

ATLAS BUILDING (WA) PTY LTD PURCHASE ORDER T&CS TE-023

1. Definitions

Agreement means the agreement of the Vendor to supply the Goods and perform the Services as set out in the letter or purchase order issued by ATLAS and these Terms, and includes any Instructions given by ATLAS.

ATLAS means the ATLAS entity listed on the Agreement letter to which these Terms apply and the authorised agents, employees, heirs and successors of that ATLAS entity.

Building Code means the Code for the Tendering and Performance of Building Work 2016 (as in force and varied from time to time).

Chain of Responsibility means the road transport laws contained in the *Road Traffic (Administration) Act 2008 (WA)* and the *Road Traffic (Vehicles) Act 2012 (WA)* and associated regulations.

CLA means the *Civil Liability Act 2002 (WA)* as amended from time to time.

Company has the meaning provided for under the *Corporations Act 2001 (Cth)* as amended from time to time.

Defective means (regarding any Goods or Services or any part of them) that those Goods or Services (or part of them) do not accord with the Agreement or are damaged, deficient, faulty, inadequate, or incomplete.

Delivery Address means the address described as the address in the Agreement to which the Goods are to be delivered and/or the address where the Services are to be performed.

Delivery Date means the delivery date specified in the Agreement.

Employment Law means any law regarding the employment of employees including any act, regulation or industrial instrument (including awards and enterprise agreements) whether State or Federal, dealing with the entitlements, terms and conditions of employment and/or income taxation of employees, including but not limited to income tax legislation, superannuation legislation, industrial relations or workplace relations legislation (including but not limited to the *Fair Work Act 2009 (Cth)*, long service leave legislation and workers' compensation legislation).

Event means an act of God, fire, war, insurrection or other armed conflict, riot, vandalism or sabotage, strike, lockout, ban, transport or port accident or congestion, pandemic, epidemic,

quarantine of persons or goods, limitation of work or other industrial disturbance or any law, rule, regulation, order, requirement or restraint imposed by any government or governmental agency whether local, state, national or international other than an order, requirement or restraint resulting from the Affected Party's breach of any law, permit or authorisation.

Goods means the goods, if any, described in the Agreement.

GST, GST Law and other GST related terms used in the Agreement and these Terms have the meanings given to them by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* as amended from time to time.

Insolvency Event means the following circumstances:

- (a) where the Defaulting Party enters into a compromise or arrangement (or announces one) under section 411 of the *Corporations Act 2001 (Cth)*;
- (b) where a managing controller is appointed over the whole (or substantially the whole) of the Defaulting Party's property; or
- (c) where the Defaulting Party enters into voluntary administration.

Instruction(s) means the lawful and reasonable directions of ATLAS provided to the Vendor to supplement and compliment these Terms, including but not limited to, any schedules or annexures to these Terms.

Law means any: Commonwealth, State or local government legislation in force and as varied from time to time (including regulations, bylaws, orders, awards and proclamations); common law or rule of equity; Authority requirements, consents, certificates, licenses, permits or approvals (including conditions in respect of those consents, certificates, licenses, permits and approvals) applicable in connection with the Agreement and these Terms, including but not limited to applicable codes of practice and supporting guidelines, work health and safety laws and applicable obligations under the *Migration Act 1958 (Cth)* and the *Privacy Act 1988 (Cth)* and any subordinate legislation; and guidelines of Authorities with which the Vendor is legally required to comply.

Notice means any written notice supplied by either party under these Terms. Such Notices are effective once sent.

Owner-Driver has the meaning provided for in the *Owner-Drivers (Contracts and Disputes) Act 2007 (WA)*.

Price means the price set out in the Agreement, or as otherwise advised by ATLAS, which is inclusive of all currency fluctuations, charges for tax and duties (except GST) and of all costs and charges that ATLAS will pay for the Goods and/or Services including all charges for packing, insurance and delivery of the Goods and the cost of any items used or supplied in the performance of the Services.

Services means the services, if any, described in the Agreement.

Site means the Delivery Address and/or ATLAS's premises at any other location where the Vendor is required to provide Goods or Services to ATLAS.

System means a data processing, storage and protection system which incorporates appropriate technical and organisational measures for the backup and restoration of data after corruption or loss, and the protection of data against spyware, viruses, other malware and unauthorised access and use.

