

PURCHASING TERMS AND CONDITIONS 2021



WA: Titan Plant Hire 7 Mandurah Road Kwinana Beach Western Australia 6167

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Titan Plant Hire Pty Ltd ACN 095 884 441 t/a Titan Plant Hire and as Territory Plant Hire ABN 16 095 884 441



1. CONTRACTS WITH US

These Purchasing Terms and Conditions apply to Goods and Services purchased by Titan Plant Hire Pty Ltd ACN 095 884 441 trading as Titan Plant Hire and as Territory Plant Hire ABN 16 095 884 441 (the **Company**).

2. DOCUMENTS FORMING THE CONTRACT

- (a) The legal agreement between the Company and the Supplier (the **Purchase Agreement**) in respect of Goods and/or Services supplied or to be supplied to the Company by Supplier is always comprised of only these Purchasing Terms and Conditions and the Purchase Order relating to those Goods and/or Services.
- (b) The Purchase Agreement does not include any of Supplier's terms or conditions (including in any quote, invoice, receipt or delivery docket) unless the Company expressly agrees otherwise in a written document signed by an officer of the Company. Each Purchase Order combined with these Purchasing Terms and Conditions constitutes a separate legal agreement.
- (c) The Company and the Supplier agree to be bound by the Purchase Agreement every time the Company buys Goods and/or Services from the Supplier, even if the Company and the Supplier exchange only a Purchase Order for specific Goods and/or Services.
- (d) If these Purchasing Terms and Conditions conflict with a Purchase Order, the Purchase Order will prevail to the extent of the conflict.

3. DEFINITIONS

- (a) Various terms are defined within these Purchasing Terms and Conditions using bold text. Other defined terms are set out below in this clause 3. Underlined bold words are headings for convenience only.
- (b) **Company** has the meaning given in clause 1.
- (c) **Company Site** means the location or premises owned or occupied by the Company to which the Goods and/or Services are to be delivered or supplied, as stated on the Purchase Order.
- (d) **Covid** means the coronavirus disease caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), including any recognised variant or strain thereof.
- (e) **Covid Event** means a change in law, a suspension or delay, or any adverse effect on the supply of labour, equipment or materials, relating to or caused directly or indirectly by Covid.
- (f) **Goods** means the goods, materials and items described in the Purchase Order.
- (g) **Party** means the Company or the Supplier, as appropriate.
- (h) **Personnel** means a Party's officers, employees, agents and contractors.
- (i) **PPSA** means the *Personal Property Securities Act 2009* (Cth) and all regulations pursuant to it.
- (j) **Price** means:
 - (i) if a lump sum is stated in the Purchase Order, that lump sum; or
 - (ii) if rates and a calculation method are stated in the Purchase Order, the amount determined by applying those rates and that calculation method.
- (k) **Purchase Agreement** has the meaning given in clause 2(a).
- (l) **Purchase Order** means the purchase order provided to the Supplier by the Company for specific Goods and/or Services.
- (m) **Security Interest** has the meaning given in the PPSA.
- (n) **Services** means the services described in the Purchase Order.

- (o) **Supplier** means the company, individual, partnership, joint venture, trust or entity supplying Goods and/or Services to the Company, as named in the Purchase Order, and includes Supplier's Personnel as appropriate according to the context.

4. SUPPLY OF GOODS AND/OR SERVICES

- (a) **Supply:** The Supplier must supply the Goods and/or Services to the Company at the Company Site in compliance with the Purchase Agreement.
- (b) Unless the Purchase Order states otherwise, the Supplier must supply, at its own cost, all labour, materials, plant, equipment, and other items that the Supplier requires to fulfil its obligations under the Purchase Agreement.
- (c) **Approvals and Permits:** The Supplier must obtain and maintain, at its own cost, all authorisations, licences, approvals, permits or consents necessary for providing the Goods and/or Services, including all necessary intellectual property consents, licences and rights.
- (d) **Non-exclusive:** The Supplier is not the sole or exclusive supplier to the Company for any goods or services.

