

Warbrook Enterprises Pty Ltd T/F Warnock Family Trust T/AS Advanced Procurement & Supplies ACN 159 673 015 – Terms and conditions of purchase

General

1. The terms in this document (“**Terms**”) apply to all supplies of goods and/or services to Warbrook Enterprises Pty Ltd T/F Warnock Family Trust T/AS Advanced Procurement & Supplies ACN 159 673 015 (“**APS**”) by any supplier of any goods (“**Goods**”) and/or services (“**Services**”) to APS (“**Goods**”).
2. These Terms and any related order or request for any supply of Goods provided by APS (“**Purchase Order**”) constitute the whole of the contract for the supply of Goods by the Supplier (“**Agreement**”) and supersedes and applies to the exclusion of all other agreements, terms, conditions, representations or understandings between the Supplier and APS in relation to Goods, whether or not any inconsistency arises and whether or not there has been any counter-offer of the Agreement or if the terms of this Agreement are the last incorporated into, referred to, or communicated during any course of conduct between APS and the Supplier.
3. The parties acknowledge and agree that the relationship between the Supplier and APS is strictly a relationship of supply and purchase or goods and/or services and nothing in any Agreement will constitute any other type of relationship between the parties.
4. The Agreement with the Supplier is non-exclusive and APS may engage any other person to provide the Goods or Services or similar goods and services from time to time.
5. The Supplier acknowledges and agrees that time is of the essence in effecting delivery of the Goods or performance of any Services.

Acceptance

6. Without prejudice to any other method of accepting this Agreement, the delivery of the Goods or the commencement of performance of any supply of the Goods by the Supplier will constitute acceptance by the Supplier of this Agreement.

Price

7. Unless agreed otherwise, the parties agree that any price or other consideration specified in a Purchase Order for Goods includes:
 - (a) all costs of testing, inspection, labelling, packing and delivery to and offloading at any Delivery Point as specified in the Purchase Order; and
 - (b) if applicable, GST.

Delivery of Goods

8. Unless otherwise agreed by the parties in writing, the Supplier is responsible for the costs of freight and delivery of the Goods to the Delivery Point.
9. The Supplier must transport or arrange for transport of the Goods to the Delivery Point:
 - (a) complying with the terms of any Purchase Order and APS’ instructions, and in any event, within the timeframes specified in a Purchase Order;
 - (b) by a method which provides adequate protection to the Goods and prevents their damage or deterioration; and
 - (c) accompanied by a delivery note clearly showing the following:
 - i. any order number;
 - ii. a description of the Goods;
 - iii. the quantity ordered, the quantity received on delivery; and
 - iv. any quantity on backorder.
10. The Goods must be received on the Date for Delivery and at the Delivery Point specified in the Purchase Order. If the Supplier fails to meet any such delivery date, that failure will be a breach of an essential term of this Agreement and APS shall be entitled to immediately cancel all or part of any order or request for Goods and/or Services and this Agreement by giving notice to the Supplier of that cancellation (**Cancellation Notice**). If any deposit has been paid by APS for the price of any Goods and/or Services, then the Supplier must refund the deposit in full within 2 business days from the date on which it receives the Cancellation Notice from APS.

Performance of Services

11. Unless otherwise agreed by the parties in writing, the Supplier must ensure that the Services are performed at the Delivery Point on the Date for Delivery. Should any change in the Date for Delivery be proposed by the Supplier for any reason, immediate written notice must be given to APS reserves the right to accept or reject any such proposal at its absolute discretion.
12. If APS rejects a proposal to change the Date for Delivery and the Supplier fails to deliver on the Date for Delivery, then APS may, by written notice to the Supplier, terminate the Agreement.

Payment

13. The Supplier’s invoices will be paid within 1-60 days of the end of the month in which the goods are received, or such other period agreed by the parties, provided that the invoice is correctly rendered, and complies with APS’ Purchase Order. In the event of any claim by APS against the Supplier, payment may be withheld until such claim is resolved.
14. The Supplier must provide to APS a GST-compliant tax invoice that must:
 - (a) include the correctly calculated amount, reflecting any relevant unit prices (if any), that is due for payment;
 - (b) ascertain the Products and/or Services to which it relates;
 - (c) be accompanied (where necessary or where reasonably requested by APS) by verifying documentation;
 - (d) be addressed to the address notified by APS from time to time;
 - (e) include any Purchaser Order number, the packing slip/delivery note number and any applicable discounts; and
 - (f) reflect payment terms in accordance with this

Agreement. Title and risk

15. Property in the Goods passes to APS on acceptance of any Agreement relating to the Goods by the Supplier.
16. The Supplier bears all risks of loss and damage to the Goods until acceptance by APS in accordance with clause 17.