Terms means the terms and conditions set out in this document.

Vendor Personnel means the Vendor's employees, agents, suppliers or subcontractors.

Vendor means the party who will supply the Goods and/or Services in consideration for payment of the Price.

Vendor Default means any of the following:

- (a) a delay in the provision of Goods and/or Services;
- (b) unexplained shortages in stock;
- (c) if ATLAS determines (acting reasonably) that the Goods and/or Services are of poor quality or workmanship;
- (d) an unexplained failure to comply with an Instruction; or
- (e) the Vendor fails to comply with its warranty obligations in respect of any Goods and/or Services.

Warranty Period means the period of 7 years commencing on the date of delivery of the Goods and/or 7 years commencing on the date on which the Services are completed.

2. General

The Vendor will supply to ATLAS the Goods and/or perform the Services in accordance with the Instructions in consideration of payment of the Price by ATLAS.

The Vendor's terms and conditions, howsoever provided, do not form part of these Terms and will be of no legal effect (even if any representative of ATLAS signs those terms and conditions and/or they are annexed to these Terms or any quote or purchase order). The parties agree that any amendments to these Terms can only be made in writing signed by authorised managers of both parties, including any inclusion of special conditions in or attached to any purchase order.

The parties' relationship is one of principal and independent contractor, not employer and employee or principal and agent. There is no partnership arrangement between the parties. No contractual relations will arise between ATLAS and any of the Vendor Personnel as a result of the Vendor and ATLAS's relationship. If, notwithstanding these Terms, there is a deemed employment relationship (as a result of any Employment Law) then the Price is in satisfaction of all minimum entitlements under the relevant Employment Law including (without limitation) any payroll or fringe benefit tax, superannuation contributions, workers' compensation claims, termination payments, salary, overtime, penalties and statutory leave.

The Vendor:

- (a) does not have the right or authority to act on behalf of or bind ATLAS unless the Vendor has been expressly authorised to do so by ATLAS in writing;
- (b) will ensure that all Vendor Personnel faithfully, skilfully and diligently perform the Services in a careful, competent, professional and responsible manner and comply with these Terms; and
- (c) acknowledges that it is independent from ATLAS and the Vendor will be responsible for all employment and industrial relations issues regarding all Vendor Personnel.

The Vendor must:

- (a) provide to ATLAS all such information and assistance as ATLAS reasonably requires to identify, evaluate, implement and report on any matter required by Law in respect of anything used, produced or created in connection with

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- the performance of the Vendor's obligations under these Terms;
- (b) not interfere with ATLAS's activities or the activities of any other person at the Delivery Address or the Site; and
 - (c) ensure that any Vendor Personnel working pursuant to these Terms have satisfactorily completed any Site induction processes required by ATLAS or ATLAS's customers as a requirement for entry to their respective Sites. Such induction will be at the cost of the Vendor unless otherwise agreed by ATLAS in writing.

The Vendor agrees that ATLAS may use a tracking device or other surveillance device at the Site and in relation to the Vendor in the course of the Vendor performing the Services.

3. Delivery and Time for Performance

The Vendor must deliver the Goods to the Delivery Address and/or provide the Services by the Delivery Date as required by the Instructions and these Terms.

The Vendor must ensure that the Goods are suitably packed to avoid damage in transit or in storage and in such a way to comply with any applicable Laws.

If the Vendor fails to deliver all required Goods and/or Services by the Delivery Date ATLAS may:

- (a) acting reasonably, reject all or part of the Goods and/or Services;
- (b) terminate the Agreement at any time until full delivery of all required Goods and/or Services by giving Notice to the Vendor and no payment or part payment for any Goods and/or Services undelivered or rejected will be payable;
- (c) set off against the Price any additional costs incurred by ATLAS as a consequence of the Vendor's failure to supply the Goods and/or Services by the Delivery Date; and/or
- (d) exercise any other rights or remedies available to ATLAS under these terms or any Law.

4. Title and Risk

Title in the Goods passes to ATLAS upon the earlier of the payment of the Price or delivery of the Goods to the Delivery Address. Risk in the Goods passes to ATLAS when the Goods are delivered to the Delivery Address.

