase Contract is issued.

2. CONTRACT

(a) This Purchase Contract is the Purchaser's offer to the Seller for the Seller to supply the Specified Services described in this Purchase Contract to the Purchaser on these terms and conditions. Acceptance of this Purchase Contract by the Seller shall constitute a binding contract between the Purchaser and the Seller to supply the Specified Services specified in this Purchase Contract on these terms and conditions.

(b) This Purchase Contract together with:

(i) all conditions implied by law (except where inconsistent with the terms of this Purchase Contract);

(ii) all representations made by the Seller for the benefit of the Purchaser relating to the Specified Services (except where expressly excluded in this Purchase Contract);

(iii) any blanket purchase order or supply agreement that this Purchase Contract relates to (whether or not it is expressly stated on this Purchase Contract);

(iv) any documents incorporated by reference in these terms and conditions; or

(v) any part of them which is not inconsistent with the express terms of this Purchase Contract,

shall contain all the terms and conditions of the supply of the Specified Services. Where there is any inconsistency between the terms of a quotation or notice and these terms and conditions, these terms and conditions shall prevail.

(c) Without limiting the foregoing, any purported terms and conditions of sale seeking to limit the liability of the Seller in relation to the Specified Services and which may be contained in sales literature, tenders, quotations, information, notices, acceptance letters, invoices or other material provided by the Seller but which are not expressly contained in this Purchase Contract incorporated by express reference are excluded;

(d) Notwithstanding the completion of this Purchase Contract, any condition which is capable of taking effect after completion, shall remain of and in full force and effect and shall not merge on completion.

3. QUALITY, QUANTITY, DELIVERY, AND WARRANTIES

a) The Specified Services delivered by the Seller will conform precisely in quality, quantity, specification and description with this Purchase Contract and any plans or specification provided or nominated by the Purchaser.

b) If the Seller provides an incorrect number or quantity of Specified Services, the Purchaser may, without prejudice to its other rights, accept or reject in part or whole the number or quantity of Specified Services delivered and where Specified Services are to be returned to the Seller they shall be returned to the Seller at the Seller's expense.

c) Time of delivery of the Specified Services if stated in this Purchase Contract shall be of the essence.

d) The Specified Services shall be new and not second hand unless expressly stated to the contrary in this Purchase Contract and shall be free from all liens, charges and encumbrances of any kind.

e) The Specified Services shall be free from defects in design,

materials and workmanship and comply with the standards laid down by any Standard Association, Local Authority, Regulating or Supply Board and/or any other association establishing conditions of quality or merchantability in relation to the Specified Services.

f) All warranties implied at law shall apply to the Specified Services in addition to any warranty expressly contained in this Purchase Contract, or to any manufacturer's warranty, service guarantee or guarantee of performance. In the event of any inconsistency between any implied warranty or expressed warranty or guarantee the most favourable shall prevail.

4. PRICE

(a) All prices stated in this Purchase Contract are not subject to escalation unless specified in this Purchase Contract.

(b) The purchase price stated in this Purchase Contract is all-inclusive and the total amount payable by the Purchaser includes the costs of delivery and packaging of the Specified Services in accordance with the delivery instructions, all taxes, duties, charges, levies and fees payable on or in respect of the Specified Services unless expressly stated to the contrary.

(c) If delivery of the Specified Services is made at a time or place other than stated in this Purchase Contract the Purchaser may refuse or reject the Specified Services and may procure similar goods or services elsewhere and the Seller shall be liable for any additional costs of the Purchaser in consequence thereof.

5. GOODS AND SERVICES TAX

(a) Words and phrases defined in the GST Act have the same meaning in this Purchase Contract unless the context indicates otherwise.

(b) If the supply of the Specified Services is a Taxable Supply, the price includes the Seller's liability for GST on the Supply of the Specified Services. The Purchaser is not obliged to pay any additional amount to the Supplier on account of GST on the Supply of the Specified Services.

(c) The Seller must provide the Purchaser with an invoice which complies with GST Act.

6. PAYMENT (a) Subject to paragraph 6(b), payment shall be made in accordance with the Terms of the Contract if specified or if not specified within 30 days of the end of the month in which the Specified Services are supplied.

7. INSPECTION AND TESTING

(a) The Purchaser or its designated agent shall have the right of inspection of all work related to the manufacture and/or supply of the Specified Services.

(b) Acceptance of Specified Services by the Purchaser is subject to inspection and testing after delivery, and if the Specified Services are to be installed or incorporated into plant or premises are subject to inspection and testing following such installation or incorporation.

(c) In every case inspection and testing must be carried out to the satisfaction of the Purchaser. If in the opinion of the Purchaser the Specified Services do not comply in any respect with this Purchase Contract the Purchaser may either reject the Specified Services or return associated goods, and where goods are returned shall be at the Purchaser's expense, such expense is to be deducted from the purchase price. Alternatively, the Purchaser may require the Seller (at the Seller's expense) to rectify or convert the Specified Services into a condition acceptable to the Purchaser.

8. PROPERTY

Subject always to the Purchaser's right of rejection of the Specified Services, property and title to the Specified Services shall pass to the Purchaser upon delivery but risk of loss shall not pass to the Purchaser until acceptance of the Specified Services. Where the Specified Services are destroyed or damaged prior to delivery the Purchaser shall be entitled to cancel this order and where any payment has been made to recover in full the monies paid by it.