Acceptance of Goods

17. Notwithstanding any prior inspections, usage or payments, all Goods shall be subject to:
 - (a) a final inspection by APS, which may include, among other things, taking measurements, conducting testing or examination; and
 - (b) acceptance by APS within a reasonable time (but not more than 90 days) after receipt of the Goods.
18. Acceptance of the Goods by APS will occur on the date when APS notifies the Supplier in writing of its acceptance.

Rejected Goods

19. APS may, within 90 days of delivery of the Goods, reject any Goods which do not strictly comply with any Purchase Order. Once the Goods and/or Services have been rejected, APS, may without limiting any other rights or remedies it may have, at its absolute discretion, require:
 - (a) in the case of either Goods or Services, the Supplier to refund the purchaser price of the Goods and/or Services within 7 days; or
 - (b) in the case of the Goods, replacement of the Goods to APS’ satisfaction, or providing APS with a credit in respect of the defaulting Goods; and
 - (c) in the case of Services, the re-performance of the Services or refund of the price in respect of the Services.
20. Upon rejection of the Goods and/or Services by APS:
 - (a) title and risk in such rejected Goods immediately re-vests in the Supplier;
 - (b) the Supplier must, at its cost, remove from the rejected Goods any of APS’ intellectual property (if any), including, among other things, any identifying signs or symbols.

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21. The Supplier agrees to indemnify APS against any loss arising out of or in connection with the rejection of the Goods and/or Services.

Warranties relating to Goods

22. The Supplier warrants that the Goods:
- (a) are safe and free from risk to health and are compliant with all relevant laws;
 - (b) are and will remain free from any security interest (as defined in the PPSA), or any other security, charge or encumbrance;
 - (c) are free from any defect or fault;
 - (d) are of acceptable quality;
 - (e) are clearly and durably labelled, including any appropriate warnings and instructions;
 - (f) are fit for their intended purpose (as communicated by APS to the Supplier before submitting any Purchase Order or as should be reasonably understood by the Supplier given the nature of the Goods and any purposes they may be used for);
 - (g) match the description and comply with any representations, descriptions, samples or other specifications (including the Specifications) as to quality, function, performance or design referred to in the Purchase Order; and
 - (h) comply with all applicable laws and regulations, including, among other things, in relation to manufacturing, packaging, labelling and transportation.

Warranties relating to Services

23. The Supplier warrants that:
- (a) the Services will be provided in an efficient manner in accordance with all applicable legislation and laws or regulations;
 - (b) the Services will be performed to the highest standard and in accordance with APS' Specifications (where those Specifications are made known to the Supplier) or in the absence of such Specifications, in accordance with any applicable standards set by Standards Australia;
 - (c) the Supplier and its personnel will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of comparable work; and
 - (d) any equipment used on-site by the Supplier will be in safe working condition, will comply with all legislation which is applicable to such equipment and will be operated by suitably qualified and competent personnel, to the satisfaction of APS.

Work on premises

24. If any Services are to be performed on APS' premises, the Supplier must comply with all applicable laws and all of APS' policies and procedures, including any occupational safety and health policies.
25. All chemicals and hazardous materials brought by the Supplier to APS's premises must bear a label stating the identity of the chemical or material and any hazards associated with them.
26. APS will grant to the Supplier access to its premises and/or any other facility as agreed in any Purchase Order or otherwise in writing and the Supplier must give APS at least 5 days' notice (or such shorter period as agreed) before commencing any supply of the Goods and/or Services at those premises.
27. Prior to commencement of the supply of any Goods and/or Services, the Supplier must notify APS of its normal times and periods of work and must give at least 24 hours' notice of any alteration in its working hours or periods of work.
28. The Supplier must at all times consult with APS and obtain 14 days' prior written approval for any action that is likely to interfere with APS' operations.
29. If the Supplier or its personnel fail to comply with any of the requirements of clauses 24-28, then APS may, at its discretion, deny that person or those persons access to its premises or any other facility, or permit such access subject to terms and conditions APS will determine to be appropriate.
30. APS may, subject to its discretion, object to any of the Supplier's