5. Price

ATLAS will pay the Price for the Goods and/or Services in the Agreement after they have been delivered and/or performed PROVIDED THAT ATLAS is entitled to deduct, from any amount owed to the Vendor, the value of any claim ATLAS has against the Vendor under this Agreement or otherwise in relation to the Goods and Services.

On delivery of the Goods and/or completion of the Services, the Vendor must provide to ATLAS, if ATLAS directs, a Tax Invoice which includes:

- (a) a reference to the Agreement and these Terms including any purchase order or contract number;
- (b) a detailed description of the delivered Goods or performed Services, including the date of delivery and/or period of Services and the relevant quantity of the Goods and/or Services; and
- (c) an individual reference number for ATLAS to quote with remittance of payment.

If ATLAS requests, the Vendor must provide ATLAS with all relevant records to calculate and verify the amount set out in any Tax Invoice.

If ATLAS disagrees with the amount set out in the Tax Invoice, within 21 days of the date on which ATLAS receives the relevant Tax Invoice, ATLAS must give to the Vendor a payment schedule indicating:

- (a) the amount of the payment ATLAS proposes to make in relation to the Tax Invoice (including, if applicable, that ATLAS proposes to make no payment); and
- (b) why ATLAS proposes to pay an amount less than claimed or make no payment (as the case may be).

Provided that the Vendor has complied with the paragraphs above, ATLAS will pay each Tax Invoice provided by the Vendor within 30 days (or such other period as the parties agree) of the date on which the relevant Tax Invoice is generated (in the case of a recipient created tax invoice) or the date on which the relevant Tax Invoice is received by ATLAS, except where ATLAS:

- (a) is required by Law to pay within a shorter time frame, in which case ATLAS must pay within that time frame;
- (b) exercises any right to retain, withhold, reduce or set-off any amount due to the Vendor; or
- (c) is required by Law to withhold a portion of payment for Goods or Services rendered by a foreign contractor.

Payment by ATLAS does not constitute an acceptance by ATLAS that the Goods and/or Services are not Defective and does not in any way affect ATLAS's rights under the Agreement, these Terms or any law.

6. Quality

The Goods and/or Services must match the description (if any) referred to in the Agreement.

If the Vendor gives ATLAS a sample of the Goods or a demonstration of the Services, the Goods and/or Services must be of the same nature and quality as the sample or demonstration given.

The Goods and/or Services must be fit for the purpose for which Goods and/or Services of the same kind are commonly supplied or bought and for any other purpose ATLAS specifies.

The Goods must be of merchantable quality, unencumbered and (unless otherwise specified in the Agreement) new.

The Vendor must ensure that ATLAS has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Vendor must pursue any manufacturer's warranties on ATLAS's behalf if ATLAS so requests).

The Services must be provided by persons who are appropriately licensed, qualified and trained.

If the Goods are Defective or otherwise do not comply with these Terms:

- (a) the Vendor must replace the Goods at the Vendor's cost. This clause does not prejudice ATLAS's rights to terminate the Agreement for breach; and
- (b) ATLAS may hold the Goods for the Vendor at the Vendor's risk. The Goods will be returned at the Vendor's cost.

7. Warranties

The Vendor warrants that:

- (a) it will provide the Services in a safe manner free from risks to health and safety including (without limitation) in compliance with all safety Laws;
- (b) the Vendor, and all Vendor Personnel have the appropriate level of skill, training and competence to perform the Services safely and to a reasonable standard of workmanship expected in the profession or industry of the Vendor and the Vendor Personnel;

(c) the Vendor and all Vendor Personnel will comply with all relevant Laws including without limitation all safety laws applicable to the supply of Goods and/or the performance of Services and Chain of Responsibility obligations in the performance of the Services;

(d) there is no prohibition or restriction or other obligation which would preclude, prevent or hinder the Vendor or the Vendor Personnel from providing the Services in accordance with these Terms;

(e) the Vendor (or if the Vendor uses a third party contractor to store its data, then that third party contractor) has and uses a robust System to protect the security, privacy and integrity of all data it collects, including any data provided to the Vendor by ATLAS;

(f) the Vendor will (upon request) provide ATLAS with information about the System (including responding to ATLAS's reasonable queries about the System), or the privacy and security of its data, and the Vendor will immediately inform ATLAS of any breach or suspected breach of the System, and will use its best endeavours to rectify the breach as soon as practicable;

(g) the Vendor, and all Vendor Personnel, will comply with all relevant policies and procedures of ATLAS;

(h) it will take all steps needed to ensure that ATLAS is not subject to any claim or finding that the Vendor and/or any Vendor Personnel are deemed to be employees of ATLAS;

(i) information, documentation and certification provided to ATLAS are accurate, valid and in good order;

(j) the Vendor will not engage in any action that could conflict with ATLAS's rights or with the Vendor's obligations under these Terms; and

(k) the Vendor is aware that ATLAS is relying on these warranties.