5. PRICE, INVOICING, PAYMENT AND GST

- (a) **Price:** The Price includes all:
 - (i) duties and taxes (including GST, unless the Purchase Order states otherwise); and
 - (ii) costs incurred in providing the Goods and/or Services, including for packing, insurance, delivery and unloading.
- (b) The Price is fixed and will not be subject to variation for rise and fall, exchange rate variations or any other variation.
- (c) **Tax invoices:** The Supplier must submit tax invoices to the Company no earlier than:
 - (i) for Goods, the date of delivery and acceptance of the Goods under clause 6, unless the Purchase Order states that the Company will make earlier payments, in which case invoices should be issued at the times and for the amounts stated in the Purchase Order; and
 - (ii) for Services, on completion of supply of the Services, unless the Purchase Order states that the Company will make progress payments, in which case invoices should be issued at the times and for the amounts stated in the Purchase Order.
- (d) All tax invoices must comply with the GST Act and contain the Purchase Order number, a description of the Goods and/or Services supplied and all calculations relating to the Price.
- (e) **Payment:** Subject to the Supplier's compliance with the Purchase Agreement, the Company must pay Supplier within 30 days from the end of the month of receipt of Supplier's tax invoice, except where the Company disputes the invoice or the Supplier's tax invoice is received by the Company after the advised "month end" cut-off date.
- (f) All payments by the Company will be on account only and will not be an admission that Goods or Services comply with the Purchase Agreement.
- (g) **Disputed amounts:** If the Company disputes any amount claimed by the Supplier to be due and payable, the Company must pay the undisputed part (if any) of the relevant tax invoice and withhold the balance pending resolution of the dispute. If the resolution of the dispute determines that the Company must pay an amount to the Supplier, Company must pay that amount within 7 days of resolution of the dispute.
- (h) **GST:** GST Act means *A New Tax System (Goods & Services Tax) Act 1999* (Cth).
- (i) **GST** means goods and services tax levied pursuant to the GST Act and the expressions **supply** and **tax invoice** have the meanings given in the GST Act.
- (j) If GST is payable by the Company on a supply made under the Purchase Agreement, the Company must pay the Supplier the

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- amount of GST which is payable, provided Supplier has given the Company a tax invoice that complies with clause 5(d).
- (k) **Set off:** Company may set off any amount owed by the Supplier under the Purchase Agreement against any amount owed by the Supplier to the Company under the Purchase Agreement or any other agreement.
- 6. TIME FOR SUPPLY, PACKAGING, DELIVERY, INSPECTION, TITLE AND RISK**
- (a) **Time for supply:** The Supplier must supply the Goods and Services at the times stated in the Purchase Order or, if not stated in the Purchase Order, at the time(s) as communicated to the Supplier by the Company. Time is of the essence.
- (b) If the Supplier is unable to or does not supply the Goods and/or Services at the time(s) required under clause 6(a):
- the Supplier must promptly notify the Company of any anticipated or actual delay, with full information regarding the cause and the earliest possible supply date; and
 - the Company may (without prejudice to any other rights) do any of the following:
 - do whatever is reasonably necessary to expedite the supply of the Goods and/or Services;
 - terminate the Purchase Order by giving notice to the Supplier; and
 - source some or all of the Goods and/or Services from an alternative supplier,and the Company is entitled to recover from the Supplier as a debt due any losses or costs the Company incurs as a result of the Supplier's failure to comply with clause 6(a).
- (c) The Company is not obliged to accept early supply of Goods and/or Services or delivery outside of normal working hours.
- (d) **Packaging, labelling and transport:** All Goods must be properly and safely packaged, labelled, stored and transported in accordance with all laws, standards, codes and good industry practice (including Chain of Responsibility laws) and to avoid being damaged during transportation, loading and unloading.
- (e) All Goods must be supplied with all relevant instructions and material safety data sheets for safe use, handling and storage of the Goods, as well as all relevant test results and certificates.
- (f) The Supplier must ensure that:
- vehicles used for transporting Goods are suitable for the purpose, are maintained in good repair; and
 - all Goods delivered are accompanied by a delivery docket quoting the Purchase Order number.
- (g) If Supplier provides transport or freight Services Supplier must ensure that loading and unloading of all items transported is only done by properly trained, competent, ticketed and supervised Supplier's Personnel in accordance with good industry practice (including use of spotters and high visibility clothing) and within properly maintained exclusion zones.
- (h) **Inspection:** The Company is entitled to take a reasonable period of time to inspect Goods and Services after delivery.
- Inspection by the Company is not acceptance of any Goods or Services and does not affect the Company's right to reject Goods and/or Services that do not comply with the Purchase Agreement.
 - If Company's Personnel sign a delivery docket or similar, the Company will not be taken to have accepted any Goods and/or Services as being in accordance with the Purchase Agreement, including as to quality or quantity supplied, regardless of any terms appearing on any such document.
 - The Supplier grants to the Company and its Personnel a license to access the Supplier's premises to inspect and test the Goods and/or Services at all reasonable times.
- Passing of risk:** Risk in Goods passes to the Company when the Goods are delivered to the Company Site, inspected and accepted by the Company.
 - Passing of title:** Title in Goods passes to the Company on the earlier of risk passing to the Company or payment of the Price.
- 7. DEFECTIVE GOODS OR SERVICES**
- (a) If on inspection or testing the Company reasonably believes any Goods or Services do not comply with the Purchase Agreement (a **Defect**), it may:
- reject those Goods or Services by notifying the Supplier in writing; and/or
 - require the Supplier to repair, rectify or resupply those Goods or Services at the Supplier's sole cost.
- (b) The Supplier must refund any payments made by the Company in respect of Goods or Services which the Company rejects and which are not resupplied in accordance with the Purchase Agreement.
- (c) The Supplier must reimburse the Company for any expenses the Company incurs in returning or repairing Goods with a Defect and in rectifying Services with a Defect.
- (d) If at any time during a period of 12 months after supply of Goods or Services the Company becomes aware that the Goods or Services have a Defect, the Supplier must at its own cost immediately rectify the Defect so that the relevant Goods and Services comply with the requirements of the Purchase Agreement. If a longer manufacturer's warranty applies, the reference to 12 months is replaced by that longer period.
- 8. SUPPLIER'S WARRANTIES**
- (a) The Supplier represents and warrants to the Company on a continuing basis that all:
- Goods and Services comply with all applicable laws, regulations, standards, industry best practices and any requirements referred to in the Purchase Order or specified by the Company;
 - Goods and Services conform in all respects with all samples, descriptions, drawings, specifications and performance criteria in the Purchase Order or as represented or provided by Supplier or on its behalf; and
 - do not infringe the intellectual property rights of any entity;
 - Goods are of merchantable quality, are unencumbered by any Security Interests, are undamaged and are new;
 - Goods are fit and safe for the purpose for which goods of the same kind are commonly bought and for any other purpose the Company reasonably specifies;
 - Goods come with the full benefit to the Company of all manufacturer's warranties; and
 - Services are of high quality and workmanship and are provided with due care and skill by appropriately qualified, experienced and skilled Personnel who hold all necessary licenses and certifications.
- (b) Supplier warrants that information provided to the Company relating to Goods and/or Services is true and complete.
- 9. STATUTORY RIGHTS NOT WAIVED**
- All rights, warranties and remedies in the Purchase Agreement are in addition to any statutory rights, warranties and remedies applicable to supply of the Goods and/or Services and the Company does not waive any statutory rights, warranties or remedies.
- 10. ENTRY ONTO COMPANY SITES**
- (a) Subject to compliance with clause 10(b), the Company will give the Supplier access to the Company Site as and when reasonably required to enable the Supplier to supply the Goods and/or Services.
- (b) If Supplier's Personnel enter any site or premises owned or occupied by the Company Supplier must:

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- (i) only enter areas of the site as permitted by the Company, and not under any circumstances enter any exclusion zone established by the Company;
 - (ii) provide all necessary safety and personal protection equipment;
 - (iii) ensure that Supplier's Personnel comply with all directions given by the Company or its Personnel and all Company policies, rules and procedures relating to security and/or occupational health and safety, including completing site inductions and attending safety meetings as required by the Company;
 - (iv) prepare and provide to the Company safety and risk management plans, procedures and safe work method statements as required by the Company or by law;
 - (v) ensure that loading and unloading is only done by properly trained, competent, ticketed and supervised Supplier's Personnel in accordance with good industry practice (including use of spotters and high visibility clothing) and only in areas designated by the Company PROVIDED always that while on Company Sites under no circumstances may Supplier or its Personnel load or unload plant or equipment owned by Company;
 - (vi) not unreasonably interfere with or impede any activity or any person on the Company Site;
 - (vii) not damage any property on the Company Site or the environment;
 - (viii) ensure that the Company Site is left secure, clean and free of waste and debris caused by the Supplier; and
 - (ix) not use any camera or recording device (including mobile phone cameras) on the Company Site and must not transmit or post any image, video or sound recording taken at the Company Site.
- (c) The Supplier agrees that any materials, plant, equipment and items that Company provides to the Supplier are used at Supplier's risk and remain the property of the Company.
- (d) The Supplier must work co-operatively with other contractors at the Company Site and must avoid any conflict between its activities and the activities of other contractors.
- ## 11. PPSR
- (a) If the Company pays any part of the Price prior to the delivery of the Goods to the Company:
- (i) the Supplier grants a charge over the Goods (and any materials purchased for incorporation into the Goods) to secure the obligations owed by the Supplier to the Company; and
 - (ii) the Supplier must not grant to any other person a Security Interest in those Goods.
- (b) The Supplier consents to the Company making and maintaining a registration on the Personal Property Securities Register in any manner the Company considers appropriate in relation to any Security Interest granted in the Purchase Agreement.
- (c) The Supplier waives rights to receive notice of any registration events to which section 157(3)(a) of the PPSA applies.
- (d) The Supplier and the Company agree that sections 95, 96, 126, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA do not apply to the Purchase Agreement.
- ## 12. INSURANCE
- (a) The Supplier must purchase and maintain, and must ensure that the Supplier's subcontractors purchase and maintain, at no cost to the Company the following insurance policies:
- (i) public and products liability insurance with a minimum cover of \$30 million per claim and with the Company noted as an interested party on the policy;
 - (ii) workers' compensation insurance as required by law and also providing cover for common law liability to a limit of not less than:
 - (A) in Western Australia, \$50 million; or
 - (B) in any other State or Territory, the maximum amount permitted under the workers' compensation legislation of that State or Territory;
 - (iii) insurance which covers the Goods for not less than the new replacement cost of the Goods at the date of the Purchase Order, including during transport;
 - (iv) if the supply of the Goods and Services requires the Supplier to provide or use plant and equipment, plant and equipment insurance for not less than the new replacement cost of the plant and equipment at the date of the Purchase Order;
 - (v) if professional services are supplied to the Company, professional indemnity insurance with a minimum cover of \$5 million per claim;
 - (vi) if the supply of the Goods or Services are to be delivered or supplied to the Company on a Company Site, insurance in respect of any registered motor vehicles or registered mobile plant or equipment for legal liability for third party property damage with a minimum cover of \$20 million per claim; and
 - (vii) any other insurances required by law.
- (b) All of the above insurances must:
- (i) be purchased and maintained from a reputable insurer approved by the Company (such approval not to be unreasonably withheld) with a Standard & Poor's Global insurer financial strength rating of at least 'A-' or its equivalent;
 - (ii) include a principal's indemnity extension and a waiver of subrogation in favour of the Company where available on commercially reasonable terms;
 - (iii) be maintained at all times by the Supplier while providing the Goods and/or Services under the Purchase Agreement, except in the case of professional indemnity insurance which must be maintained for a further period of 7 years from the expiry or termination of the Purchase Agreement; and
 - (iv) where permitted by the insurer, require the insurer to notify the Company of any cancellation or non-renewal of any insurance purchased by the Supplier.
- (c) The Supplier must provide the Company with current certificates of currency for all insurances as referred to above. All Certificates must note the Company as an interested party where permitted by the insurer.
- ## 13. INTELLECTUAL PROPERTY
- (a) Title to all intellectual property rights in or in relation to providing the Services vests upon creation with the Company. Any intellectual property owned by the Supplier prior to supply of the Services will remain the property of the Supplier.
- (b) The Supplier grants the Company a royalty-free, non-exclusive, transferable, perpetual licence to use any intellectual property rights associated with the Goods and/or Services and any documentation provided by the Supplier for the installation, use, support, repair, maintenance or alteration of the Goods or Services.
- ## 14. LIABILITY AND INDEMNITIES
- (a) **Claim** means any claim, action, demand, suit, proceeding, complaint, cause of action, cost (including legal costs on a solicitor and own client basis), damages, losses and liability whatsoever, including claims by a third party.
- (b) **Indemnity:** Except to the extent caused by the negligent or wilful act of the Company or its Personnel, the Supplier is liable for and must indemnify and keep indemnified the Company