personnel (including, without limitation, any contractor, agent or invitee of the Supplier) ("**Personnel**") who, in the opinion of APS, are lacking in appropriate skills or qualifications or engages in any misconduct. The Supplier must remove such Personnel upon direction by any representative of APS requiring it to do so and must not re-engage that person in connection with any Goods and/or Services without prior written consent of APS.

31. The Supplier acknowledges that nothing in this Agreement confers on it exclusive possession of any premises or facility of APS and that it will only be granted access to the extent deemed necessary by APS for the purpose of the supply of the Goods and/or Services.

Consequences of breach

32. Notwithstanding any other clause of these Conditions or term of the Agreement, in the event of any breach of clauses 24-31, or if APS believes in its sole discretion that it is in the interests of the health or safety or any person, APS may:
- (a) require the Supplier, the Supplier's Personnel, and/or any other person to leave the site on which Services and/or Goods are being supplied immediately; and
 - (b) require the Supplier and/or any of its Personnel to remove any material or substance from that site at the Supplier's cost.

Suspension by APS

33. Notwithstanding any other provision in this Agreement, the APS has the right, at any time and for any reason,
- a) to suspend the progress of the whole or any part of the supply of the Goods under this Agreement immediately by notice under this clause 33.
 - b) When the Supplier receives a notice of suspension from the APS under clause 33, it must suspend the supply of Goods under this Agreement until such time as the APS directs that the supply of the Goods is no longer suspended. At such time, the Supplier must promptly recommence the supply of the Goods.

Entitlement to costs

- c) If the whole or part of the supply of the Goods is suspended in accordance with clause 33
- d) then the APS will pay to the Supplier the verified additional costs necessarily incurred by the Supplier during or arising out of the suspension unless the suspension is caused or contributed to by:
- e) the non-performance of the supply of Goods by the Supplier or its Personnel; or any breach or default by the Supplier of its obligations under this Agreement.

Indemnity and release

34. The Supplier agrees to indemnify APS, its affiliated companies, and their representatives, successors, and assigns and hold them harmless from and against any liabilities, howsoever arising, from or in connection with:
- (a) any acts, negligence, omissions or wilful misconduct of the Supplier;
 - (b) any breach of any of the Supplier's warranties or any other term of the Agreement;
 - (c) the Supplier's negligent, unauthorised or wrongful acts or omissions with regards to the use of hazardous materials or dangerous conduct;
 - (d) any claims that any Goods or Services supplied to APS infringe any Intellectual Property rights of any person; or
 - (e) any claim of any lien, security interest or other encumbrance made by a third party.

Limitation of liability

35. To the maximum extent permitted by law, the maximum aggregate liability of APS for all claims under or relating to these Terms, whether in contract, tort (including, without limitation, negligence), in equity, under statute, or on any other basis is limited as follows:

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- (a) APS shall have no liability to the Supplier for any indirect or Consequential Loss under any Purchase Order;
- (b) APS' total aggregate liability for any loss, however arising, is limited to payment of the price under the relevant Purchase Order paid by APS to the Supplier for the Goods or Services that gave rise to the Loss.

- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

Severance

- 42. If a court of competent jurisdiction decides that any part of these Conditions is invalid or unenforceable, then that part will be modified (if possible) so as to make it enforceable. If it cannot be modified, then it will be severed and the rest of the Conditions will continue to operate.

Variation

- 43. APS may, prior to delivery of the Goods or performance of the Services, direct the Supplier in writing to add, omit, amend, supplement or replace any Purchase Order Specification or these Conditions.
- 44. Where a direction for a variation would result in variation to the Price, the Supplier must immediately advise APS in writing of the varied Price (which must be determined by the same method of pricing for the provision of the original Goods and/or Services). A variation to the Price is not effective unless it is communicated to APS in writing and signed by its authorised representative.
- 45. If, in the opinion of the Supplier, a direction for a variation is likely to prevent the Supplier from meeting its obligations under the Agreement, it must immediately notify APS, at its absolute discretion, will determine whether the variation will take effect and notify the Supplier of its decision in writing and may, in its discretion, modify the Agreement to the extent required to enable the Supplier to deliver the variation.