The Vendor indemnifies ATLAS in respect of any and all claims giving rise to liability on the part of ATLAS in respect of a breach of this warranty clause howsoever such claims arise.

8. Warranty Period

If, before the end of the Warranty Period, any of the Goods or Services are found to be Defective or otherwise fail to comply with these Terms, ATLAS may:

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- (a) return the Defective Goods to the Vendor at the Vendor's cost;
- (b) reject the Defective Services;
- (c) repair or make good the Defective Goods or re-perform or make good the Defective Services.

If required by ATLAS, the Vendor must:

- (a) repair or replace the Defective Goods or re-perform or make good the Defective Services all at its own cost; and/or
- (b) reimburse ATLAS for any expenses incurred by ATLAS in repairing, re-performing or making good (as the case may be) any Defective Goods or Services.

The Vendor must:

- (a) pay for any damage made by the Vendor or any Vendor Personnel (or arising from Defective Goods or Services) to property on or near any Sites; and
- (b) assign the benefits of any warranties provided by manufacturers of the Goods or materials and other components that are used in the performance of these Terms where ATLAS will ultimately take ownership of those Goods, materials or components.

9. Indemnities

The Vendor must indemnify ATLAS and agrees to hold ATLAS harmless from all claims for the following circumstances:

- (a) any wilful, reckless or negligent act or omission and any breach or non-performance of the Agreement by the Vendor or the Vendor Personnel (including, without limitation, for legal fees on a solicitor-client basis) except to the extent the claim arises from ATLAS's negligence or breach of the Agreement;
- (b) any performance of the Services that infringes the Intellectual Property Rights of any person;
- (c) any damage to property or injury or death of any person caused or contributed to by the Vendor and/or the Vendor Personnel;
- (d) any actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against ATLAS or which ATLAS may pay, sustain or incur as a direct or indirect result of any claim brought by, or in respect of, the Vendor and/or any Vendor Personnel in relation to an Employment Law including workers compensation insurance

payments, annual leave and long service leave accruals and payments, notice payments, redundancy payments, unfair or unlawful dismissal verdicts and taxation (including, without limitation, PAYG tax instalment deductions, superannuation guarantee contributions and payroll tax payments) or any other such payments that ATLAS may be required to pay in relation to or arising out of the provision of the Goods and Services;

- (e) damage to or destruction of any property belonging to the Vendor or in the Vendor's possession or under the Vendor's control except to the extent the claim for such damage or destruction arises solely as a result of ATLAS's negligence or breach of the contract constituted by the Agreement by ATLAS; and/or
- (f) failure by the Vendor to comply with any Law including the payment of any taxes required at Law or in accordance with the Agreement or these Terms.

10. Equipment

The Vendor will supply its own plant and equipment as required for the performance of the Services or for the provision and installation of the Goods.

11. Insurance

The Vendor will use reasonable endeavours to obtain, and maintain, the following insurances on terms to the reasonable satisfaction of ATLAS:

- (a) public and products liability insurance which:
 - (i) names ATLAS and extends cover to ATLAS as Principal;
 - (ii) provides a waiver of subrogation; and
 - (iii) has a limit of indemnity of at least \$10 million.
- (b) if the Vendor is a sole trader or partnership, income protection insurance to cover the Vendor in circumstances of a work related injury or illness which prevents the Vendor from attending work;
- (c) if the Vendor is a Company, workers' compensation and employer's liability insurance, covering all claims and liabilities in respect of any statutory to common law liability for the death, injury or illness of or to any person employed by (or deemed to be employed by), the Vendor including, but not limited to, the Vendor Personnel;

- (d) if the Vendor is supplying Services, professional indemnity insurance of at least \$2 million per claim;
- (e) any other insurance required by Law in force; and
- (f) if the Vendor is an Owner-Driver:
 - (i) Goods in transit insurance;
 - (ii) if the Vendor owns or rents a single trailer then Trailer in Control insurance with minimum coverage of \$100,000 is required;
 - (iii) if the Vendor has multiple trailers, or ATLAS is supplying trailers to the Vendor, Comprehensive Trailer in Control insurance with minimum coverage of \$300,000 is required;
 - (iv) third party insurance; and
 - (v) either Owner-Driver insurance or hirer insurance as appropriate.