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and its Personnel (each an **Indemnified Party**) from and against any Claim against an Indemnified Party directly or indirectly arising out of or in connection with:

- (i) the Supplier's activities;
- (ii) a reckless, wilful or negligent act or omission by the Supplier or its Personnel; or
- (iii) a breach of the Purchase Agreement by the Supplier or its Personnel.

Each indemnity in this Purchase Agreement is a continuing obligation, separate and independent from the other obligations of the Parties.

15. ASSIGNMENT AND SUBCONTRACTING

- (a) The Supplier is not permitted to assign or subcontract any of its obligations under the Purchase Agreement without the prior written consent of the Company.
- (b) The Supplier must ensure compliance with the Purchase Agreement by its Personnel.
- (c) The Supplier is liable for all acts and omissions by its Personnel as if those acts or omissions are those of the Supplier.

16. TERMINATION

- (a) In addition to any rights at law or in this Purchase Agreement, either Party may terminate the Purchase Agreement immediately by giving notice to the other Party, if:
 - (i) the other Party breaches any term of the Purchase Agreement and fails to remedy the breach within 14 days of written notification of the breach; or
 - (ii) to the maximum extent permitted by law, the other Party ceases to carry on business, becomes bankrupt, insolvent or has an external controller appointed.
- (b) Clauses 6(l), 7, 8, 9, 12, 13, 14, 16(b), 17 and 23 survive termination of the Purchase Agreement.

17. CONFIDENTIALITY

- (a) A Party must not disclose or use for an improper purpose any confidential information received from the other Party.
- (b) Each Party can disclose such confidential information if:
 - (i) required by law, a court or rules of a stock exchange;
 - (ii) the information is disclosed to professional advisers or bankers; or
 - (iii) the information is disclosed to a Party's Personnel.

18. DELAY/FORCE MAJEURE/COVID EVENTS

- (a) **Force Majeure Event** means an act of God, industrial action, embargo, boycott, delay by carrier or freight company, flood, fire, war, civil unrest, epidemic, pandemic (including Covid), decrees or orders or other Government intervention or any other cause or delay that is:
 - (i) not reasonably foreseeable by the Party adversely affected; and
 - (ii) is outside the reasonable control of that Party.A Force Majeure Event does not include adverse weather.
- (b) Subject to the rest of this clause 18, if a Party is restricted or prevented from performing obligations (other than an obligation to pay money) under the Agreement due to a Force Majeure Event (the **Restricted Party**), the Restricted Party may give notice of such cause to the other Party and the time for performance of the Restricted Party's obligations (other than to pay money) shall be extended by the period the cause continues. If the cause continues for more than 60 days either Party may terminate the Purchase Agreement.
- (c) **Covid Events:** Supplier agrees that the potential for Covid Events occurring after the date of the Purchase Agreement is reasonably foreseeable by Supplier and that when entering into the Purchase Agreement Supplier has taken into account

that a Covid Event may prevent, delay or disrupt its operations or increase the costs of or disrupt or delay works or supplier which Supplier is obliged to complete.

- (d) Unless the Company agrees otherwise in writing, the Price will not be modified or increased if a Covid Event affects Supplier's ability to comply with its obligations under the Purchase Agreement, including supplying Goods and/or Services.

19. TRUSTEE PROVISIONS

If the Supplier is a trustee it enters into the Purchase Agreement in its own capacity and also as trustee of the trust named on the Purchase Order, and the Supplier represents and warrants to the Company that:

- (a) it has full authority and power to enter into the Purchase Agreement and perform the obligations under it, including for the benefit of the beneficiaries of that trust; and
- (b) it has a right to be fully indemnified out of the trust in respect of the obligations imposed on it in its capacity as trustee.

20. VARIATION

The Purchase Agreement may only be varied by writing signed by the Parties. However, the Company may vary these Purchasing Terms and Conditions in relation to future Purchase Orders. If the Supplier does not wish to be bound by such variations in respect of future Purchase Orders the Supplier is entitled to cease providing Goods and Services to the Company.

21. WAIVER

A power, right or remedy may only be waived in writing signed by the Party to be bound by the waiver. The non-exercise of, or delay in exercising, any power, right or remedy is not a waiver.

22. ILLEGALITY

Any provision of the Purchase Agreement which is unenforceable or illegal is deemed severed to not operate until it is enforceable and legal, without affecting the rest of the Purchase Agreement.

23. GOVERNING LAW

The Purchase Agreement is governed by the law in force in the state in which the Goods and/or Services are supplied.

24. AUSTRALIAN CONSUMER LAW RIGHTS

Company does not waive any of its rights under the Australian Consumer Law (the **ACL**).

25. INTERPRETATION

In the Purchase Agreement,:

- (a) the singular includes the plural and vice versa;
- (b) where two or more entities are named as the Supplier, then the obligations on each bind them jointly and severally;
- (c) "include" and derivatives thereof are not words of limitation;
- (d) a reference to a person includes that person's legal personal representatives, successors and assigns;
- (e) if the date by which any payment must be made or notice given is not a business day, it must be made or given on or by the next business day;
- (f) where time is calculated by reference to a day or event, that day or the day of that event is excluded;
- (g) a notice or other communication means a notice or communication in writing in the English language, addressed to the email or postal addresses of the recipient Party; and
- (h) a reference to a State or Territory is a reference to a State or Territory of the Commonwealth of Australia.