Intellectual Property

- 46. The Supplier warrants that the Goods and Services, and APS' reasonably foreseeable use of them will not infringe the Intellectual Property right of any other person. The Supplier agrees to indemnify APS against breach of this warranty.
- 47. The Supplier acknowledges and agrees that APS shall be the sole and exclusive owner of all Intellectual Property rights related to any and all Goods and/or Services created by the Supplier in the course of, or for the purposes of, supplying the Goods and/or Services to APS. The Supplier agrees to assign such Intellectual Property rights to APS, and agrees to execute such further documentation as APS considers necessary in order to support such of the Intellectual Property rights.
- 48. The Supplier agrees to grant APS a licence of all Intellectual Property rights owned by the Supplier and not assigned under clause 54 to enable it to use, modify, maintain and repair the Goods and enjoy the benefit of the Services.
- 49. All drawings, Specifications, artwork, data, material, supplies, equipment, tooling, dies, moulds, fixtures and patterns furnished or paid for by APS, are APS' exclusive property and must be used by the Supplier only in performance of the Purchase Order. Such property, while in the Supplier's custody and control, must be returned to the Purchaser in good condition, normal wear and tear accepted, or destroyed by the Supplier upon APS' direction.
- 50. Except for the purposes of this Agreement, the Supplier is not permitted to do any of the following, whether directly or indirectly through another person or entity, without the prior written consent of APS:
 - (a) reproduce or manufacture, whether for sample purposes or otherwise, any product the Intellectual Property rights in which belong to APS
 - (b) reproduce, copy or display the image of any product the Intellectual Property rights in which belong to APS; or
 - (c) give away, deal with, or sell any product the Intellectual Property rights in which belong to APS.

Confidentiality

- 51. The Supplier must ensure that it keeps any confidential information provided to it by APS and not use or disclose it, except to fulfil its obligations under this Agreement. Any information supplied by APS to the Supplier remains the property of APS and the Supplier must not disclose that information without prior written consent of APS.
- 52. Clause 51 does not apply to information which is lawfully obtained from Supplier Initial: _____

Default and termination

- 36. APS may, at its sole discretion, issue a notice of default in the event of a breach of this Agreement by the Supplier, such notice to provide at least 5 days for the default to be remedied.
- 37. Each of the following occurrences constitutes an event of default:
 - (a) the Supplier breaches or is alleged to have breached these Conditions for any reason (including, but not limited to, failing to supply the Goods and/or Services before the Date of Delivery) and fails to remedy that breach within the timeframe stipulated in clause 35.
 - (b) the Supplier, being a natural person, commits an act of bankruptcy;
 - (c) the Supplier, being a corporation, is subject to:
 - i. a petition being presented, an order being made or a meeting being called to consider a resolution for the Supplier to be wound up, deregistered or dissolved;
 - ii. a receiver, receiver and manager or an administrator under Part 5.3A of the *Corporations Act 2001* (Cth) being appointed to all or any part of the Supplier 's property and undertaking; or
 - (d) the entering of a scheme of arrangement (other than for the purpose of restructuring);
 - (e) the Supplier purports to assign its rights under these Conditions without APS' prior written consent;
 - (f) the Supplier ceases or threatens to cease conduct of its business in the normal manner.
- 38. Upon termination, APS is entitled to deduct any moneys payable by it to the Supplier, whether under this Agreement or otherwise, from any moneys due or to become due to the Supplier under this Agreement. APS is entitled to recover from the Supplier any balance that remains owing after deduction.

Subcontracting and assignment

- (a) The Supplier must obtain APS' written consent before it subcontracts any obligation under the Agreement; or
- (b) assigns, charges or encumbers this Agreement or any rights under this Agreement; or
- (c) advertises or publishes anything concerning the Agreement.