12. Owner-Drivers

Where the Vendor is an Owner-Driver, the following provisions apply.

Owner-Drivers acknowledge that they are aware that the "Guideline Rates" and "Owner-Driver (Contracts and Disputes) Act 2007 Information Pamphlet" are available either online at www.transport.wa.gov.au or upon request from ATLAS.

ATLAS may refuse for the Services to be provided by a particular driver where ATLAS has reasonable grounds to believe that such a driver is:

- (a) not a fit and proper person, or sufficiently qualified or capable person to perform the Services; or
- (b) not acceptable to ATLAS or a customer of ATLAS for reasonable and lawful grounds.

The Owner-Driver:

- (a) will ensure that their vehicle used to perform the Services or deliver the Goods is maintained in a mechanically sound, properly painted and clean condition that is fit for the purposes of providing the Services or delivering the Goods to ATLAS;
- (b) will promptly advise ATLAS if any vehicle used in the provision of the Services or the delivery of the Goods is involved in any accident or subject to any damage;

- (c) is responsible for all working expenses and statutory charges, including tolls, incurred in the course of their business, unless otherwise specified in writing by ATLAS; and
- (d) is not entitled to any payment from ATLAS during any period of non-performance of the Services or the delivery of the Goods as required by these Terms.

Where the Owner-Driver is obliged to take mandatory rest or meal breaks under a Law, such rest breaks will not be paid for as time worked. To the extent possible without otherwise breaching this provision, the Owner-Driver must take meal breaks at a convenient time to ATLAS having regard to ATLAS's requirements.

The Price paid by ATLAS for the performance of the Services or the delivery of the Goods is in full and final settlement of any statutory liabilities that may be payable by ATLAS to or in respect of the Owner-Driver.

13. Goodwill

Under no circumstances may the Vendor and/or Vendor Personnel:

- (a) if an Owner-Driver, dispose of their vehicle to any other person and charge or receive goodwill as part of that sale;
- (b) sell or offer to sell, the rights under or in connection with these Terms or any future contract in consideration of receiving goodwill;
- (c) claim a right to introduce any new person or entity to the work to be performed under these Terms; and/or
- (d) make any representation to any person, whether written or verbal, implied or direct, that they have the right to do any of the matters referred to in paragraphs (a) to (c) above.

In this clause "goodwill" means any payment, benefit or premium, however described, which is paid by a purchaser, with the express or implied representation that the purchaser will obtain rights under these Terms with ATLAS or have any rights or expectation to continue to supply Goods or Services to ATLAS.

14. No waiver

A waiver or relaxation of the requirements of these Terms will only be valid if expressed in writing and supplied by ATLAS to the Vendor. Waivers will only apply to the particular occasion to which the waiver

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relates, will be restricted to its terms and will not be of a continuing nature

15. Jurisdiction

The Agreement and these Terms are governed by and are to be construed according to the laws of Western Australia and the parties submit to the exclusive jurisdiction of the courts of Western Australia.

16. Dispute Resolution

If a dispute or difference arises between ATLAS and the Vendor in respect of any fact, act, matter or thing arising out of or in any way connected with the Agreement or these Terms and one party requires the dispute of difference to be resolved, then that party will promptly give the other party a written Notice giving details of the dispute.

Within 14 days of a party receiving a Notice, ATLAS and the Vendor and/or their delegates must meet and attempt to resolve the dispute in good faith.

Either party may, but need not, appoint a delegate/representative of their choice for the purposes of the procedures in this clause.

If, within 14 days of the meeting, the dispute is still not resolved, then, either party may refer the dispute to litigation.