9. INTELLECTUAL PROPERTY

(a) The Seller warrants to the Purchaser or its successors in title that the manufacture, sale or use of the Specified Services will not infringe any patent, trade mark, design or copyright in Australia or elsewhere and the Seller agrees to indemnify the Purchaser and its successors in interest against any liability or damage arising from breach of this warranty or prevention or hindrance of use of the Specified Services.

(b) The Seller at its cost shall obtain all necessary licences, permits or authorities required for the performance of this Purchase Contract and shall comply with all applicable laws and regulation to the Specified Services.

10. TECHNICAL DATA

- (a) The Seller shall supply with the Specified Services, all engineering, technical, "as constructed" and other data required for the satisfactory use, maintenance, repair, installation or operation of the Specified Services.
- (b) Safety Data Sheets must be supplied with all hazardous goods or substances.

11. RIGHTS OF PURCHASER

- (a) All rights and remedies of the Purchaser contained in this Purchase Contract are accumulative and in addition to and without prejudice to the rights and remedies of the Purchaser at law, in equity or by statute.
- (b) In the event of any breach by the Seller of any term or condition of this Purchase Contract for the Specified Services and whether such breach is of a material or of a minor nature the Purchaser may at any time terminate this Purchase Contract, and reject and/or return the Specified Services or any part of them and recover from the Seller its costs and damages (including consequential damages) sustained.
- (c) If the Seller commits an act of bankruptcy or being a corporation commits an act of insolvency or goes into liquidation or has external administrators appointed, then this Purchase Contract may at the option of the Purchaser be cancelled by the Purchaser free of claim (in law or in equity) by the Seller.
- (d) The Purchaser shall be entitled to deduct from monies due to the Seller any money due from the Seller to the Purchaser other than under this Purchase Contract.
- (e) The Purchaser may at any time in its sole discretion, cancel this Purchase Contract for the Specified Services and pay to the Seller actual costs incurred by the Seller in respect to the Specified Services up to the date of cancellation and upon such payment title and property in any material in or completed Specified Services shall pass to the Purchaser.

12. WAIVER

Failure by the Purchaser to insist upon strict performance of any term or condition of this Purchase Contract shall not be deemed a waiver thereof or of any other rights the Purchaser may have and shall not be deemed a waiver of any subsequent breach of any term or condition.

13. INDEMNITIES

The Seller shall indemnify and keep indemnified the Purchaser from and against any liabilities, damages, remedies, losses, penalties, fines, costs, expenses (including indemnity legal fees and expenses), demands, claims and proceedings of any nature incurred by the Purchaser and arising directly or indirectly out of or in connection with:

- (a) any claim or suit for alleged infringement of patents or copyright relating to any use or sale of Specified Services and will assume the defence of any and all such suits and will pay all costs and expenses incidental to those suits;
- (b) the failure of the Specified Services to conform to or fulfil any term or condition of this Purchase Contract; or
- (c) the Seller's performance or non-performance (including the performance or non-performance of any of the Seller's employees, contractors or agents) of this Purchase Contract including claims for personal injuries, death and property loss or damage and the claims or liens of workmen or suppliers of goods.

14. INSURANCE

- (a) By accepting this Purchase Contract, the Seller warrants that adequate provision has been made for product liability.
- (b) The Seller warrants that it has obtained and maintained all insurance cover required by law and by this Purchase Contract, including but not limited to the following: (i) Public Liability and Products Liability Insurance (ii) Workers Compensation and Employers Liability Insurance in accordance with the law of the State in which the work is performed. Such insurance shall be unlimited in respect of common law liability.
- (c) If this Purchase Contract is endorsed with the words "professional indemnity insurance", then the Seller is required to maintain professional indemnity insurance for the amount stated on this Purchase Contract for six years from the date of this Purchase Contract.
- (d) As and when requested by the Purchaser, the Seller shall provide copies of the policies of insurance and certificates of currency.
- (e) If the Seller fails to effect or maintain the insurance required in clauses 14 (b) and 14(c), the Purchaser may effect or maintain the said insurance and recover from the Seller as a debt due or set off against any amount payable to the Seller, any premium paid by the Purchaser.

15. NATIONAL CODE OF PRACTICE

The National Code of Practice for the Construction Industry (the Code) and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, applies to this project if nominated on this Purchase Contract. By agreeing to undertake the works, the Seller will be taken to have read and to agree to comply with the Code and Industry Guidelines.

16. SUBCONTRACTING

The Seller must not subcontract all or any of its obligations under this Purchase Contract to a person or business regardless of whether they are qualified or skilled to be able to carry out the works required unless approval is obtained in writing from the Purchaser.

17. INTERPRETATION

- (a) This Purchase Contract is to be interpreted in accordance with the law of the State in which the purchase is made.
- (b) If any clause or any part of this Purchase Contract is void or unenforceable then such clause shall be deemed inoperative and the remainder of this Purchase Contract shall remain binding upon the parties.
- (c) Reference in this Purchase Contract to "winding up" shall when applied to individuals be deemed to refer to bankruptcy.
- (d) Words denoting the singular number shall include the plural and vice versa, words importing gender shall include all genders.
- (e) The headings of this Purchase Contract are for convenience only and shall not affect its interpretation.
- (f) The expression "\$" or "dollars" means Australian Dollars unless otherwise provided.
- (g) References to covenants and agreements on the part of the Seller shall where there is more than one Seller bind the Seller and every two and greater number, of them jointly and each of them severally.