Insurance

- 39. During the term of the Agreement, the Supplier must, at its own expense:
 - (a) maintain appropriate insurance in relation to public liability and product liability with a reputable insurer for at least \$20,000,000;
 - (b) maintain appropriate insurance in relation to professional indemnity with a reputable insurer for at least \$5,000,000;
 - (c) maintain workers' compensation in accordance with applicable legislation; and
 - (d) insure the Goods with a reputable insurer for their full replacement cost.
- 40. The Supplier must, upon APS' request, provide it with certificates of currency with respect any of the insurance policies set out in clause 39.

Waiver

- 41. Subject to the terms of the Agreement, a right may only be waived in writing, signed by a party giving the waiver, and:
 - (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
 - (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and

a third party, is public knowledge, is already known or is otherwise independently developed by the Supplier having not been exposed to that information.

Applicable law

- 53. This Contract is governed by the law of Western Australia.
- 54. Any legal action in relation to each contract against any party or its property may be brought in any court of competent jurisdiction in the state of Western Australia, and the parties submit to the exclusive jurisdiction of that state.

Force Majeure

55. APS will not be responsible for any delay in or failure of performance of its obligations under this Agreement which are caused by circumstances beyond its control, including but not limited to, strikes, lock-outs, labour disturbances, acts of government, riot, civil war, commotion, fire, flood, failure of power supply or similar event and shall not be liable for any consequential loss, damage, expense or claim suffered by the Supplier or any other party as a result of any such event.

Notices

- 56. Where, pursuant to these Conditions, a party is required to give notice to the other party, such notice must be:
 - (a) in writing; and
 - (b) signed by a person authorised by the sender.
- 57. A notice is deemed to have been given and served on a party:
 - (a) if delivered personally, on the same day on which it was delivered;
 - (b) if sent by post, it is taken to have been given on the day it would have been delivered in the ordinary course of post;
 - (c) if sent by fax, at the time recorded on the transmitting machine;
 - (d) if sent electronically, at the "time of dispatch" within the meaning of section 13 of the Electronic Transactions Act 2001 (WA).

Interpretation

- 58. In these Conditions
 - (a) Agreement means an agreement between APS and the Supplier for the supply of any Goods and/or Services constituted by:
 - i. a Purchase Order;
 - ii. these Condition;
 - iii. any agreed written variation; and
 - iv. any other document which is attached to, or incorporated by reference in, the Purchase Order or these Conditions.
 - (b) Consequential Loss includes special, indirect, consequential, incidental or punitive damages or damages for loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay and whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence) in equity, statute or otherwise.
 - (c) Date for Delivery means the date for delivery of the Goods and/or performance of the Services as set out in the Purchase Order.
 - (d) Delivery Point means the address for delivery of any Goods, or where the Goods comprise services (wholly or partially) the performance of services, as stipulated in the relevant Purchase Order.
 - (a) Goods means any item of whatsoever nature which is purchased or to be purchased by APS from the Supplier, as described in any Purchase Order.
 - (b) GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* and any related legislation imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.
 - (c) GST means the tax payable on certain goods within the meaning of the GST Act.
 - (d) Intellectual Property rights means intellectual property rights at any time protected by statute or common law, including, among other

things, copyright, trade marks, patents and registered designs;

- (e) PPSA means the *Personal Property Securities Act 2009* (Cth).
 - (f) Price means the total purchase price of the Goods and/or Services as indicated in the Purchase Order.
 - (g) Services means any services that are provided or to be provided by the Supplier to APS, including but not limited to any services in connection with the supply and installation of any pumps or any like Goods.
 - (h) Specifications means any technical or other specification relating to the Goods and/or Services referred to in the Purchase Order and details of which have been made available by the APS, including by accessibility via APS's website, to the Supplier; and
59. Unless the context or subject matter otherwise requires, in these Conditions:
- (a) the singular includes plural and vice versa;
 - (b) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns;
 - (c) if a party consists of more than 1 person, the Agreement binds each of them separately and any 2 or more of them jointly;
 - (d) an obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly; and
 - (e) time is of the essence in respect of all of the Supplier's obligations to APS.

The Supplier agrees to be bound by the Terms and Conditions set out above

Signed	Dated
Print Name	
Position	
Signature:	

Note:

- **For companies:** with more two or more directors, two directors or a director and a company secretary must sign. If there is only one director, then that person must sign.
- **For partnerships:** all partners must sign.
- **For individual traders trading under their own name or under a business name:** the individual person must sign.

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