17. Suspension

- (a) If an Event affects, or is likely to affect the supply of Goods, performance of Services (whether under the Agreement or any other contract entered into by ATLAS), the Site or project related to the Instructions, ATLAS (acting reasonably) may by notice in writing to the Vendor suspend the performance of all obligations (other than an obligation to pay money due under the Agreement) required to be performed pursuant to the Agreement.
- (b) ATLAS must notify, and keep informed, the Vendor of the anticipated length of suspension resulting from an Event, and shall also give the Vendor a notice in writing specifying the date the suspension ends as soon as practicable once that date is determined.
- (c) The performance of the parties' obligations shall be suspended for the period from the date notice is given under **clause 17(a)** until the date the suspension ends (as specified in the notice given under **clause 17(b)**), and any resulting non-performance or delay in

performance of the Agreement will not be a breach of the Agreement.

- (d) Any party may terminate the Agreement at the expiration of not less than 7 days' notice to the other party if the suspension under this clause exceeds 90 days.
- (e) If a party terminates the Agreement under this clause, all money previously paid under the Agreement for which no goods, services or other consideration has been provided, must be refunded.

18. Cancellation

- (a) ATLAS may cancel all, or any part of, an Agreement for Goods or Services with effect from 7 days after giving Notice. Upon receipt of a cancellation notice, the Vendor will, unless otherwise directed, cease work and follow ATLAS's directions as to disposal of work in progress and finished Goods.
- (b) ATLAS's liability for the cancellation of Services, will be:
 - (i) the Price for the Services fully performed prior to cancellation; and
 - (ii) the Vendor's actual cost of the performing any Services which have only been partially performed prior to the cancellation, up to a maximum of the Price for those Services.

If any hourly or other time-based rate for Services is specified in the Agreement, such rate will be used in determining the Vendor's actual costs. In no case will ATLAS be liable for the Vendor's lost profits as a result of any cancellation.

- (c) ATLAS will pay for Goods delivered and accepted, and ATLAS's liability for the cancellation of Goods will be the lesser of:
 - (i) the Vendor's actual price for raw materials, components, work in progress and any finished units on hand at the time of such cancellation that are attributable to the cancelled portion of the Agreement; or
 - (ii) the Price per finished unit, after giving effect to any discount ATLAS would otherwise be entitled to, for the cancelled or a portion of the Goods.

19. Termination

- (a) The Agreement and these Terms may be terminated by a party (**Non-Defaulting Party**) at any time effective immediately upon the giving of Notice if:
 - (i) the other party (**Defaulting Party**) materially breaches any Terms or the Agreement and does not remedy that default within a reasonable time, and in any event no longer than 7 days, of Notice requiring it to be remedied;
 - (ii) a judgement, order or encumbrance is enforced, or becomes enforceable upon any of the Defaulting Party's property;
 - (iii) an order for payment is made or judgment for an amount exceeding \$10,000 is entered or signed against the Defaulting Party which is not satisfied within 7 days;
 - (iv) the Defaulting Party suspends or delays payment of its debts;
 - (v) the Defaulting Party is unable to pay its debts as and when they fall due or goes into bankruptcy;
 - (vi) the Defaulting Party (being a corporation) has a liquidator appointed to it, or has a mortgagee of the corporation assume control of, or a receiver appointed to any of the assets or undertakings of the Defaulting Party (not being an Insolvency Event);
 - (vii) the Defaulting Party (being a corporation) is deregistered; or
 - (viii) to the extent permitted by law, the Defaulting Party suffers an Insolvency Event.
- (b) The Agreement and these Terms may be terminated by ATLAS at any time effective immediately upon the giving of Notice if:
 - (i) a change occurs in the Vendor's circumstances which, in ATLAS's reasonable opinion, may have a material adverse effect on the Vendor's ability to comply with its obligations under the Agreement or fulfil its warranty obligations in respect of the Goods and/or Services. Examples include (but are not limited to):
 - (A) a change in the Vendor's financial position up and until an Insolvency Event occurring;
 - (B) key personnel are no longer engaged and are not promptly replaced with

appropriately qualified and experienced personnel;

- (C) the Vendor factoring its debts; or
 - (D) the Vendor becoming party to litigation, arbitration or any other administrative proceeding; or
 - (ii) any Vendor Default occurs in relation to any supply to ATLAS (whether under this Agreement or another arrangement) more than three times over a period of 12 months (even where the Default is remedied or waived)
- (c) If the Agreement or these Terms are terminated by ATLAS, ATLAS may have the Vendor's obligations performed by another party.
 - (d) The Defaulting Party will be responsible for, and will indemnify the Non-Defaulting Party against, any damages, costs (including, without limitation, legal fees on a solicitor-client basis), losses and expenses, incurred by the Non-Defaulting Party as a result of the breach.
 - (e) On termination of the Agreement or these Terms, each party retains its rights against the other party in respect of any past breach, in addition to any other rights, powers or remedies provided by law.
 - (f) The rights set out in these Terms comprise the Vendor's sole entitlements upon cancellation or termination of the Agreement.

20. Goods and Services Tax (GST)

Unless otherwise stated, the Price or other amounts payable by ATLAS to the Vendor, are exclusive of GST.

If a Supply under these Terms is subject to GST, ATLAS will pay to the Vendor an additional amount equal to the amount of the Price multiplied by the prevailing GST rate. The additional amount is payable at the same time as the amount payable for the supply is to be paid. However, the additional amount need not be paid until the Vendor provides a Tax Invoice to ATLAS.

If the amount of GST payable is found to differ from the amount paid in relation to a Supply then:

- (a) if the amount of GST paid is more than is required under the GST law, the Vendor will refund to ATLAS the excess amount of GST paid to; or

(b) if the amount of GST paid is less than is required under the GST law, ATLAS will pay the difference to the Vendor.

If either ATLAS or the Vendor is entitled to be reimbursed or indemnified under the Agreement or these Terms, the amount to be reimbursed or indemnified by either party is to be the GST exclusive amount. For the avoidance of doubt, the amount of any reimbursement does not include any amount attributable to GST for which either ATLAS or Vendor is entitled to an Input Tax Credit.

21. Entire Agreement & Variation

The Agreement constitutes the entire understanding between the parties and supersedes all prior communications and agreements between the parties, including any prior written or verbal undertakings or statements. No variations to the Goods or Services required under the Agreement or to these Terms are to be made unless agreed in writing between ATLAS and the Vendor.

22. Accounts

The Vendor must not consider, or take any steps to sell, assign, factor or otherwise dispose of the Vendor's present or future rights to payments that are due to a sub-contractor of the Vendor (hereinafter referred to as "**Account**"), nor shall the Vendor encumber any Account without the prior written consent of ATLAS acting entirely in ATLAS's sole and unfettered discretion, any consent may be on such terms and conditions as ATLAS deems fit.

23. PPSA

Where ATLAS makes a payment in advance of delivery of any Goods, the Vendor charges the Goods (including any item identified for incorporation into the Goods) to ATLAS with its obligations under this Agreement and consents to ATLAS registering its interest in the Goods on the Personal Property Security Register and will sign all documents and provide all information and assistance required to effect that registration. To the extent that the law permits the Vendor waives its rights to receive any notice required from ATLAS (or any of its related entities) under any provision of the *Personal Property Securities Act 2009* (Cth) (**PPSA**) (including a notice of a verification statement). However nothing in this clause prohibits ATLAS (or its related entities) from giving a notice under the PPSA or any other law.

24. Proportionate liability

The provisions of Part 1F of the CLA are specifically excluded from these Terms and have no operation or application to the rights, obligations and liabilities of ATLAS and the Vendor under these Terms with respect to any matter to which Part 1F of the CLA applies.

To the fullest extent permitted by law, the parties agree that the provisions of Part 1F of the CLA:

- (a) are specifically excluded from any subcontract or other agreement entered into pursuant to these Terms by the Vendor; and
- (b) have no operation or application to the rights, obligations and liabilities of the parties under any subcontract or other agreement entered into pursuant to these Terms by the Vendor, with respect to any matter to which Part 1F of the CLA applies.

25. Privacy

ATLAS collects the Vendor's personal information for the purpose of acquiring Goods and/or Services and keeping a record of transactions on our file. Personal information can include sensitive health information as required by ATLAS from time to time.

26. Severability

If any part or all of any clause of the Agreement is illegal or unenforceable it will be severed from the Agreement and the remaining provisions of the Agreement will continue in force.